



**MAKING THE NORMATIVE CASE:  
IMPLEMENTING SECURITY COUNCIL  
RESOLUTION 1325 AS PART OF A LEGAL  
FRAMEWORK ON WOMEN, PEACE AND  
SECURITY**

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## EXECUTIVE SUMMARY AND KEY RECOMMENDATIONS

This submission makes the normative case for understanding Security Council Resolution 1325 (SCR 1325) and related resolutions on women, peace and security (WPS) as an integrated part of an established and growing framework of international and regional law that upholds the rights of women and girls<sup>1</sup> in relation to conflict (the legal framework).<sup>2</sup> This legal framework is grounded in international and regional human rights law, international humanitarian law (IHL) international criminal law and international refugee law.<sup>3</sup> These sources of law are reflected in the commitments in the Security Council resolutions on women, peace and security (WPS) to uphold the rights of women and girls, and men and boys, in relation to conflict. The legal framework places binding obligations on states, non-state actors, the United Nations (UN) and other organizations, and is sourced from treaties and customary international law. Situating SCR 1325 and its following resolutions on WPS as part of this legal framework, rather than seeing them as isolated political statements, allows them to be understood a part of a body of obligations that uphold human rights at all stages of conflict, from prevention to resolution to transitions towards peace.

This submission makes the following five recommendations:

### **Recommendation 1: Understand the obligations in SCR 1325 as an integrated part of the legal framework on women, peace and security (the legal framework)**

SCR 1325 and subsequent Security Council resolutions on WPS should be understood in light of the binding obligations and commitments reflected in their contents. This understanding of the Resolutions should integrate both the Security Council's political commitment to act on women's rights in conflict, and obligations from the legal framework. The key elements of the legal framework that uphold commitments held by all parties involved in conflicts include:<sup>4</sup>

- The Convention on the Elimination of all Forms of Discrimination against Women (CEDAW);

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<sup>1</sup> In this submission, the human rights of women refer to the rights of both women and girls.

<sup>2</sup> See Christine Chinkin and Hilary Charlesworth, 'Building Women into Peace: the international legal framework' (2006) 27(5) *Third World Quarterly*, pp. 937-57.

<sup>3</sup> Committee on the Elimination of Discrimination against Women (CEDAW Committee) 'General Recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations' (adopted on 18 October 2013) CEDAW/C/GC/30 (CEDAW GR No. 30). See also Security Council Report, *Cross Cutting Report on Women, Peace and Security* (New York, October 2010).

<sup>4</sup> Convention on the Elimination of All Forms of Discrimination against Women (adopted on 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13 (CEDAW); CEDAW GR No. 30; United Nations, *Beijing Declaration and Platform of Action, adopted at the Fourth World Conference on Women*, 27 October 1995 (BPfA); UNGA, *Further actions and initiatives to implement the Beijing Declaration and Platform for Action*, 16 November 2000, A/RES/S-23-3 (UNGA Outcome Document); and UN Commission on the Status of Women, *Agreed Conclusions on the prevention and elimination of violence against women and girls*, 15 March 2013, E/CN.6/2013/11 (CSW Agreed Conclusions 2013).

- Committee on the Elimination of Discrimination against Women (CEDAW Committee) General Recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations (CEDAW GR No. 30);
- The Beijing Declaration and Platform for Action 1995 (BPfA) notably its two critical areas of concern on Violence against Women and Women in Armed Conflict;
- The UN General Assembly Outcome Document of its 23<sup>rd</sup> Special on Women 2000: Gender Equality, Development and Peace for the 21<sup>st</sup> Century 2000 (UNGA Outcome Document);
- The UN Commission on the Status of Women Agreed Conclusions on the prevention and elimination of violence against women and girls 2013 (CSW Agreed Conclusions 2013).

**Recommendation 2: Implement SCR 1325 and the legal framework by increasing women and girls' meaningful participation and inclusion in the National Action Plan (NAP) process (design, implementation, monitoring and evaluation)**

- SCR 1325 National Action Plans (NAPs) must be created with the meaningful participation and inclusion of women and girls and their non-governmental organizations (NGOs) and allies. Women and girls, and their civil society organizations, should be empowered to jointly design, implement, monitor and evaluate NAPs together with governments, development partners, and other stakeholders, including private actors (especially non-state actors involved in post-conflict reconstruction and transitional justice situations).
- An active and engaged civil society plays a key role in ensuring that NAPs are substantively implemented. States must budget for adequate financial and human resources so that the following groups can shape, enforce and continually improve the NAP process: female political leaders, women's and girls' organizations, victims and survivors of conflict-related violence, and women, girls, men and boys affected by conflict.

**Recommendation 3: Implement SCR 1325 and the legal framework by ensuring government buy-in at all levels (national, regional, provincial/district and local) and across all of government**

- Government buy-in is essential to creating NAPs via a robust process, and to holding states accountable to their obligations under SCR 1325, the other resolutions on WPS, and the entire legal framework. Key decision-makers should lead the NAP process including legislators, policy-makers and political leaders, especially women, supported by the highest levels of government. The NAP process should involve all levels of government (national, regional, provincial/district and local government, including urban and rural authorities).

- The NAP process should take a multi-stakeholder, multi-sectoral cross-government approach, and provide adequate financial and human resources to involve the following government bodies: women's and children's ministries; national women's machineries and government bodies dealing with children's rights e.g. children's commissions; national human rights institutions; truth and reconciliation commissions and other transitional justice bodies; and ministries and agencies responsible for: justice, security, peace and reconstruction, migration, economic and social development, labour and employment, education, foreign affairs, and all issues relevant to the legal framework. It should budget for adequate financial and human resources build political will across of all relevant levels of government, especially women leaders.

**Recommendation 4: To guarantee substantive equality, which is a minimum protection under the legal framework on women, peace and security**

- To guarantee *substantive equality*, the UN's existing monitoring and accountability processes must be accessible to women and girls and their organizations and advocates, to ensure access to justice, and provide effective monitoring and reporting on state compliance with the legal framework, including by:
  - Creating a dedicated "Women, Peace and Security" section in key Universal Periodic Review (UPR) and CSW reports and outcome documents, and building the capacity of government officials and civil society, especially women's and girls' organizations, for gender-responsive reporting on conflict;
  - Mainstreaming the CEDAW GR No. 30 into CEDAW country and shadow reporting, and budgeting for adequate financial and human resources to the CEDAW Committee, governments, women's and girls' organizations and others to provide capacity-building training on implementing the SCR 1325 and the CEDAW GR. No 30 in the context of the overarching legal framework on women, peace and security.
  - Improving the CEDAW communication procedure by publicising its availability and enabling women and girls to meaningfully access the procedure, including by removing the requirement to exhaust domestic remedies, providing legal aid, and publicising all decisions.

**Recommendation 5: To allow for transformative equality, which is provided for in the legal framework, especially under CEDAW, including by providing transformative remedies for women and girl victims of rights violations**

- To guarantee *transformative equality*, international, regional and national courts, judicial and quasi-judicial bodies, informal justice mechanisms and all relevant bodies with the power to provide remedies to victims of rights violations, including those in transitional justice situations, should apply transformative remedies that both provide meaningful redress for victims and survivors, and hold perpetrators fully accountable for their actions.

Section 1 shows that making the normative case requires seeing SCR 1325 and its related resolutions as more than political documents, fixed to particular moments in the Security Council's history. Making the normative case means understanding the legal obligations that underpin SCR 1325 and the subsequent resolutions on WPS. Section 1 situates the resolutions on WPS in the context of an established and growing legal framework that recognises the duties to uphold the human rights of women, girls, men and boys, held by all parties involved in conflicts, including states, non-state actors, and international and regional organizations. The legal framework, when fully implemented, allows women and girls, and men and boys, to claim their rights and hold perpetrators accountable for violations of those rights, in ways that guarantee both substantive and transformative equality.

The following sections consider how the legal framework could be implemented, at the country level (Section 2) and via processes and remedies available to victims of rights violations (Section 3).

Section 2 of the submission considers how the legal framework on WPS outlined in Section 1 could be implemented, via National Action Plans (NAPs). This section contains six case studies of SCR 1325 NAPs from different regions around the world. The NAPs, recommended by the Security Council to governments to better implement SCR 1325, are one of the main mechanisms that the Security Council, other UN organs and bodies, states, non-governmental organizations (NGOs) and others use to track the enforcement of the Security Council resolutions in women, peace and security. The case studies include a range of countries at various stages of the conflict process (conflict prevention, conflict, conflict resolution, post-conflict and transitional justice situations). Most countries have been chosen because of an existing or multiple NAPs. Myanmar has been chosen as a country that is moving towards adopting a NAP. The case studies are:

- The Democratic Republic of the Congo (Africa)
- Myanmar (Asia)

- Nepal (Asia)
- Bosnia and Herzegovina (Europe)
- Chile (Latin America)
- Iraq (The Middle East)

Section 3 of the submission assesses existing monitoring processes and remedies at the UN, and how these could be improved to guarantee substantive equality. This section also discusses the emergence of transformative reparations for women and girl victims of rights violations including sexual and gender-based violence (SGBV). The UN's currently fragmented system must be reformed to effectively to monitor the accountability of states and other actors involved in conflict, and to provide redress for victims. Women and girls must be empowered to access remedy mechanisms that provide for transformative equality.



## SECTION 1: MAKING THE NORMATIVE CASE TO READ SCR 1325 TOGETHER WITH CEDAW, ITS GENERAL RECOMMENDATION NO. 30 AND THE LEGAL FRAMEWORK ON WOMEN, PEACE AND SECURITY

The adoption of the UN Security Council Resolution 1325 (SCR 1325) on 31 October 2000 signalled a victory by women's organizations, governments, UN Women (then UNIFEM) and others to put the women, peace and security (WPS) agenda at the centre of the Council's work.<sup>5</sup> This submission argues that the SCR 1325 and its related resolutions (the resolutions) should not be understood in isolation or solely within the Security Council's security agenda. The resolutions should be understood as reflecting existing normative obligations that they incorporate from treaties, custom and other sources of international and regional law. This submission identifies the links between SCR 1325 and key elements of the legal framework that are reflected in its text and that expand on the protections in SCR 1325. Implementing the resolution as an integrated centre of a wider body of law on WPS allows for robust implementation of the full spectrum of rights concerning women, girls, men and boys affected by conflict.

This submission argues that the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)<sup>6</sup> is the normative heart of the legal framework, complementing many of the human rights protections contained in the SCR 1325. CEDAW is both reflected in the language of SCR 1325 and expands on its provisions. As a Security Council Resolution with political impact, SCR 1325 gives an unmatched visibility to the legal framework. As the international bill of women's rights that has been widely ratified by states,<sup>7</sup> CEDAW contains binding obligations that are at the core of the legal framework and that guarantee both substantive and transformative equality.<sup>8</sup> **Substantive equality** requires recognising and appropriately responding to gender-specific harms that will not be addressed by gender-neutral (formal) equality.<sup>9</sup> **Transformative equality** necessitates systemic and structural changes in societies. These changes involve a redistribution of power and resources and a restructuring of structures that perpetuate sex- and gender-based discrimination, including violence against women. Transformative equality involves states being committed to undertaking fundamental and far-reaching societal changes, as

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<sup>5</sup> Dianne Otto (2010) 'Power and Danger: Feminist Engagement with International Law through the UN Security Council' 32(1) *Australian Feminist Law Journal*, pp. 97-121, p. 100.

<sup>6</sup> Convention on the Elimination of All Forms of Discrimination against Women (adopted on 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13 (CEDAW).

<sup>7</sup> In this section, "women's rights" refers to the rights of both women and girls. As of April 2015, 188 states have ratified CEDAW or acceded to it.

<sup>8</sup> UN Women *CEDAW and Security Council Resolution 1325: A Quick Guide* (New York, 2010) (CEDAW and SCR 1325 Quick Guide) p. 5.

<sup>9</sup> See Christine Chinkin, 'Violence against Women' in Marsha A. Freeman, Christine Chinkin and Beate Rudolf (eds) *The UN Convention on the Elimination of All Forms of Discrimination against Women: A Commentary* (Oxford, Oxford University Press, 2012) (CEDAW Commentary) pp. 443-73, p. 463.

guaranteed by the spirit and the letter of CEDAW, its General Recommendations, and the CEDAW Committee's jurisprudence and recommendations to state parties<sup>10</sup> (see Section 3 for a discussion on transformative remedies). This submission argues that while substantive equality is a minimum guarantee of the legal framework, there is space, especially under CEDAW, for transformative equality to guide the remedies for women, girls, men and boys who experience rights violations.

The following elements of the legal framework should be read together with SCR 1325, because they reflect binding obligations and government commitments that are significant to the WPS agenda. CEDAW enjoys near-universal ratification by most UN Member States and provides substantive guidance on protecting women and girls affected by conflict via its General Recommendations (GRs), especially its GR No. 30 on women in conflict prevention, conflict and post-conflict settings (CEDAW GR No 30).<sup>11</sup> CEDAW's binding obligations are supported by the blueprints for action in the Beijing Platform for Action (BPfA) and other important documents. The key elements of the legal framework that support an integrated understanding of SCR 1325 are:

- The subsequent Security Council Resolutions (SCRs) on WPS following SCR 1325, adopted in 2008-13.<sup>12</sup>
- CEDAW and the CEDAW GR No. 30, adopted in 1979 and 2013 respectively.<sup>13</sup>
- The BPfA, adopted at the Fourth World Conference on Women in 1995, especially its two critical areas of concern on violence against women and women in armed conflict.<sup>14</sup>
- The Outcome Document of the 23<sup>rd</sup> Special Session of the UN General Assembly on Women 2000: Gender Equality, Development and Peace for the 21<sup>st</sup> Century (UNGA Outcome Document).<sup>15</sup>
- The Agreed Conclusions of the Commission on the Status of Women 2013 on the prevention and elimination of violence against women (CSW Agreed Conclusions 2013).<sup>16</sup>

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<sup>10</sup> Andrew Byrnes, 'Article 1', in CEDAW Commentary (Byrnes) pp. 52-70, p. 56.

<sup>11</sup> CEDAW and SCR 1325 Quick Guide, p. 8.

<sup>12</sup> The related UN Security Council Resolutions on women, peace and security are: UN Security Council Resolution 1820 (19 June 2008) UN Doc S/RES/1820 (SCR 1820); UN Security Council Resolution 1888 (30 September 2009) UN Doc S/RES/1888 (SCR 1888); UN Security Council Resolution 1889 (5 October 2009) UN Doc S/RES/1889 (SCR 1889); UN Security Council Resolution 1960 (16 December 2010) UN Doc S/RES/1960 (SCR 1960); UN Security Council Resolution 2106 (24 June 2013) UN Doc S/RES/2106 (SCR 2106); and UN Security Council Resolution 2122 (18 October 2013) UN Doc S/RES/2122 (SCR 2122).

<sup>13</sup> Convention on the Elimination of all Forms of Discrimination against Women (adopted on 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13 (CEDAW); and Committee on the Elimination of Discrimination against Women (CEDAW Committee) General Recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations (adopted on 18 October 2013) CEDAW/C/GC/30 (CEDAW GR No. 30).

<sup>14</sup> *Beijing Declaration and Platform of Action, adopted at the Fourth World Conference on Women, 27 October 1995; referenced in SCR 1325 preparatory paragraph 2 (PP2).*

<sup>15</sup> UNGA, *Further actions and initiatives to implement the Beijing Declaration and Platform for Action*, 16 November 2000, A/RES/S-23-3; referenced in SCR 1325 in PP2.

<sup>16</sup> UN Commission on the Status of Women, *Agreed Conclusions on the prevention and elimination of violence against women and girls*, 15 March 2013, E/CN.6/2013/11 (CSW Agreed Conclusions 2013).

This submission does not discuss the following international instruments that are part of the framework in depth, but acknowledges their importance:

- International human rights law (IHRL) treaties other than CEDAW and its Optional Protocol 1999,<sup>17</sup> including:
  - The International Bill of Rights (the Universal Declaration of Human Rights 1948, and the International Covenants on Civil and Political Rights and Economic, Social and Cultural Rights 1966).<sup>18</sup>
  - The Convention on the Rights of the Child 1989 (which has special relevance for girls affected by conflict and like CEDAW, enjoys near-universal ratification) and its two relevant Protocols of 2000, especially the Optional Protocol on the Involvement of Children in Armed Conflict.<sup>19</sup>
  - The Refugee Convention 1951, which has special relevance for women and girl refugees in relation to conflict, and its Protocol of 1967.<sup>20</sup>
  - The Convention against Torture 1984, which has special relevance for the rights of women and girls to be free from violence, including torture and all forms of cruel, inhuman and degrading treatment.<sup>21</sup>
- International humanitarian law (IHL) treaties, namely the Geneva Conventions 1949 and the Additional Protocols of 1977.<sup>22</sup>

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<sup>17</sup> UN General Assembly, Optional Protocol to CEDAW, (adopted 6 October 1999, entered into force 22 December 2000) UN Doc A/RES/54/4.

<sup>18</sup> Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) (UDHR); International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR); International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force on 3 January 1976) 999 UNTS 3.

<sup>19</sup> Convention on the Rights of the Child (adopted 11 November 1989, entered into force 2 September 1990) 1577 UNTS 3 (CRC); Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (adopted 25 May 2000, entered into force 18 January 2002) 2171 UNTS 227; Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (adopted 25 May 2000, entered into force 12 February 2002) 2173 UNTS 222; referenced in SCR 1325 OP9.

<sup>20</sup> Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137 (Refugee Convention 1951); Protocol Relating to the Status of Refugees (adopted 31 January 1967, entered into force 4 October 1967) 606 UNTS 267 (Protocol 1967) referenced in SCR 1325 OP9. Although SCR 1325 emphasizes the obligations under the Refugee Convention 1951 and Protocol 1967, the subsequent resolutions are silent on international refugee law. Given that the Refugee Convention does not explicitly address gender equality, this has been supplemented by references to CEDAW.

<sup>21</sup> Convention against Torture (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85.

<sup>22</sup> Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 31 (Geneva Convention I); Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 85 (Geneva Convention II); Geneva Convention relative to the Treatment of Prisoners of War (adopted 12 August 1949, entered into force 21 October 1950) 74 UNTS 135 (Geneva Convention III); Geneva Convention relative to the Protection of Civilian Persons in Time of War (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 287 (Geneva Convention IV); Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the

- International criminal law treaties, namely the Rome Statute of the International Criminal Court 1998.<sup>23</sup>
- Other relevant SCRs that address the WPS agenda including: the SCRs on children and armed conflict, including SCRs 1539 (2004) 1612 (2005) 1882 (2009) 1998 (2011) and 2143 (2014) and on armed conflict and post-conflict situations, as well as Presidential Statements of the Security Council relevant to the WPS agenda.<sup>24</sup>
- Declarations and programmes for action that are “soft law” but that are relevant to the rights of women and girls in armed conflict, especially the Declaration on the Protection of Women and Children in Emergency and Armed Conflict 1974, the UN Declaration on the Elimination of Violence against Women 1993 and the Vienna Declaration and Programme of Action 1993.<sup>25</sup>
- Recommendations in the reports of the Secretary-General relevant to the legal framework on women, peace and security; the Concluding Observations and General Comments/Recommendations of the CEDAW Committee and other UN treaty bodies; the recommendations of the Special Representatives of the Secretary-General (SRSGs) on Sexual Violence in Conflict and Children and Armed Conflict; and recommendations made by the special procedures of the Human Rights Council on thematic issues and territories relevant to WPS, including the Special Rapporteurs on: Violence against Women, its causes and consequences; the human rights of internally displaced persons; truth, justice, reparation and guarantees of non-recurrence; the situation of human rights in Somalia; the Sudan; the Syrian Arab Republic; and the Palestinian territories occupied since 1967.

Similarly, while this section does not cover regional human rights law in-depth, it acknowledges the importance of regional treaties that strengthen the framework on WPS. In particular these include:

- The Council of Europe Convention on Preventing and Combating Gender Based Violence and Domestic Violence (the Istanbul Convention, 2011).

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Protection of Victims of International Armed Conflicts (Protocol I) (adopted 8 June 1977, entered into force 7 December 1978) 1125 UNTS 3; Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Additional Protocol II) (adopted 8 June 1977, entered into force 7 December 1978) 1125 UNTS 609; all referenced in SCR 1325 OP9.

<sup>23</sup> Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 3 (Rome Statute 1998); referenced in SCR 1325 OP9.

<sup>24</sup> See for instance: Presidential Statements of the Security Council: S/PRST/2004/40 and S/PRST/2005/52.

<sup>25</sup> Declaration on the Protection of Women and Children in Emergency and Armed Conflict, G.A. res. 3318 (XXIX), 29 U.N. GAOR Supp. (No. 31) at 146, U.N. Doc. A/9631 (1974); Declaration on the Elimination of Violence Against Women G.A. Res 48/104, A/RES/104 (20 December 1993); World Conference on Human Rights, *Vienna Declaration and Programme of Action*, U.N. Doc. A/CONF.157/23 (July 12, 1993). See also Aisling Swaine, ‘Substantive New Normative Provisions on Women and Armed Conflict Concurrently Adopted by the United Nations Security Council and the CEDAW Committee’, 18(5) *AWID Insights*, 18 February 2014.

- The Inter American Convention on the Prevention, Punishment and Eradication of Violence against Women 1994 (Convention of Belém do Pará). The Convention and the jurisprudence of the Inter-American Court of Human Rights are discussed in Section 3 relation to transformative remedies.
- The African Charter on Human and People's Rights 1981; and its accompanying Protocol on the Rights of Women in Africa 2003.
- The African Charter on the Rights and Welfare of the Child 1990.

## SCR 1325: REFLECTING INTERNATIONAL LAW, ESPECIALLY CEDAW, OBLIGATIONS

The four pillars of SCR 1325 (participation, protection, prevention, and relief and recovery) reflect states' existing obligations, especially to fully implement international humanitarian law and international human rights law to protect women and girls during and after conflicts.<sup>26</sup> The text of SCR 1325, by reflecting other sources of international law, reinforces the commitments of UN Member States to take action on upholding the rights in the legal framework on women, peace and security. The Resolution directly references treaties, calling all parties to armed conflict to fully respect their obligations under the: Geneva Conventions 1949 and 1977 Additional Protocols; the Refugee Convention 1951 and 1967 Protocol; and other UN Treaties including CEDAW and its Optional Protocol 1999; the CRC and its two Optional Protocols 2000; and the Rome Statute 1998.<sup>27</sup> The Resolution also reflects international treaty and customary law protections under each pillar.

As shown below, **many of the binding treaty obligations reflected in SCR 1325 are from CEDAW**. These are later picked up and elaborated in the CEDAW GR No. 30, adopted by the CEDAW Committee thirteen years after SCR 1325 on 18 October 2013. The **participation pillar** largely reflects the **obligation of non-discrimination** under international law, encompassed most comprehensively by CEDAW. As Hilary Charlesworth and Christine Chinkin note, under a formal equality model found in other human rights treaties, "the language of non-discrimination makes it difficult to emphasise the particularity of women's lives in ways that benefit women: it compresses women's lives into cumbersome and inaccurate categories. It also precludes the possibility of special programs for women".<sup>28</sup> Non-discrimination under CEDAW addresses the Convention's central purpose, to eliminate all forms of discrimination against women and girls, as well as its complementary purpose of ensuring the enjoyment of rights on the basis of equality of women and men. Non-discrimination is best understood as "the elimination of classifications, acts, or practices which are based explicitly on sex or which have an indirectly discriminatory effect, so that women enjoy access to the benefits and opportunities available within existing social structures".<sup>29</sup>

Under CEDAW, the obligation of non-discrimination requires both **substantive** and **transformative equality**. States must take positive steps to address women's political, economic, social and cultural exclusion, guaranteeing not just formal opportunities but the substantive enjoyment of these

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<sup>26</sup> UN Security Council Resolution 1325 (30 October 2000) UN Doc S/RES/1325, preparatory paragraph 6 (PP 6) (SCR 1325).

<sup>27</sup> SCR 1325, operative paragraph 9 (OP 9).

<sup>28</sup> Hilary Charlesworth and Christine Chinkin, 'The New United Nations 'Gender Architecture': A Room with a View?' (2013) 17 *Max Planck Yearbook of United Nations Law*, pp. 1-60.

<sup>29</sup> Byrnes, p. 53.

opportunities (substantive equality). States must achieve systemic, transformational changes to remedy the exclusionary structures that prioritise the views and interests of privileged groups (transformative equality).<sup>30</sup> As the CEDAW Committee emphasizes in its GR No. 30, the obligation of non-discrimination towards women and girls affected by conflict necessitates an intersectional perspective on discrimination, especially in relation to conflict situations.<sup>31</sup> Although intersectionality is not addressed in SCR 1325, it is briefly addressed in subsequent resolutions and is a key feature of the CEDAW GR No. 30 that adds value to understanding the resolutions on WPS.

## 1. Prevention

- a. By reaffirming **women's role in preventing and resolving conflicts and peace-building**, stressing their equal participation and full involvement in efforts to maintain and promote peace and security, and recognising the need to increase their role in decision-making to prevent and resolve conflicts, SCR 1325 reflects a range of existing international obligations. These include:<sup>32</sup>
- Articles 7 and 8 of CEDAW, which address women's participation in political and public life, nationally and internationally, respectively. Article 4(1) of CEDAW is also relevant (it addresses temporary special measures to remove discrimination against women e.g. quotas and other affirmative action measures to involve women). The ICCPR General Comment No. 28 (equality between men and women (GC No. 28)) also recognises the importance of affirmative action measures to promote gender equality.
  - The CEDAW GRs No. 23 (political and public life) and 30. CEDAW GR No. 30 prohibits prevention efforts from discrimination against women and their peace groups, and takes a holistic approach to conflict prevention, recognises women's role informal, local and community-based preventive diplomacy efforts.
  - Article 25 of the ICCPR (concerning participation in public affairs) as well as the ICCPR GCs No. 25 (on Article 25) and No 28.
- b. SCR 1325 seeks an **evidence-based approach to conflict prevention**, noting the **need for data** collection to address the impact of armed conflict on women and girls, and requesting the Secretary-General for **gender-sensitive reporting** on armed conflict (including women's role in peace-building

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<sup>30</sup> Ibid.

<sup>31</sup> Ibid, p. 69.

<sup>32</sup> SCR 1325 PP 5 and OP 1; recalling: Articles 4(1), 7 and 8 of CEDAW; paras 12, 30, 39-40 and 50(a) of CEDAW General Recommendation No. 23, adopted at the Sixteenth Session of the CEDAW Committee A/52/38 (GR No. 23); paras 30, 33, 42, 44 and 46(a) of CEDAW GR No. 30; Article 25 ICCPR; paras 1-8 of ICCPR General Comment No. 25 (participation in public affairs and the right to vote), adopted on 12 July 1996, CCPR/C/21/Rev.1/Add.7 (ICCPR GC No. 25); para 29 of ICCPR General Comment No. 28 (the right of equality between men and women) adopted on 19 March 2000, HRI/GEN/1/Rev.9/Vol.1 (ICCPRGC No. 28).



and the gender dimensions of conflict resolution) and on [gender-mainstreaming in peacekeeping missions](#). This reflects:<sup>33</sup>

- Article 18 of CEDAW, which requires states to report on progress on eliminating discrimination against women every four years, and CEDAW GR No. 2, which elaborates the process for states' reporting.
- The CEDAW GR No. 9 on statistical data concerning the situation of women, which requires member states to make every effort to provide gender-disaggregated data.
- The CEDAW GRs No. 12 and 19 on violence against women, which require states to collect data on the extent, causes and effects of violence against women and the effectiveness of anti-violence measures.
- The CEDAW GR No. 30, which specifies that data collection on violence should focus on the incidence and prevalence of gender-based violence (GBV) especially sexual violence in different settings and against different categories of women. The GR No. 30 also has comprehensive recommendations on monitoring and reporting (see below).

## 2. [Participation](#)

- a. By urging Member States to ensure [women's participation in all decision-making levels](#) in [national, regional and international institutions to prevent, manage and resolve conflict](#), SCR 1325 recalls:<sup>34</sup>
- Articles and GRs/GCs of CEDAW and the ICCPR mentioned above in relation to Prevention under 1(a).
  - The CEDAW GR No. 30, which specifies the national institutions dealing with conflict-related crimes including the armed forces, police, justice institutions and transitional justice mechanisms (judicial and non-judicial).
  - The CEDAW GR No. 23, which asks states to collect data on women's representation in the foreign service or international representation (including government delegations to conferences or nominations for peacekeeping/ conflict resolution roles) and seniority in the relevant sector.
  - The ICCPR GC No. 28, which asks states to provide statistics on women in publicly elected office, including the legislature, civil service and the judiciary.

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<sup>33</sup> SCR 1325 PP 11 and OPs 17 and 18; Article 18 of CEDAW, all of CEDAW GRs No. 2, 9 and 12; paras 4 and 24(c) of CEDAW GR No. 19; and para 38(d) of the CEDAW GR. No. 30. See CEDAW and SCR 1325 Quick Guide, p. 12.

<sup>34</sup> SCR 1325 OP1; para 50(a) of the CEDAW GR No. 23; para 46 (b) of the CEDAW GR No. 30; para 29 of GC No. 28. See CEDAW and SCR 1325 Quick Guide, p. 30.



- b. By urging the **Secretary-General** to appoint more female **special representatives/envoys**, and asking Member States to provide women candidates, SCR 1325 reflects:<sup>35</sup>
- Article 8 of CEDAW and the CEDAW GR No. 23, as mentioned above under 1(a). The CEDAW GR No. 23 asks states to identify, implement and monitor measures to ensure a better gender balance in all UN bodies, including committees, expert bodies and treaty bodies, and appointments to independent working groups or as country and special rapporteurs.
  - Article 8 of the UN Charter, which states the UN cannot place any restrictions on the eligibility of men and women to participate in any capacity and under conditions of equality in its principal and subsidiary organs.
- c. SCR 1325 also urges the Secretary-General to **expand women's role and contribution in UN field-based** operations, especially among military observers, civilian police, human rights and humanitarian personnel, and expresses the Council's willingness to incorporate a gender perspective, urging the Secretary-General to include a gender perspective in field operations, where appropriate.<sup>36</sup>
- CEDAW extends this provision, confirming a gender perspective as mandatory and not optional. As the CEDAW Committee observes in its GR No. 23 and reiterates in GR No. 30, "the inclusion of a critical mass of women in international negotiations, peacekeeping activities, all levels of preventive diplomacy, mediation, humanitarian assistance, social reconciliation, peace negotiations and the international criminal justice system will make a difference. In addressing armed or other conflicts, a gender perspective and analysis is **necessary** to understanding their differing effects on women and men" (emphasis added).
- d. By calling on all involved in **negotiating and enforcing peace agreements to adopt a gender perspective**, including measures that support local women's peace initiatives and indigenous processes for conflict resolution, and that involve women in implementing peace agreements, SCR 1325 reflects:<sup>37</sup>

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<sup>35</sup> SCR 1325 OP 2; para 40, GR No. 23; Article 8 of United Nations, Charter of the United Nations (signed 26 June 1945, entered into force 24 October 1945) 1 UNTS 16; and above n32.

<sup>36</sup> SCR 1325 OPs 4 and 5; para 49 of the CEDAW GR No. 23; para 42 of the CEDAW GR No. 30 which reiterates this provision, and above n32.

<sup>37</sup> Paras 46 (c)-(d) and 47 (a)-(b) of CEDAW GR No. 30; Article 40 of the UN Declaration on the Rights of Indigenous Peoples, resolution adopted by the UN General Assembly, 2 October 2007, A/RES/61/295.

- Articles 7 and 8 of CEDAW. The SCR 1325 also reflects the language of CEDAW GR No. 30, which extends these protections by requiring states to build women's capacity so that they can take part in these activities. The CEDAW GR No. 30 asks states to ensure that women and women's organizations are included equally in peace negotiations and post-conflict rebuilding and reconstruction, and to provide leadership training for women's effective participation in post-conflict processes.
- The obligation under CEDAW GR No. 30 for third party states participating in post-conflict processes (individually or as part of international organizations) to include women in negotiation and mediation as delegates, including at senior levels, and provide technical assistance to post-conflict states to promote women's participation.
- The UN Declaration on the Rights of Indigenous Peoples, which protects indigenous peoples' right to access and prompt decision via fair and just procedures to resolve conflicts and disputes with states/other parties, and effective remedies for rights violations.

### 3. Protection

- a. SCR 1325 asks Member States to protect the **human rights of women and girls** especially in relation to the **constitution, the electoral system, the police and the judiciary**. It reflects:<sup>38</sup>
  - The right to equal protection according to humanitarian norms during international or internal armed conflict, which is a human right under general international law. The SCR 1325 also reflects customary IHL rules on the specific protection, health and assistance needs of women and children affected by armed conflict (including child soldiers).
  - Articles 3 and 15 of CEDAW, which oblige states to: take appropriate measures in all fields (political, social, cultural and economic) including legislation, to ensure women's full development and advancement and guarantee their human rights; and guarantee equality between women and men, respectively. Article 6 requires states to take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women. The SCR 1325 also reflects Articles 1 (which defines discrimination); 2 (states' positive obligations to eliminate discrimination) 4(1) and 5(a) (measures to modify gender stereotypes) and 7 of CEDAW.

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<sup>38</sup> SCR 1325 OP 8(c); Articles 1-5(a), 7 and 15 of CEDAW; para 11 CEDAW GR No. 28; paras 70-73 of CEDAW GR No. 30, and see above n32. See also the International Committee of the Red Cross (ICRC) Customary IHL Database, Chapter 39. Other Persons Afforded Specific Protection, available from: [https://www.icrc.org/customary-ihl/eng/docs/v1\\_cha\\_chapter39](https://www.icrc.org/customary-ihl/eng/docs/v1_cha_chapter39).

- The CEDAW GR No. 28, which emphasises that states' positive obligations to end discrimination do not cease during armed conflict or in states of emergency, and that recommendation to adopt strategies and measures to meet women's particular needs in such situations.
  - The CEDAW GR No. 30, which extends this provision by protecting the human rights and women and girls during constitutional and electoral reforms.
  - The CEDAW and ICCPR Articles and GCs/GRs discussed under 1(a).
- b. SCR 1325 urges Member States to conduct **gender-sensitive training** efforts on the protection, rights and particular needs of women. Governments are encouraged to incorporate these elements as well as **HIV/AIDS awareness training** into their national training programmes for their military and civilian police personnel, in cooperation with the Secretary-General who is requested to provide appropriate training guidelines and materials. SCR 1325 urges Member States to increase their voluntary financial, technical and logistical support for gender-sensitive training efforts at the UN. This reflects:<sup>39</sup>
- Articles 1-3, 4(1) and 5(a) of CEDAW, and GRs No. 15 (women and HIV/AIDS) 19, 24 (women and health) and 30. As discussed below, the CEDAW GR No. 30 substantively protects women and girls regarding sexual and reproductive health (SRH) including HIV/AIDS.
  - The CEDAW GR No. 15, which extends this protection in SCR 1325 by recommending that states intensify efforts to disseminate information to increase public awareness of HIV/AIDS, especially its effects on women and children, and by requiring that programmes to combat AIDS give special attention to women and children.
  - The CEDAW GR No. 24, which asks states to remove all barriers on women's access to health services, education and information, including regarding sexual and reproductive health, and to allocate resources for programmes for adolescents to prevent and treat sexually transmitted diseases, including HIV/AIDS.
- c. The Resolution calls on all parties to armed conflict to take special measures to protect women and girls from **gender-based violence (GBV)** especially **rape and other forms of sexual abuse**, and all other forms of violence in armed conflict settings. This reflects:<sup>40</sup>

<sup>39</sup> SCR 1325 OPs 6 and 7; Articles 1-4(1), 5(a) and 6 of CEDAW; all of the CEDAW GR No. 15; and para 31(b) of the CEDAW GR No. 24.

<sup>40</sup> SCR 1325 OP 10, Articles 1-4(1), 5(a) and 6 of CEDAW, Article 34 of the CRC, paras 72(g) and 76 of the Committee on the Rights of the Child General Comment No. 13 (children's right to freedom from all forms of violence) (2011) (CRC GC No. 18); paras 6-7, 15-16 and 23 of the CEDAW GR No 19; paras 33 (c), 38, 50, 52-54, 57(d)-(g), 67, 73(f), 78, 81(c), (j) and(k) of the CEDAW GR No. 30.

- Articles 1-3, 4(1), 5(a) and 6 of CEDAW. The CEDAW GR No. 19 recognises gender-based violence (GBV) as a form of discrimination, and mandates that states take appropriate and effective measures to overcome all forms of GBV, public or private.
- The CEDAW GR No. 30, which expands on states' protection obligations and diverges from SCR 1325 by encouraging non-state actors to protect women. It specifies measures concerning violence against vulnerable women and girls, including: those living with HIV/AIDS; internally displaced, refugee and trafficked women; female combatants (in state and non-state groups); and women campaigning for public office or exercising their right to vote. It places obligations throughout the conflict cycle, including establishing early warning systems and gender-specific security measures to prevent the escalation of GBV and other rights violations. The measures to prevent, address and end impunity for GBV of the CEDAW GR No. 30 that go beyond the language of SCR 1325, are discussed below.
- Article 34 of the Convention on the Rights of The Child (CRC) which requires states to protect children from all forms of sexual exploitation and sexual abuse, and the CRC General Comment No. 13 on children's right to freedom from all forms of violence, recognises the gender dimensions of violence against girls and boys, acknowledges that children in armed conflict are especially vulnerable to violence, and calls for cross-border cooperation regarding children affected by conflict.

#### 4. Relief and Recovery

- a. SCR 1325 emphasizes the responsibility of all States to **end impunity** and prosecute those responsible for **genocide, crimes against humanity and war crimes**, including those relating to **sexual and other violence** against women and girls. It stresses the need to exclude these crimes from amnesty provisions (where feasible). This reflects states' obligations under customary IHL and treaties. The latter includes:

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- Articles 1-3, 5(a) and 15 of CEDAW, and recommendations on access to justice in the CEDAW GR No. 30. As discussed below, the CEDAW GR No. 30 expands on the language in SCR 1325 to guarantee substantive and transformative equality.

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<sup>41</sup> SCR 1325 OP 11; Preamble, Articles 7(g), 8(2)(b)(xxii) of the Rome Statute; Common Article 3, Geneva Conventions; Article 14(1) Third Geneva Convention; Article 27(2) Fourth Geneva Convention; Article 75(2) Additional Protocol I; Article 4(2) Additional Protocol II; Article 4(e) of the Statute for the International Criminal Tribunal for Rwanda; Article 3(e) of the Statute of the Special Court for Sierra Leone; see the section on "access to justice" in the CEDAW GR No. 30. See also ICRC Customary IHL Database, "Rule 93. Rape and Other forms of Sexual Violence", available from: [https://www.icrc.org/customary-ihl/eng/docs/v1\\_cha\\_chapter32\\_rule93#Fn\\_17\\_4](https://www.icrc.org/customary-ihl/eng/docs/v1_cha_chapter32_rule93#Fn_17_4).

- The Rome Statute, which aims to end impunity and recognizes rape and sexual violence as crimes against humanity and war crimes in Articles 7(g) and 8(2)(b)(xxiii) respectively.
  - Common Article 3 of the Geneva Conventions, which recognize rape and sexual violence as grave breaches of international humanitarian law, as well as Articles 75(2) and 4(2) of the Additional Protocols I and II respectively, which include rape, enforced prostitution or any other form of indecent assault under the prohibition of outrages upon personal dignity. Articles 27(2) of the Fourth Geneva Convention and 76-77 of Additional Protocol I require protection for women and children against these crimes.
  - The Statutes of the International Criminal Tribunals for the former Rwanda and Sierra Leone and Yugoslavia, which also recognise rape and/or sexual violence as war crimes and/or crimes against humanity.
- b. The Resolution calls all parties to armed conflict to respect the **civilian and humanitarian character of refugee camps and settlements**, and to take into account **women and girls'** particular needs, including in designing these camps and settlements. This reflects: <sup>42</sup>
- Articles 1-3 and 15 of CEDAW, and the CEDAW GR No. 30, which provides specific guidance on refugee camps and settlements that expands the protections in SCR 1325 in relation to trafficked, refugee, migrant, IDP and stateless women and girls (see below).
  - The general customary IHL rule regarding the treatment of displaced persons - that all possible measures must be taken to receive civilians in satisfactory conditions of shelter, hygiene, health, safety and nutrition and to prevent family members from being separated. This general rule is supplemented by the rule that parties must consider the condition of each displaced person when providing assistance, which especially includes: unaccompanied children, expectant and nursing mothers, persons with disabilities and the elderly.
  - International law from treaties, other instruments, state practice (via military manuals, legislation and official statements) and the practice of international organizations and conferences. The relevant treaties include: Article 78 of Additional Protocol I to the Geneva Conventions, which deals with the evacuation of children; Articles 22 of the CRC and 23 of the African Charter on the Rights and Welfare of the Child, which guarantee appropriate protection and humanitarian assistance to refugee children; and Article 9 of the Convention of Belém do Pará, which requires states to take

<sup>42</sup> SCR 1325 OP 12; Article 78, Additional Protocol I; Article 22, African Charter on the Rights and Welfare of the Child; Article 23, CRC; Article 9, Belém do Pará; See ICRC Customary IHL Database, "Rule 131. Treatment of Displaced Persons", available from: [https://www.icrc.org/customary-ihl/eng/docs/v1\\_cha\\_chapter38\\_rule131#Fn\\_6\\_23](https://www.icrc.org/customary-ihl/eng/docs/v1_cha_chapter38_rule131#Fn_6_23); see also Articles 1-3 and 15 of CEDAW; paras 54 and 57 of CEDAW GR No. 30.

special account of women's vulnerability to violence because of their race, ethnic background or status as migrants, refugees or displaced persons, as well as those who are pregnant, disabled, minors, elderly, socioeconomically disadvantaged, affected by armed conflict or deprived of their freedom.

c. SCR 1325 encourages all actors involved in planning for **disarmament, demobilization and reintegration** (DDR) to consider **female and male combatants' different needs** and to consider the needs of their dependents. International human rights law and IHL provide the guiding principles for DDR policies and programmes, via treaties and custom:<sup>43</sup>

- Articles 1-4(1), 5(a) and 6 of CEDAW are relevant. The CEDAW GR No. 30 recommends that states: develop and implement DDR programmes in coordination and within the framework of security sector reform; undertake gender-sensitive and gender-responsive security sector reform resulting in representative security sector institutions that both address women's different security experiences and priorities, and liaise with women and women's organizations; ensure that security sector reform has inclusive oversight and accountability mechanisms with sanctions, which includes vetting ex-combatants, creating special protocols and units to investigate gender-based violations, and strengthening gender expertise and women's roles; and ensuring women's equal participation at all stages of DDR, from negotiating peace agreements to creating national institutions to design and implement programmes. These provisions are supported by customary IHL and the practices of states, international organizations and conferences.
- Protections relating to DDR and children, including child soldiers, are outlined in Article 39 of the CRC, which requires states to promote the physical and psychological recovery and social reintegration of a child victim of armed conflict or any other form of neglect, exploitation, abuse, torture or cruel, inhuman or degrading treatment, in an environment that fosters the child's health, self-respect and dignity. Articles 6 and 7 of the CRC Optional Protocol on the Involvement of Children in Armed Conflicts require states to ensure that persons within their jurisdiction who are recruited or used in hostilities are demobilized or otherwise released from service, and to cooperate to achieve this via technical and financial assistance, respectively. These protections are supplemented by regional agreements, and the practices of states, international organizations and conferences.

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<sup>43</sup> SCR 1325, OP 13, Articles 1-4(1), 5(a) and 6 of CEDAW; para 69 of the CEDAW GR No. 30; Article 39 of the CRC; Articles 6 and 7 of the Optional Protocol on the Involvement of Children in Armed Conflicts; Principle B(2) Refugee Convention 1951. See ICRC Customary IHL Database, "Practice Relating to Rule 135. Children. Section E: Rehabilitation and Reintegration of former child soldiers, available from: [https://www.icrc.org/customary-ihl/eng/docs/v2\\_rul\\_rule135\\_sectione](https://www.icrc.org/customary-ihl/eng/docs/v2_rul_rule135_sectione).

- Dependents' needs are protected by the Refugee Convention's principle of family unity, which recommends that states: encourage refugee family unit especially the protection of refugees who are minors, in particular unaccompanied children and girls.

## SCR 1325, THE OTHER RESOLUTIONS ON WOMEN, PEACE AND SECURITY AND INTERNATIONAL LAW

The Security Council Resolutions on women, peace and security (WPS) that follow SCR 1325 also reflect and reinforce existing principles of international law:

1. SCR 1820 (2008) which reaffirms that rape and sexual violence are war crimes.
2. SCR 1888 (2009) which creates the office of the Secretary-General's Special Representative on Sexual Violence in Conflict.
3. SCR 1889 (2009) which outlines women's agency and participation in peace-building.
4. SCR 1960 (2010) which addresses the accountability gaps in SCR 1325.
5. SCR 2106 (2013) which deals with HIV/AIDS in conflict and post-conflict settings.
6. SCR 2122 (2013) which is known as the SCR on women's leadership.

As with SCR 1325, understanding these resolutions as part of a broader legal framework enhances the protections for women and girls affected by conflict. These resolutions should be read together with SCR 1325 for two key reasons. First, they **provide a fuller picture of the Security Council's agenda on WPS**, reinforcing many of the provisions of SCR 1325. Second, they **uphold international human rights law (IHRL) international humanitarian law (IHL) and international criminal law obligations not addressed by SCR 1325**. In doing so, more accurately reflect states' obligations under the legal framework. Reading SCR 1325 together with these resolutions on WPS would oblige states to incorporate a fuller spectrum of rights into their implementation of SCR 1325, via National Action Plans (NAPs) laws, policies, programmes and other measures.

## HOW THE RESOLUTIONS ON WOMEN, PEACE AND SECURITY REFLECT INTERNATIONAL HUMAN RIGHTS LAW

The resolutions reflect several binding obligations under human rights law, expressed primarily via **CEDAW** and its GRs, as well as the **CRC and ICESCR**. The resolutions uphold human rights not addressed by SCR 1325 regarding **access to justice** and **economic, social and cultural rights**. Article 15 of CEDAW affirms that women and girls' equal access to justice is closely linked to the full realization of economic, social and cultural rights. This connection is also emphasized in Article 8 of the Protocol on the Rights of Women in Africa, which outlines specific regional standards on access to justice that encompass a broad set of socio-economic rights.<sup>44</sup>

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<sup>44</sup> Savitri W.E. Goonesekere, 'Article 15' in CEDAW Commentary, pp. 387-408, p. 401.



All resolutions highlight the need for **gender-responsive access to justice**, which is a basic human right that enables the enjoyment of other human rights.<sup>45</sup> Access to justice is not mentioned in SCR 1325 (although accesses to justice concerns are addressed by various provisions). The resolutions reflect Articles 1-3, 5(a) and 15 of CEDAW and the GR No. 30, especially the latter's substantive protections for women and girls' right to access justice throughout the conflict cycle.<sup>46</sup> SCR 1820 promotes access to justice in the context of rape and sexual violence, emphasising that women and girl victims require equal protection under the law and access to justice.<sup>47</sup> SCR 1888 urges states to ensure that survivors of conflict-related sexual violence are treated with dignity throughout the justice process, have their rights upheld and receive redress. The SCR 1888 calls for a "holistic national approach" to addressing sexual violence in conflict by enhancing criminal accountability, responsiveness to victims and judicial capacity, with recommendations that are drawn upon and elaborated through legal and policy recommendations in the CEDAW GR No. 30 (see below for discussion on the GR).<sup>48</sup> SCR 1889 recommends access to gender-responsive law enforcement and justice mechanisms for victims of rights violations, especially in conflict and post-conflict situations.<sup>49</sup> SCR 2122 goes further, specifying the need for gender-responsive legal, judicial and security sector reform and other mechanisms in these situations.<sup>50</sup>

SCRs 1888 and 1889 recognises the particular needs of women and girls post-conflict, including regarding **health services, legal assistance, socio-economic reintegration services for victims of sexual violence, livelihood assistance, land and property rights and employment**. The SCR 1889 encourages Member States, in post-conflict situations, to guarantee greater physical security and better socio-economic conditions for women, through education, income-generating activities and access to basic services especially health services related to sexual, reproductive and mental health.<sup>51</sup> SCR 1960 incorporates an intersectional view of discrimination, reaffirming the rights of rural women and persons with disabilities in the context of post-conflict and post-rights violation support, including socio-economic reintegration.<sup>52</sup> These provisions as a whole reflect Articles 1-3, 4(1), 5(a), 10-12 and 14 of CEDAW. Women's rights concerning education, work and health services, including protections for vulnerable groups such as rural women and those with disabilities, are addressed in the CEDAW GR No. 30. The resolutions also reflect

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<sup>45</sup> SCR 1820, OP4; SCR 1888, OP 6; SCR 1889, OP 10; SCR 1960, PP 15; SCR 2106, OP 2; SCR 2122, OP 10.

<sup>46</sup> See paras 74-80, CEDAW GR No. 30.

<sup>47</sup> SCR 1820, OP4.

<sup>48</sup> SCR 1888, OPs 6 and 8.

<sup>49</sup> SCR 1889, OP 10.

<sup>50</sup> SCR 2122, OP 10.

<sup>51</sup> SCR 1888, OP 13; SCR 1889, OP 10.

<sup>52</sup> SCR 1960, PP 13.

Articles 1, 3, 6, 12 and 13 of the ICESCR.<sup>53</sup> In doing so, they recognise the interrelationship and integrity of all human rights.

The resolutions' provisions on **education** reflect Article 10 of CEDAW, which upholds women's right to equality in education. The CEDAW GR No. 30 protections relating to education for women and girls affected by conflict are discussed further in Section 1. Article 13(1) of the ICESCR and its General Comment No. 13 (GC No. 13) also uphold women's access to education. Article 29(1) of the CRC protects the right of the girl child to education, and the CRC GC No. 1 emphasises the importance of education for all children during both conflict and peacetime.<sup>54</sup>

The resolutions' language on **income-generation** (and women's work-related rights) reflects Articles 13 and 14 of CEDAW, which protect women against discrimination in economic and social life, and uphold rural women's right to economic opportunities, respectively. The CEDAW GR No. 30 provides for women and girls to have opportunities to economic empowerment. Under the ICESCR, Article 1 upholds the right to self-determination of all persons, including via their economic and social development, Article 3 guarantees the equal enjoyment of women and men of all economic, social and cultural rights, and Article 6 ensures that states parties recognise the right to work and outlines the steps to fully realize equal enjoyment between the sexes, including via programmes, policies and techniques.<sup>55</sup>

All the resolutions that follow SCR 1325 uphold the rights of women and girls in relation to **health**, with Resolution 2106 taking a particular focus on HIV/AIDS. The resolutions reflect Article 12 of CEDAW, which addresses women's right to health care services including family planning, which as well as the CEDAW GRs No 14 on female circumcision, GRs No. 15 and 24 (mentioned above in relation to SCR 1325). CEDAW GR No. 30 contains robust recommendations on women and girls' health in relation to conflict prevention, conflict, post-conflict and transitional justice situations. The CRC and its GC No. 4 on adolescent health and development, which protect the rights of the girl child in relation to conflict, are also reflected in the resolutions.<sup>56</sup>

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<sup>53</sup> SCR 1888, OP13; SCR 1889, PP 9 and OP 10; Articles 1-3, 4(1), 5(a), 10-12 and 14 of CEDAW; paras 48-52 of the CEDAW GR No. 30; Articles 1, 3, 6, 12 and 13(1) of ICESCR; paras 1, 31, 32, and 55 of the General Comment to the ICESCR No. 13 (Art 13) adopted on 12 August 1999, E/C/12/1999/10 (ICESCR GC No. 13).

<sup>54</sup> Article 10 of CEDAW; Article 13(1) of ICESCR; paras 1, 31, 32, and 55 of ICESCR GC No. 13; Article 29(1) of the CRC; para 16 of CRC General Comment No. 1, adopted on 17 April 2001, CRC/GC/2001/1 (CRC GC No. 1).

<sup>55</sup> Articles 13-14 of CEDAW and paras 48-9, 52(b) of the CEDAW GR No. 30.

<sup>56</sup> SCR 1820, OP 13; SCR 1889, OP 10; SCR 1960, PP 13 and OP8; SCR 2106 OPs 19 and 20; SCR 2122, OP 11; paras 38(e) and (h), 48, 50-51, 52 (c)-(e), 54, 57 (d) and (g) and 60 of the CEDAW GR No. 30; paras 27, 34 and 38 of CRC General Comment No. 4 on Adolescent Health and Development in the context of the Convention on the Rights of the Child, adopted on 1 July 2003, CRC/GC/2003/4 (CRC GC No. 4).

## HOW THE RESOLUTIONS ON WOMEN, PEACE AND SECURITY REFLECT INTERNATIONAL HUMANITARIAN LAW

The resolutions extend the protections in SCR 1325 by reflecting core principles of IHL, especially the **protection of civilians**, which is contained in the Fourth Geneva Convention (to which almost all states are parties) and is supported by customary IHL and state practice.<sup>57</sup> The resolutions affirm the principle of distinction between combatants and civilians, and build on the provisions in SCR 1325 by reflecting IHL principles regarding **rape and sexual violence**, the treatment of **refugees, displaced persons and abductees, and individual and command responsibility**.<sup>58</sup>

SCR 1820 contains stronger language on **rape and sexual violence** than SCR 1325, more fully reflecting customary IHL rules on protecting women and children civilians.<sup>59</sup> The Resolution reaffirms the Council's condemnation of rape and sexual violence and its resolve to address SGBV by ending impunity and protecting civilians during and after armed conflict in accordance with IHL and international human rights law. In SCR 1820, the Council recognises the connection between protecting civilians from sexual violence and maintaining international peace and security, expresses its willingness to address widespread and systematic sexual violence and demands that all parties immediately and completely cease all acts of sexual violence against civilians. The council asks the Secretary-General to train peacekeeping and humanitarian personnel on how to better prevent, recognize and respond to sexual violence and other rights violations against civilians. SCR 1820 encourages troop-contributing countries to peacekeeping missions to heighten the awareness and responsiveness of personnel towards protecting civilians, especially women and children.<sup>60</sup>

Several resolutions reflect IHL rules regarding civilian protection that are not addressed by SCR 1325, especially for women and girls affected by **refugee camps and settlements and forced abductions**. SCR 1889 affirms protection against all forms of violence including rape and sexual violence within refugee camps and settlements and ensures full, unimpeded and secure humanitarian access.<sup>61</sup> SCR 2106 recognises the vulnerability of women and children victims of forceful abductions by armed groups and

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<sup>57</sup> Geneva Convention IV. Practice, here, refers to the practices of states and international organizations and conferences, national military manuals, and soft law, as contained in the ICRC Customary IHL Database Rules No. 134 on Women and 135 on Children, cited earlier in Section 1.

<sup>58</sup> Article 48 of the Additional Protocol I. See, for instance, SCR 1960 PPs 5-6; SCR 2122, PPs 6, 7, 9, 10 and OP3.

<sup>59</sup> See the ICRC Customary IHL Database Rules No. 134 on Women and 135 on Children, cited earlier in Section 1.

<sup>60</sup> SCR 1820 PPs 3, 6-9, 13, OPs 1-3, 6 and 7.

<sup>61</sup> SCR 1889, OP 12.

armed forces, especially in relation to sexual violence in conflict and post-conflict settings, and demanding their identification and release.<sup>62</sup>

The resolutions address IHL rules regarding **command and individual responsibility** that are not addressed in SCR 1325. SCRs 1820, 1888, 1960 and 2106 affirm the principle of command responsibility, with SCRs 1960 and 2106 requiring the issuance of clear orders through chains of command prohibiting sexual violence, and that all levels of the chain of command are informed of their mandate and responsibilities including preventing and responding to sexual violence, and calling for the prohibition of sexual violence in Codes of Conduct, military field manuals, or equivalent.<sup>63</sup> SCR 1888 suggests that all parties to conflict, in addition to enforcing military disciplinary measures and upholding command responsibility: train troops on prohibiting all forms of sexual violence against civilians; debunk myths that fuel sexual violence; and vet candidates for national armies and security forces to exclude those associated with serious violations of IHL and international human rights law, including sexual violence.<sup>64</sup> SCR 2106 elaborates the role of gender advisers, to reinforce the law of armed conflict during gender-sensitive training of peacekeepers.<sup>65</sup> Several resolutions emphasize the zero tolerance policy on sexual exploitation and abuse by UN personnel.<sup>66</sup> Members of personnel of a UN force implicated in violations of IHL are subject to prosecution in their national courts.<sup>67</sup>

## HOW THE RESOLUTIONS ON WOMEN, PEACE AND SECURITY REFLECT INTERNATIONAL CRIMINAL LAW

The resolutions emphasize the responsibility of all parties to **end impunity** and for states to prosecute perpetrators of **war crimes and crimes against humanity committed against women and girls in armed conflicts, including rape and sexual violence**.<sup>68</sup> They go beyond SCR 1325 by explicitly recognising rape as a war crime and crime against humanity, drawing on obligations from the Rome Statute. SCR 2122 reinforces the recognition in SCR 1325 of states' obligations to prosecute those responsible for crimes against

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<sup>62</sup> SCR 2106, OP 17.

<sup>63</sup> SCR 1820, OP 3; SCR 1888, OP3; SCR 1960 OP 5; and SCR 2106 OP 10. See also ICRC Customary IHL Database, Rule 152. Command Responsibility for Orders to Commit War Crimes, available from: [https://www.icrc.org/customary-ihl/eng/docs/v1\\_cha\\_chapter43\\_rule152?OpenDocument&highlight=command,responsibility](https://www.icrc.org/customary-ihl/eng/docs/v1_cha_chapter43_rule152?OpenDocument&highlight=command,responsibility); and Rule 153. Command Responsibility for Failure to Prevent, Suppress or Report War Crimes, available from: [https://www.icrc.org/customary-ihl/eng/docs/v1\\_cha\\_chapter43\\_rule153?OpenDocument&highlight=command,responsibility](https://www.icrc.org/customary-ihl/eng/docs/v1_cha_chapter43_rule153?OpenDocument&highlight=command,responsibility).

<sup>64</sup> SCR 1888, OP 3.

<sup>65</sup> SCR 1960 OP 5; SCR 2106, OP 8.

<sup>66</sup> SCR 1820, OP 7; SCR 1888, OP 21; SCR 1960, OP16; and SCR 2106, OP 15.

<sup>67</sup> UN Secretary-General's Bulletin ST/SGB/1999/13, Observance By United Nations Forces Of International Humanitarian Law, Section 4.

<sup>68</sup> SCR 1889, OP 3; SCR 2106, OP 3.

humanity, genocide or war crimes, reflecting the language of the Rome Statute.<sup>69</sup> SCR 2106 states that sexual violence can amount to a crime against humanity, genocide or a war crime in accordance with the Rome Statute.<sup>70</sup> SCRs 1820, 1888, 1960 and 2106 recall the inclusion of sexual violence offences in the Rome Statute and the statutes of the UN ad hoc criminal tribunals,<sup>71</sup> while SCR 2122 notes the work of the International Criminal Court (ICC) the ad hoc and mixed tribunals, and specialized chambers in national tribunals in ending impunity.<sup>72</sup> Several resolutions draw on the language of crimes against humanity in the Rome Statute, recognizing that conflicts can involve a “widespread or systematic attack against a civilian population”.<sup>73</sup> There is a greater emphasis on ending impunity in the resolutions compared to SCR 1325. SCR 1960 requests the Secretary-General for detailed information on those suspected of committing or being responsible for patterns of sexual violence in armed conflict. The Resolution also calls upon those parties to enforce specific commitments on timely investigations of alleged abuses.<sup>74</sup> SCR 1820 reaffirms that need to exclude sexual violence from amnesty provisions in conflict resolution processes.<sup>75</sup>

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<sup>69</sup> SCR 1325, OP 11; SCR 2122, OP 12.

<sup>70</sup> SCR 2106, OP 2. See Articles 6-8 of the Rome Statute 1998.

<sup>71</sup> SCR 1820, PP 9; SCR 1888, PP 9; SCR 1960, PP 12; SCR 2106, PP 9.

<sup>72</sup> SCR 2122, OP 12.

<sup>73</sup> SCR 1888, OP 1; SCR 1960, OP 1; SCR 2106, OP 1.

<sup>74</sup> SCR 1960, OPs 3 and 5.

<sup>75</sup> SCR 1820, OP 4.

## UNDERSTANDING SCR 1325 IN AN INTEGRATED WAY WITH THE CEDAW GENERAL RECOMMENDATION NO. 30

SCR 1325 and its related resolutions should be understood together with CEDAW as complementary and mutually reinforcing elements of the legal framework. The CEDAW GR No. 30 acts as a bridge between SCR 1325 and CEDAW, containing a comprehensive package of protections that provide for transformative equality and that go beyond the language of the resolutions on women, peace and security. This submission agrees with the CEDAW Committee's integrated approach, outlined in the GR, to implement the Security Council agenda on women, peace and security as part of a legal framework grounded in CEDAW. This involves States Parties:<sup>76</sup>

1. Ensuring that **National Action Plans (NAPs)** and strategies to implement SCR 1325 and subsequent resolutions on women, peace and security **comply with CEDAW**, and that there are **adequate budgets** to implement both NAPs and CEDAW.
2. Ensuring that the implementation of Security Council commitments reflects a model of **substantive equality** and takes into account the impact of conflict and post-conflict contexts on all rights in CEDAW, in addition to violations involving conflict-related GBV.
3. Cooperating with all UN networks, departments, agencies, funds and programmes throughout the **conflict process (prevention, conflict, conflict resolution and post-conflict reconstruction including transitional justice situations)**.
4. Collaborating with **civil society and NGOs** working on the Security Council agenda on WPS.
5. Providing information on the **implementation** of the Security Council agenda on women, peace and security, in particular **SCRs 1325, 1820, 1888, 1889, 1960 and 2010**, including by specifically reporting on compliance with any agreed UN benchmarks or indicators developed as part of that agenda, reporting on the legal framework, policies and programmes, and collecting sex-disaggregated data.

The CEDAW GR No. 30 contains several path-breaking recommendations that provide for substantive and transformative equality. The following seven key elements of GR No. 30 should be read together with SCR 1325, and understood as complementing the protections in the Security Council resolutions on women, peace and security.<sup>77</sup>

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<sup>76</sup> CEDAW GR No. 30, paras 26, 28, 82-3. Note that the SCR 2122 was adopted by the Security Council on the same day as the CEDAW GR No. 30, and as such is not referred to in the GR, but is included in this submission as an important Security Council resolution on women, peace and security.

<sup>77</sup> For a brief overview of the notable features of CEDAW GR No 30, see this analysis by Development Alternatives with Women for a New Era 'CEDAW GR 30 on Women in Conflict Prevention, Conflict and Post-Conflict Situations' (2013) available from:

1. An **expanded understanding of conflict and conflict-related situations**, which covers situations that may not be defined as armed conflicts under international law. These include: international and non-international armed conflicts, situations of foreign occupation, other forms of occupation and post-conflict situations.<sup>78</sup> The wide-ranging scope of the CEDAW GR No. 30 allows for transformative equality if the rights of women and girls are recognised in all of these contexts, especially those not usually covered under international law.
2. The application of **extra-territorial responsibility to state and non-state actors**. CEDAW is unique among international human rights treaties in enforcing due diligence obligations on states concerning acts of private individuals or entities that violate the Convention. This provides for transformative equality by enforcing accountability on non-state actors that are traditionally not held accountable under international law e.g. officials enjoying diplomatic immunity, private security companies, and transnational corporations. The Committee also recommends the comprehensive application of CEDAW and other international human rights instruments and humanitarian law in the exercise of territorial or extra-territorial jurisdiction, whether acting individually or as members of international or intergovernmental organizations and coalitions. This addresses sexual violence against women and girls by peacekeepers, armed and non-state armed groups, and diplomats.<sup>79</sup>
3. A preventive approach to addressing women's roles throughout the **conflict process**, which provides for transformative equality by requiring structural and systemic changes to society at all stages of conflict. This approach includes recommendations on women's participation in **conflict prevention**, a comprehensive recognition of women's rights during **conflict**, and substantive recommendations on **women's substantive participation in conflict resolution, post-conflict and transitional justice** settings. CEDAW obligations apply throughout the conflict process, from donor assistance in conflict prevention and humanitarian aid, to involvement in peace processes as third parties, to trade agreements negotiated in post-conflict contexts. The GR even recognises the displacement cycle, affirming the needs of refugee, IDP and stateless women at all stages of conflict.<sup>80</sup>

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<http://www.dawnnet.org/feminist-resources/content/cedaw-gr-30-women-conflict-prevention-conflict-and-post-conflict-situations>.

<sup>78</sup> CEDAW GR No. 30 section 2 (drawing on Article 9 of CEDAW).

<sup>79</sup> CEDAW GR No. 30 section 1 (drawing on Articles 8 and 10 of CEDAW).

<sup>80</sup> CEDAW GR No. 30, Part A, sections 1- 3, paras 29-47 and 53 (which draws on Articles 1-3, 15).

4. The intersectional perspective of the rights of women and girls, which follows a transformative equality model by addressing the multiple discriminations faced by women and girls. The Committee recognizes the rights of women displaced by conflict including **refugees, asylum seekers, internally displaced persons (IDPs) stateless persons,**<sup>81</sup> and **trafficked persons**, including the right to be free from GBV.<sup>82</sup> Refugee, asylum seeker and IDP women are safeguarded in particular from forced and child marriage. The GR recognises intersectional identities of refugee, asylum seeker and IDP women. These include: women with disabilities, older women, girls, widows, women who head households, pregnant women, women living with HIV/AIDS, rural women, indigenous women, women belonging to ethnic, national, sexual or religious minorities, and women human rights defenders.<sup>83</sup>
5. Recommendations on **sexual and reproductive health including access to abortion** that provide for transformative equality. The CEDAW Committee explicitly asks states to provide safe abortion services and post-abortion care as part of their obligations to provide sexual and reproductive health care, going beyond SCR 2122 which only upholds the provision of the full range of sexual and reproductive health services for pregnancies resulting from rape in conflict situations, and never mentions the word “abortion” itself. The CEDAW GR No. 30, building on the comprehensive recommendations on sexual and reproductive health services in preceding GRs including the CEDAW GR no. 26 on women migrant workers, recommends access to a holistic range of healthcare measures including psychosocial support and maternal and obstetric services. It specifies issues relevant to conflict situations: preventing and treating HIV/AIDS and recognizing that HIV/AIDS can be transmitted via rape as a weapon of war.<sup>84</sup> It also recommends treating sexually transmitted illnesses, and injuries resulting from GBV including fistula.

Several provisions add to states’ obligations to address GBV in SCR 1325 and related resolutions, including the duties to: ensure women’s access to justice by adopting gender-sensitive investigation procedures to address SGBV; build the capacity of the judiciary including in transitional justice contexts; allocate adequate resources and adopting effective measures to ensure that victims of GBV especially SGBV can access comprehensive medical treatment, medical health care and psychosocial support; and develop and disseminate standard operating procedures and referral pathways to link security actors with service providers on GBV (including one-stop shops with

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<sup>81</sup> The rights of stateless women are mentioned together with refugees, asylum seekers and IDPs in para 8, but are addressed separately in section 6, paras 58-61 of the CEDAW GR No. 30.

<sup>82</sup> CEDAW GR No. 30, para 42.

<sup>83</sup> CEDAW GR No. 30, section 5, paras 55-7 and section 9, para 73.

<sup>84</sup> See CEDAW GR No. 30 para 37. As noted above, SCR 2106 (2013) expands on the discussion of HIV/AIDS in SCR 1325.



medical, legal and psychosocial services for survivors, multipurpose community centres linking immediate assistance to economic and social empowerment and reintegration, and mobile clinics).<sup>85</sup>

6. **Access to justice** provisions that include **transformative reparations**. The GR recommends that states enforce comprehensive transitional justice systems that include judicial and non-judicial mechanisms like truth commissions and reparations that are gender-sensitive and promote women's rights. The GR addresses an expanded range of gender-based violations, including domestic and sexual enslavement, all violations of sexual and reproductive health rights, forced marriage and forced displacement, in relation to GBV and violations of economic, social and cultural rights (in addition to civil and political rights).

Under the CEDAW GR No. 30, access to justice includes substantive guarantees against amnesties for gender-based violations and to ensure compliance with the decisions of transitional justice mechanisms. It also prohibits discrimination against women when re-establishing the rule of law, and ensures that women take part in the design, operation and monitoring of transitional justice mechanisms to include their experience of conflict, to meet their needs and priorities, to address their violations, and ensure that they participate in designing reparations programmes. Access justice also includes the provision of legal aid, the creation of special courts like domestic and family violence courts and mobile courts for camps and settlements and remote areas, and the provision of shelters. Transformative equality also requires special criminal-procedure protections that protect identity during public hearings and require testimonies to be taken by female professionals. Justice systems must have gender-sensitive procedures that avoid revictimization and stigmatization, create special protection units and gender desks in police stations, undertake confidential and sensitive investigations, and ensure that the testimony of women and girls is equally weight in relation to men. Criminal accountability is enhanced by strengthening the capacity not only of the judiciary but also of security, medical and judicial personnel dealing with forensic evidence related to SGBV in conflict and post-conflict situations.<sup>86</sup>

7. The comprehensive recognition of women and girls' human rights including **economic, social and cultural rights**. Whereas SCR 1325 focuses almost exclusively on women's civil and political rights, and related resolutions briefly touch upon economic, social and cultural rights, the CEDAW GR No. 30 affirms transformative equality through comprehensive recommendations that: girls have access

<sup>85</sup> CEDAW GR No. 30, paras 38 (f)-(h), 52 (c)-(e), 64-65.

<sup>86</sup> CEDAW GR No. 30, para 80 (a) and (b) (d) (e) (f) (g) (h) (i) (j) (k) (l).

to education; women and girls have adequate healthcare and employment opportunities; and rural women are also empowered. States are encouraged to end discrimination against women in marriage and family life, including addressing women's access to land and property,<sup>87</sup> as these discriminations are compounded by the impacts of conflicts on women and girls.<sup>88</sup>

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<sup>87</sup> SCR 1889 also refers to women's access to land and property, albeit in less detail than the CEDAW GR No. 30.

<sup>88</sup> CEDAW GR No. 30, paras 48-50, 62-65.

## BEYOND CEDAW: SCR 1325 AND ‘SOFT LAW’ IN THE WIDER LEGAL FRAMEWORK

While SCR 1325 and its related resolutions should be read together with CEDAW and its GR No. 30, an integrated understanding of SCR 1325 does not end with CEDAW. This submission argues that other elements of the legal framework must also be read together with the Security Council resolutions on women, peace and security, and CEDAW, where they extend and expand upon the protections in these documents. These include three core documents that are ‘soft law’ but that provide blueprints for action that are supported by state practice. These are the BPfA and the UNGA Outcome Document (directly referenced in SCR 1325 and subsequent resolutions on WPS) and the CSW Agreed Conclusions 2013 (which, like the CEDAW GR No. 30, were concluded after the adoption of SCR 1325, and so are not referenced in the resolutions).

### The Beijing Platform for Action, 1995: Critical Areas of Concern on Women in Armed Conflict and Violence against Women

This year marks the 20<sup>th</sup> anniversary of the BPfA, which focused attention on the women, peace and security agenda at the UN five years before the adoption of SCR 1325.<sup>89</sup> While the SCR 1325 reasserts several BPfA goals, the BPfA adds value to the legal framework by going beyond the language of SCR 1325. The BPfA, unlike SCR 1325, elaborates an **intersectional view of violence** under two of its twelve critical areas of concern on women and armed conflict and violence against women. In doing so it provides for transformative equality. Like CEDAW and the GR No. 30, the BPfA takes a detailed, holistic view of women’s rights in conflict, engaging with the systemic and underlying social, economic, and psychological conditions that contribute to and perpetuate violence against women. The BPfA also has added value because of its **appeal to a broader audience**, including governments and NGOS at the community, national, regional, and international levels. The SCR 1325 directs its commitments to the Security Council, Secretary General, and Member-States concerning women’s role in peace-building *within* the UN.<sup>90</sup>

Many of the commitments in the BPfA’s critical area of concern on **women and armed conflict** are re-affirmed in SCR 1325: increased consideration for women’s: participation in power structures and at all levels of decision-making;<sup>91</sup> involvement in preventing and resolving conflicts;<sup>92</sup> protection in situations of

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<sup>89</sup> United Nations, *Beijing Declaration and Platform of Action, adopted at the Fourth World Conference on Women, 27 October 1995. [Beijing Platform]*.

<sup>90</sup> See SCR 1325, OPs 3-6.

<sup>91</sup> See *Beijing Platform*, Strategic Objective E.1, and SCR 1325, OP 1.

<sup>92</sup> See *Beijing Platform*, Strategic Objective E.1. [on the participation of women in conflict-resolution at decision-making levels], and E4 [on women’s contribution to fostering a culture of peace]; and SCR 1325, OPs 6 [on involving women in all peacekeeping and peace-building measures], and 8(b) [on involving women in the implementation mechanisms of peace agreements].

armed conflict;<sup>93</sup> and protecting refugees.<sup>94</sup> However, the BPfA also prioritizes preventing conflict and demilitarisation by calling for a reduction of excessive military spending, and control of the arms trade.<sup>95</sup> Conversely, SCR 1325 focuses on making conflict safer for women, rather than considering the links between arms trading, militarization and conflict.<sup>96</sup>

The BPfA's critical area of concern on **violence against women** establishes similarly ambitious objectives to prevent and eliminate violence against women in conflict and non-conflict settings. The BPfA articulates a much deeper, more expansive set of goals than SCR 1325 regarding violence. Reflecting the CEDAW GR No. 19, the BPfA defines violence very broadly, to include any gender-based act of violence that results (or can result) in harm to women, be it physical, sexual, or psychological, including threats of such acts.<sup>97</sup> The BPfA sets out three nuanced strategic objectives for all levels of government, NGOs, international organizations, and the mass media, to eliminate violence, namely: 1) the adoption by governments of integrated measures to prevent and eliminate violence against women;<sup>98</sup> 2) the study of the causes and consequences of violence against women and the effectiveness of preventive measures;<sup>99</sup> and 3) the elimination of trafficking in women and assistance for victims of violence due to prostitution and trafficking.<sup>100</sup>

#### The UN General Assembly Outcome Document on “Women, Development and Peace”, 2000

The UNGA Outcome Document<sup>101</sup> also provides a useful blueprint for action, which in contrast to SCR 1325, contains recommendations on **violence against women in peacetime and refugees and IDPs** that should form part of an integrated understanding of the Security Council resolutions on women, peace and security. Like the BPfA, the Document makes several key points not addressed in SCR 1325 and its related resolutions. It recognizes: the inextricable links between peace, equality between women and men and development;<sup>102</sup> the impact of armed conflict on the increasing level of female-headed households;<sup>103</sup>

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<sup>93</sup> See *Beijing Platform*, Strategic Objectives E.1. [on the protection of women living in armed conflict or under foreign occupation], and E5 [on the protection of refugee women]; and SCR 1325, OP 9 [on respecting the international law applicable to the rights and protection of women and girls], and 10 [on protection from gender-based violence].

<sup>94</sup> See *Beijing Platform*, Strategic Objective E.5. [on the protection, assistance and training of refugee women], and SCR 1325, OP 12 [on taking into account the particular needs of women and girls in refugee camps].

<sup>95</sup> *Beijing Platform*, Strategic Objective E.2.

<sup>96</sup> SCR 1325, OPs 5, 10 and 13.

<sup>97</sup> *Beijing Platform*, OP 113.

<sup>98</sup> *Beijing Platform*, Strategic Objective D1.

<sup>99</sup> *Beijing Platform*, Strategic Objective D2.

<sup>100</sup> *Beijing Platform*, Strategic Objective D3.

<sup>101</sup> UN General Assembly, *Further actions and initiatives to implement the Beijing Declaration and Platform for Action*, 16 November 2000, A/RES/S-23-3 (UNGA Outcome Document).

<sup>102</sup> *Ibid.*

<sup>103</sup> *Ibid.*

and that excessive military expenditures detract from the social and economic development of women by diverting funds.<sup>104</sup>

The Document recognizes progress on addressing **violence against women**, notably reforms by governments;<sup>105</sup> increased research and specialized studies on gender roles;<sup>106</sup> efforts to eradicate harmful traditional practices, including female genital mutilation and the appointment of the Special Ambassador for the Elimination of Female Genital Mutilation by the United Nations Population Fund.<sup>107</sup> The many forms that violence can take are elaborated on, such as “physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation.”<sup>108</sup> The Document notes problems concerning the use of new information and communication technologies for trafficking in women and children and for economic and sexual exploitation.<sup>109</sup>

The Document dedicates significant attention to **refugees and IDPs**. Progress on disseminating and implementing guidelines for the protection of refugee women, and in addressing the needs of displaced women, is noted.<sup>110</sup> However the Document also highlights the shortcomings of international assistance with respect to the increasing number of refugees.<sup>111</sup>

### **The Agreed Conclusions of the Commission on the Status of Women, 2013**

The CSW Agreed Conclusions 2013<sup>112</sup> build on the language of SCR 1325 and other elements of the legal framework via their commitments to: **comprehensively eliminate violence against all women and girls in public and private spheres, via short- and long-term measures**; progress the **Millennium Development Goals** (MDGs) for women and girls in conflict and post-conflict situations; and provide **effective remedies** for victims based on an understanding of **the systemic impacts of violence**. The Agreed Conclusions recall SCR 1325, the other resolutions on WPS (adopted in 2008-2010) as well as resolutions on children and armed conflict and on armed conflict and post-conflict situations.<sup>113</sup>

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<sup>104</sup> UNGA Outcome Document, para 17.

<sup>105</sup> UNGA Outcome Document, para 13.

<sup>106</sup> Ibid.

<sup>107</sup> Ibid.

<sup>108</sup> UNGA Outcome Document, para 14.

<sup>109</sup> Ibid.

<sup>110</sup> UNGA Outcome Document, para 15.

<sup>111</sup> UNGA Outcome Document, para 16.

<sup>112</sup> UN Commission on the Status of Women, Agreed Conclusions on the prevention and elimination of violence against women and girls, 15 March 2013, E/CN.6/2013/11 (CSW Agreed Conclusions 2013).

<sup>113</sup> CSW Agreed Conclusions 2013, OPs 8, 10-21, 30, 34A (l)-(m), and (p), B (pp) C (ddd) and D (zz) and 35.

The Agreed Conclusions **address violence against women and girls** in conflict and peacetime through a **preventive and comprehensive approach** involving coordinated, interdisciplinary, accessible and sustained multi-sectoral services, programmes and responses at all levels, and using all available technologies, for all victims and survivors. This approach is based on the intersectional understanding of violence that is also evident in CEDAW and its GR No. 30, the BPfA and the UNGA Outcome Document. The intersectional approach in the Conclusions recognizes the economic, social, and political causes and impacts of violence against women and girls, including in public spaces and cities, and acknowledges the vulnerability of specific groups including older and indigenous women and girls. The Conclusions also affirm a universal understanding of human rights, stressing their interdependence, interrelated nature and indivisibility, despite cultural, religious and historical differences.<sup>114</sup>

The Agreed Conclusions incorporate the services mentioned in SCR 1325 and other elements of the framework in regards to addressing violence via **immediate and short-term measures** (the police and justice sector, legal aid services, health care including sexual and reproductive health services, medical, psychological and counselling services). They also add services only mentioned in the CEDAW GR No. 30, including government and independent women's shelters and counselling centres, 24-hour hotlines, social aid services, one-stop crisis centre, immigration services, child services and public housing services. There is an emphasis on women and children's access to justice, with the requirement that these anti-violence measures must be safe and easy to reach.<sup>115</sup>

Short-term relief services are supplemented by **long-term measures to target violence against women**. The Conclusions recommend access to **long-term accommodation, education, employment and economic opportunities**, remind states of the obligation to consider the best interests of the child when dealing with child victims, and ask states to ensure the safety and security of health-care workers and service providers dealing with victims. The Conclusions affirm that **national women's machineries** should be strategically positioned at the highest levels of government, and endowed with the necessary financial and human resources to prevent and eliminate violence and discrimination. The role of national human rights institutions is also acknowledged in the effort to prevent and eliminate violence against women and girls. The Agreed Conclusions also affirm **the important role of the community, especially men and boys, as well as civil society including women's and youth organizations**, in eliminating violence against women.<sup>116</sup>

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<sup>114</sup> CSW Agreed Conclusions 2013, paras 15, 26-7, 34 C (ddd) and D (zz).

<sup>115</sup> CSW Agreed Conclusions 2013, paras 10-23, 34 C (ddd).

<sup>116</sup> CSW Agreed Conclusions 2013, paras 17, 19, 28, 29, and 34 C (ddd).

Like the BPfA and the UNGA Outcome Document, the Conclusions link the women, peace and security agenda to the **overall development agenda**. The **MDGs** are acknowledged as crucial to achieving the broader aims of gender equality and women's empowerment. The Agreed Conclusions reinforce states' commitments to strengthen national efforts and international cooperation to achieve the MDGs and wider goals for women and girls affected by armed conflicts and situations including natural disasters, trafficking in persons, terrorism and "other complex humanitarian emergencies". Like the CEDAW GR No. 30, the Conclusions affirm the need to fully realize the rights of women and girls living under foreign occupation, in conformity with international law.<sup>117</sup>

Finally, the CSW Agreed Conclusions 2013 add to the legal framework by reinforcing the need for **effective accountability, redress measures and effective remedies** for crimes against women and girls. By recognising the impact of violence on victims and survivors, families, communities and societies, and calling for effective accountability and remedies, the Conclusions support the aim of transformative equality as provided for in CEDAW and its GRs. The Agreed Conclusions also call for accountability for the killing, maiming and targeting of women and girls, and crimes of sexual violence which are prohibited under international law. Steps must be taken to address these acts at all stages of the conflict and post-conflict resolution processes including via transitional justice mechanisms, while ensuring women's full and effective participation in these processes.<sup>118</sup>

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<sup>117</sup> CSW Agreed Conclusions 2013, para 32 (p).

<sup>118</sup> CSW Agreed Conclusions 2013, paras 13, 34 A (m).

## SECTION 1 CONCLUSIONS AND RECOMMENDATION

Section 1 of this submission makes the following conclusions and recommendation:

1. The **language of SCR 1325** is grounded in binding commitments, and **should be understood as containing states' legal obligations and not mere political commitments**. The Resolution both expressly references and draws upon international law from treaties and custom, particularly CEDAW. Many of the protections under the four pillars of the SCR 1325 reflect commitments under CEDAW and its GRs, especially its participation pillar which reflects CEDAW's obligation of non-discrimination. Understanding that CEDAW obligations underpin SCR 1325 is crucial to uphold the rights of women and girls in relation to conflict.
2. The **Security Council resolutions** on women, peace and security that follow SCR 1325 also reflect binding international legal obligations that go beyond SCR 1325. They expand on:
  - Women's and girls' **access to justice and economic, social and cultural rights** under international human rights law;
  - The **protection of civilians**, especially women and children and including against rape and sexual violence and war crimes and crimes against humanity, the treatment of refugees, displaced persons and abductees and individual and command responsibility under international humanitarian law;
  - The need to **end impunity and prosecute perpetrators of war crimes and crimes against humanity committed against women and girls** under international criminal law.
3. **CEDAW and its GR No. 30 contain seven important differences** from the Security Council Resolutions that should inform an understanding of them. These are: an **expanded view of conflict** that covers foreign and other forms of occupation and post-conflict situations; the application of **extra-territorial responsibility** to state and non-state actors; **access to justice provisions that include transformative reparations**, especially for women and girl victims of rape and sexual and gender-based violence; a **preventive approach to addressing women's rights at all stages of the conflict process**; the recognition of human rights via an **intersectional perspective** that affirms protections for diverse groups of women and girls; comprehensive recommendations on **sexual and reproductive health**, including access to abortion; and the substantive recognition of **economic, social and cultural rights as indivisible from civil and political rights**, which builds on the recognition of these rights in the resolutions.



4. The SCRs on women, peace and security, and CEDAW and its GRs, should be read together with important “soft law” elements of the legal framework on women, peace and security, which provide blueprints for action that are supported by state practice.
- The BPfA adds value to an understanding of SCR 1325 through its **intersectional perspective on violence** against women, as well as its **appeal to a broader audience** than that of Security Council resolutions.
  - The UNGA Outcome Document strengthens the legal framework via its focus on women in armed conflict and **peacetime**, especially women’s role in **disarmament and demilitarization**, and on **refugees and IDPs**.
  - The CSW Agreed Conclusions 2013 add value to an understanding SCR 1325 because of their: comprehensive short- and long-term measures to **eliminate violence against women in public and private spheres**; measures to progress **development goals**; and provision for **effective remedies** for victims based on an understanding of the systemic and structural impacts of violence.

**Recommendation 1: Understand the obligations in SCR 1325 as an integrated part of the legal framework on women, peace and security (the legal framework)**

SCR 1325 and subsequent Security Council resolutions on WPS should be understood in light of the binding obligations and commitments reflected in their contents. This understanding of the Resolutions should integrate both the Security Council’s political commitment to act on women’s rights in conflict, and obligations from the legal framework. The key elements of the legal framework that uphold commitments held by all parties involved in conflicts include:<sup>119</sup>

- The Convention on the Elimination of all Forms of Discrimination against Women (CEDAW);
- Committee on the Elimination of Discrimination against Women (CEDAW Committee) General Recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations (CEDAW GR No. 30);
- The Beijing Declaration and Platform for Action 1995 (BPfA) notably its two critical areas of concern on Violence against Women and Women in Armed Conflict;

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<sup>119</sup> Convention on the Elimination of All Forms of Discrimination against Women (adopted on 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13 (CEDAW); CEDAW GR No. 30; United Nations, *Beijing Declaration and Platform of Action, adopted at the Fourth World Conference on Women*, 27 October 1995 (BPfA); UNGA, *Further actions and initiatives to implement the Beijing Declaration and Platform for Action*, 16 November 2000, A/RES/S-23-3 (UNGA Outcome Document); and UN Commission on the Status of Women, *Agreed Conclusions on the prevention and elimination of violence against women and girls*, 15 March 2013, E/CN.6/2013/11 (CSW Agreed Conclusions 2013).

- The UN General Assembly Outcome Document of its 23<sup>rd</sup> Special on Women 2000: Gender Equality, Development and Peace for the 21<sup>st</sup> Century 2000 (UNGA Outcome Document);
- The UN Commission on the Status of Women Agreed Conclusions on the prevention and elimination of violence against women and girls 2013 (CSW Agreed Conclusions 2013).

## SECTION 2: IMPLEMENTING SCR 1325 VIA NATIONAL ACTION PLANS

Section 2 assesses the implementation of the legal framework on women, peace and security (the legal framework) outlined in Section 1 of the submission through the National Action Plan process linked to Security Council Resolution 1325 (SCR 1325).<sup>120</sup> The Security Council recommended the development of National Action Plans (NAPs) to implement SCRs 1325, and related resolutions on women, peace and security (WPS) via Presidential Statements adopted in 2004 and 2005.<sup>121</sup> So far only 50 countries have adopted NAPs<sup>122</sup> and several conflict-affected countries like Myanmar (included below as a case study) and South Sudan, that urgently need to address women, peace and security issues, are yet to adopt NAPs.

As discussed below, there are wide variations in the quality and implementation of NAPs. As Aisling Swaine notes, “Action plans are set to continue to gain momentum as strategies that bring attention to the need to implement [SCR 1325] and, whatever their flaws, they will no doubt be used as tools to compel states to act”.<sup>123</sup> Ultimately, what will be crucial to NAP’s effectiveness will be evaluating their performance and impact against credible, appropriate, qualitative indicators set by women (and girls) via their participation in the NAP process in the coming decade.<sup>124</sup>

### Assessing the impact of National Action Plans – six country case studies from around the world

The impact of NAPs is considered through country case studies from various regions, all at different stages of the (conflict prevention, conflicts, conflict resolution, post-conflict and transitional justice situations). Each case study tells a story based on the particular features of conflict prevention or resolution in that country (or region). These are:

1. The Democratic Republic of the Congo (DRC) – A Need to Address Conflict-Related Sexual and Gender-Based Violence (Africa)
2. Nepal – Women’s Participation and Civil Society Leadership in a Post-Conflict NAP (Asia)

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<sup>120</sup> UN Security Council Resolution 1325 (30 October 2000) UN Doc S/RES/1325 (SCR 1325).

<sup>121</sup> See Presidential statements of the UN Security Council, S/PRST/2004/40 and S/PRST/2005/52. The relevant UN Security Council resolutions on women, peace and security are: UN Security Council Resolution 1820 (19 June 2008) UN Doc S/RES/1820 (SCR 1820). See also: UN Security Council Resolution 1888 (30 September 2009) UN Doc S/RES/1888 (SCR 1888); UN Security Council Resolution 1889 (5 October 2009) UN Doc S/RES/1889 (SCR 1889); UN Security Council Resolution 1960 (16 December 2010) UN Doc S/RES/1960 (SCR 1960); UN Security Council Resolution 2106 (24 June 2013) UN Doc S/RES/2106 (SCR 2106); and UN Security Council Resolution 2122 (18 October 2013) UN Doc S/RES/2122 (SCR 2122).

<sup>122</sup> See Institute for Inclusive Security, “The Power of a Plan” (2014) available from: <http://actionplans.inclusivesecurity.org/>.

<sup>123</sup> Aisling Swaine, ‘Assessing the Potential of National Action Plans to Advance Implementation of United Nations Security Council Resolution 1325’ (2009) 12 *Yearbook of International Humanitarian Law*, pp. 403-33, p. 433.

<sup>124</sup> Ibid.

3. Myanmar – A Journey Towards a NAP that Draws on the Legal Framework (Asia)
4. Bosnia and Herzegovina – An Old NAP Featuring Fragmentation, a New NAP that Draws on the Legal Framework (Europe)
5. Chile – A NAP for National and International Cooperation (Latin America and the Caribbean)
6. Iraq – A NAP amidst Current Conflict, following War and Occupation (the Middle East)

This Section discusses how NAPs have been developed, implemented and reviewed by governments, development agencies and civil society, including women’s organizations and victims and survivors of conflict-related rights violations. As discussed below, two factors seem to have the greatest impact on the effectiveness of the NAP process (design, implementation, monitoring and evaluation). These are: **women and girls’ participation and inclusion**; and **government-buy in** and **civil society engagement** on the legal framework, both via NAPs and other actions.

### **The participation and inclusion of women and girls in the NAP process**

Participation is the only one of the “three Ps” of SCR 1325 (the other two being prevention and protection) to feature as a priority in every NAP in the case studies. While the NAPs focus on the other three pillars of SCR 1325 to varying degrees (the fourth pillar being relief and recovery) either explicitly or implicitly, the meaningful inclusion of women and girls is crucial to the NAP process. In Myanmar, the only country yet to implement a NAP, preliminary measures to promote women’s political participation include a National Strategic Action Plan for the Advancement of Women 2013-2022 (NSPAW). The NSPAW includes “decision-making” as a priority, and is based on elements of the legal framework on women, peace and security that prioritise the participation of women and girls in preventing, managing and resolving conflict, namely the Convention on the Elimination of All Forms of Discrimination against Women 1979 (CEDAW) and its General Recommendations, which include the General Recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations (CEDAW GR No. 30) and the Beijing Platform for Action 1995 (BPfA).<sup>125</sup> CEDAW and its GR No. 30 and the BPfA are two key elements of the legal framework that complement SCR 1325. These elements of the legal framework are mentioned in all of the NAPs in the case studies (Chile, the DRC, Iraq, Bosnia and Herzegovina and Nepal).

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<sup>125</sup> Convention on the Elimination of All Forms of Discrimination against Women (adopted on 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13 (CEDAW); Committee on the Elimination on of Discrimination against Women (CEDAW Committee) General Recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations (adopted on 18 October 2013) CEDAW/C/GC/30 (CEDAW GR No. 30); United Nations, *Beijing Declaration and Platform of Action, adopted at the Fourth World Conference on Women*, 27 October 1995. See Section 1.

## **Political will and civil society engagement on the legal framework on women, peace and security**

Buy-in by governments and the involvement of civil society are crucial to implementing SCR 1325 and upholding the legal framework. In each case study, political will largely determines the adequacy of the design and content of NAPs. Civil society advocacy makes a difference in holding political leaders accountable to put NAPs into action, and to monitor and evaluate them. The levels of government buy-in and civil society engagement are affected by: the immediacy of conflict in a country; post-conflict political instability and leadership vacuums; and the coordination by the UN, development agencies, and civil society actors in supplementing government actions on WPS.

The relatively successful NAPs, like those of Nepal and Chile, are designed to work closely with development agencies and civil society at local and national levels, and across government. Consultation appears to best secure government buy-in where, as in Myanmar and Nepal, it is initiated at the beginning of the NAP process to involve all relevant stakeholders, including women's ministries, national women's machineries and women's and girls' organizations. In Bosnia and Herzegovina (BiH) the federal structure of the government coupled with official denial by the regional government hampered implementation of the first NAP. The second NAP of BiH shows promise by incorporating lessons learned from the CEDAW Committee and the country's obligations under the legal framework. In Iraq, efforts to enforce the newly adopted NAP must be understood against a backdrop of renewed conflict from the recent military campaign by the Islamic State of Iraq and Levant (ISIL). The DRC retains the title of the world's 'rape capital' and the government's inadequate implementation of its NAP indicates a lack of political will.

## AFRICA

### THE DEMOCRATIC REPUBLIC OF THE CONGO (DRC) – A NEED TO ADDRESS CONFLICT-RELATED SEXUAL AND GENDER-BASED VIOLENCE

#### **I. An Overview of Conflict in the Democratic Republic of the Congo (DRC)**

The situation for women and girls in the eastern DRC is dire following decades of conflict. Instability remains and the eastern Congo is in a fragile state of being **neither in conflict, nor at peace**. Following the genocide in neighboring Rwanda, refugees and génocidaires fled to the DRC. Rwanda and Uganda then invaded the DRC in July 1996 in pursuit of the perpetrators of the genocide. After Laurent-Désiré Kabila, former dictator of the DRC (and father of current President Joseph Kabila) fell out with his benefactors; a regional war broke out between rebels and government forces. The ensuing five years of war exacted a devastating toll on the civilian population, with nearly four million estimated deaths from violence, starvation and disease, in what has been dubbed “Africa’s World War”. In 2002, a peace agreement was reached between all the parties to the conflict. In 2010, the former Secretary-General’s Special Representative on Sexual Violence in Conflict, Margot Wallström, labelled the DRC the “rape capital of the world.”<sup>126</sup> The Congolese Army and the numerous armed groups operating in the eastern DRC continue to target civilians, especially women and girls. The army and armed groups persistently use sexual violence as a weapon of war<sup>127</sup> using rape, mutilation, sexual slavery and forced pregnancy to achieve military objectives.<sup>128</sup>

#### **II. The DRC’s National Action Plan (2010 - no end date)**

The DRC adopted its National Action Plan (NAP) in January 2010. The Ministry of Gender, Family and Children led the development of the NAP, with involvement from other ministries including Defence, Interior and Security, Justice, Human Rights, Budget, Finance, Foreign Affairs as well as civil society,

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<sup>126</sup> United Nations News Centre, ‘Tackling sexual violence must include prevention, ending impunity – UN official’ (2010) available from: <http://www.un.org/apps/news/story.asp?NewsID=34502#.VRMCpzvF9fx>.

<sup>127</sup> World Organisation against Torture and Women’s Synergy for Victims of Sexual Violence, ‘Report On Violence Against Women In North And South Kivu, In The Democratic Republic Of Congo: Alternative Report For The CEDAW Committee’ (2013) (World Organisation against Torture) p. 1.

<sup>128</sup> Committee on the Elimination of Discrimination Against Women (CEDAW Committee) *Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women, Combined 6<sup>th</sup> and 7<sup>th</sup> periodic report of States Parties: DRC*, 21 December 2011, CEDAW/C/COD/6-7, p 23.

religious representatives and leaders from traditional authorities.<sup>129</sup> The document is only ten-pages, and like the first NAP of Chile, has no end date.

A positive feature is the NAP's reference, albeit briefly, not only to SCR 1325 but also key elements of the legal framework on women, peace and security, namely CEDAW and its Optional Protocol (1999); the Convention on the Rights of the Child (1989) and its two Optional Protocols (2000); and the world conferences on women in Nairobi (1985) and Beijing (1995) the latter of which launched the BPfA.<sup>130</sup> This reference indicates that the government is cognisant of its binding obligations and commitments under international law.

The NAP commits the government to implementing SCR 1325 by focusing on seven specific axes: 1) Participation; 2) Integration of gender into planning, programming and budgeting; 3) Promotion and protection of the rights of women; 4) Reform of the security sector; 5) Regional and international cooperation; 6) Research and studies; and 7) Monitoring and evaluation.<sup>131</sup> The NAP's implementation is designated to Steering Committees at three levels – national, provincial and local, each responsible for a different aspect of implementing the NAP. The three-tiered Steering Committee structure is a unique feature of the NAP of the DRC.<sup>132</sup> Periodic evaluations of the activities of each steering committee are envisaged during the central Government's biennial overall assessment of implementation of the NAP.

### III. Implementation of the NAP by the Government, Development Agencies and Civil Society

#### Government

The Government's progress on implementing the NAP and its National Strategy to Eliminate Gender-Based Violence (National Strategy) must be considered in the context of the persistently high rate of **sexual and gender-based violence** (SGBV) as well as the **low level of women's political participation** in **public life and peace processes** in the DRC.

Since the NAP was adopted, the **rate of SGBV** in the DRC remains one of the highest in the world.<sup>133</sup> Preventing and eliminating conflict-related SGBV is hampered by the DRC Government's denial that a

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<sup>129</sup> Barbara Miller, Milad Pournik and Aisling Swaine, "Women In Peace And Security Through United Nations Security Resolution 1325: Literature Review, Content Analysis Of National Action Plans, And Implementation" (2014) (Institute for Global and International Studies, George Washington University) (Miller, Pournik and Swaine) p. 94-95.

<sup>130</sup> Ministry of Gender, Family and Children, "The Government's Action Plan Of The Democratic Republic Of The Congo For The Purposes Of Resolution 1325 Of The United Nations Security Council" (Kinhasa; 2010), p. 3.

<sup>131</sup> Ibid, p 4.

<sup>132</sup> Miller, Pournik and Swaine, ibid.

<sup>133</sup> African Development Bank/African Development Fund, 'Democratic Republic Of Congo: 2013-2017 Country Strategy Paper', (Regional Department Centre ORCE/CDFO 2013).

conflict exists and insistence that the country is at peace, with no more conflict-related SGBV.<sup>134</sup> This seems to be an effort to erase the perception of the DRC as the world's "rape capital".<sup>135</sup>

Reported instances of rape remain alarmingly high. The reported SGBV rate in the eastern regions are well above the average in the rest of the country with 13,963 instances reported in North Kivu in 2011-2013, and 8,945 reported in South Kivu in the same time.<sup>136</sup> During a period of increased conflict in 2013, reported rapes and instances of SGBV rose, with 705 cases reported in North Kivu province alone in the first six months of 2013, 619 of which were reports of rape.<sup>137</sup> Armed men were the perpetrators in more than half of these reports.<sup>138</sup>

Despite the alarmingly high instances of SGBV, **impunity is rife** in the DRC. Few cases are prosecuted due to "insufficient resources, lack of confidence in the justice system, fear of subjecting themselves to humiliation and possible reprisal, or family pressure."<sup>139</sup> Nationally, only 11% of all reported cases of SGBV were investigated, and the rate of penalization for rapes, rapes of minors, aggression and other forms of SGBV was only 5.6% in 2012.<sup>140</sup> Since the Security Council adopted SCR 1888 in 2009, which has a particular focus on accountability for rape and SGBV, some military commanders in North and South Kivu have been convicted for mass rapes and human rights breaches, including sexual violence.<sup>141</sup> However, impunity remains a serious problem that continues to contribute to the perpetuation of rape and SGBV against women and girls.<sup>142</sup>

Women's **political participation in public life and peace processes** in the DRC remains low. The Global Network of Women Peacebuilders links women's insufficient political participation to a lack of political will by the government to include women, as well as female illiteracy, cultural burdens, and a "weak political culture of women candidates and voters".<sup>143</sup>

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<sup>134</sup> Marcy Hersh, 'Congolese Women: What Happened To The Promise To Protect?' (Refugees International, 2015) (Hersh) p. 34.

<sup>135</sup> Ibid. p 33; see also Clàr Ní Chonghaile, 'Top Congo Official Hopes To Shed Country's 'Rape Capital Of The World' Tag' *Guardian* (2015) available from: <http://www.theguardian.com/global-development/2015/mar/04/congo-presidential-adviser-hopes-shed-rape-capital-tag>.

<sup>136</sup> Ibid.

<sup>137</sup> United Nations News Centre, 'New UN Statistics Show Alarming Rise In Rapes In Strife-Torn Eastern DRC' (2013).

<sup>138</sup> Ibid.

<sup>139</sup> US Department of State, Bureau of Democracy, Human Rights and Labor, 'Country Reports On Human Rights Practices for 2013: Democratic Republic of the Congo' (2014).

<sup>140</sup> Global Network of Women Peacebuilders, 'Women Count - Security Council Resolution 1325: Civil Society Monitoring Report 2013' (New York, 2013) (Women Count), available from: [http://issuu.com/suba\\_gnwp/docs/women\\_count\\_civil\\_society\\_monitorin/1?e=8954983/7339869](http://issuu.com/suba_gnwp/docs/women_count_civil_society_monitorin/1?e=8954983/7339869), p 32.

<sup>141</sup> Ibid, p. 31.

<sup>142</sup> World Organisation against Torture, p 7.

<sup>143</sup> Global Network of Women Peacebuilders, 'Women, Peace And Security Policy Briefs' (2013) (WPS Policy Briefs) p. 23.



Women's low level of engagement in politics is evident in all aspects of public life in the DRC. There is no quota for women in parliament.<sup>144</sup> Women represent 5.5% of the senate, 10.4% of the National Assembly and 14% of cabinet appointments.<sup>145</sup> Gender representation is even lower at the provincial level, with 9% of parliamentarians being women (61 of 618 seats), and only 7 women in cabinet across all provinces covering the east of the country.<sup>146</sup> The country is taking steps to increasing participation, and the representation of women in appointed positions is higher than in elected positions.<sup>147</sup> Women's involvement in the justice and security sector is better, but still low. The number of female judges and prosecutors, at all levels, increased in 2013 to 20% from 17% in 2012.<sup>148</sup> In policing, this percentage drops to 5.6%.<sup>149</sup> Military statistics are even lower, with women representing 2-3% of all levels of the military.<sup>150</sup>

Very few women have been involved in [peace negotiations](#). Most recently, no women were included in delegations during talks in Addis Ababa in February 2013, and during the Kampala Negotiations, only four women participated during all three rounds.<sup>151</sup> Despite their low numbers, female delegates played an important role in the Sun City negotiations to include gender equality and women's rights in the final document.<sup>152</sup>

The three levels of the NAP's Steering Committees do not appear to be operational. The National Steering Committee remained non-functioning until June 2013.<sup>153</sup> On 15 June 2013, the Minister for Gender, Family and Children issued a ministerial order regarding Steering Committees. The order reduced the number of civil society organisations involved in the National Steering Committee from 16% to 10%, and also established a Trust Fund.<sup>154</sup> The Trust Fund is now under the administration of UN Women.<sup>155</sup> The NAP made provision for biennial review of implementation but there does not appear to have been such a review undertaken by the central government to date. The reduction of civil society involvement in the ministerial order has also limited the possibility for women's participation in implementing the NAP at the national level.

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<sup>144</sup> Christopher Kuonqui and Hanny Cueva-Beteta, 'Tracking Implementation Of Security Council Resolution 1325 (2000)' (UN Women, New York, 2012) p. 12.

<sup>145</sup> WPS Policy Briefs, p. 23; Women Count, p. 13.

<sup>146</sup> Ibid, and Women Count, p. 63.

<sup>147</sup> Women Count, *ibid*.

<sup>148</sup> Ibid.

<sup>149</sup> Ibid.

<sup>150</sup> WPS Policy Briefs, p. 23.

<sup>151</sup> World Organisation against Torture, p. 5.

<sup>152</sup> Women Count, p. 65.

<sup>153</sup> WPS Policy Briefs, p. 24.

<sup>154</sup> Women Count, p. 68.

<sup>155</sup> Ibid.

The Government's **obligations under the legal framework**, while referenced in the text of the NAP, are insufficiently addressed in its **content** and **implementation**. The NAP appears to have been designed via a participatory process that was led by the national women's ministry. However this inclusive approach has not been followed through in the rest of the NAP process. This is evident in women's low level of participation in implementing, monitoring and evaluating the NAP, as well as the lack of women's inclusion more broadly in public life and peace processes.

As a whole, the **NAP lacks specificity in its content**.<sup>156</sup> Whilst the areas of priority are listed, the remainder of the document does not provide for mechanisms to achieve those goals other than the establishment of Steering Committees. Much of the document discusses the achievements of the government of the DRC to date, and acknowledges the disproportionate effect of conflict on women. A number of 'opportunities' are then presented, but it is not clear as to whether they are areas for improvement, and whether they are to form part of the implementation of the NAP.

Most significantly, the document fails to provide the following key information:<sup>157</sup> (1) timeline – none specified for implementation; (2) roles – the NAP does not clarify which agencies will be responsible for implementation; (3) financial allocation – there is no mention of sources of funds for any of the implementation activities, nor for the Steering Committees; and (4) indicators – none specified in the monitoring and evaluation of implementation of the NAP.

### Development Agencies and Civil Society

Efforts to implement the NAP have largely been the result of the work of civil society, including women's organizations, and not that of the government.<sup>158</sup> The government has exhibited a lack of political will to implement SCR 1325, as evidenced by the fact that the National Steering Committee was non-functioning for many years. In 2011, the Ministry of Gender, Family and Children reallocated funds that were earmarked for implementation of SCR 1325 to other areas of priority.<sup>159</sup> Such actions indicate that the women's concerns are not a priority for the government of the DRC, and reflect a misconception that women's issues are separate from other concerns.<sup>160</sup>

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<sup>156</sup> Ibid.

<sup>157</sup> Ibid.

<sup>158</sup> WPS Policy Briefs, p. 23.

<sup>159</sup> Ibid, p 24.

<sup>160</sup> Ibid.

The work of NGOs and development agencies has been crucial in assisting victims and survivors of SGBV, by providing support services that have been life-saving for many women and girls.<sup>161</sup> The volume of donor services available, however, has created an almost paternalistic relationship between humanitarian agencies and the DRC Government. This creates a risk of government complacency towards responsibility to provide basic social services, and does not encourage the government to take a more active role to address SGBV.<sup>162</sup>

Programs established and run by development agencies and civil society have been effective in providing care to survivors of SGBV by assisting women and children to reintegrate socially and to cope with trauma, through accessing medical and social services.<sup>163</sup> Where such services are available, it has been much easier for women and girls to report rape and SGBV.<sup>164</sup> The US Agency for International Development (USAID) has been the main source of funding for programs addressing gender based violence in the eastern DRC.<sup>165</sup>

While the USAID-funded programming has taken a holistic approach to addressing SGBV in the DRC, much of the financing to tackle SGBV in 2010-15 has been in response to violence, not an effort to prevent it. Holistic efforts can save women's lives and help them reintegrate into society, but they cannot address the underlying causes of SGBV. Therefore, the persistence of SGBV in the country should not be linked to development programs falling short.<sup>166</sup> There is a need for concerted action, led by the government, to address the systemic and structural causes of SGBV, with a view towards achieving substantive and transformative equality, as outlined in the provisions of CEDAW and other international legal obligations held by the DRC (see Section 1).

#### **IV. Other Actions by Government, Development Agencies and Civil Society**

In addition to adopting the National Strategy, the government established a number of agencies to address the problem of SGBV in conflict-affected areas including the National Agency against Violence to Women and Girls (AVIFEM) and National Fund for the Promotion of Women and Child Protection (FONAFEN). These have been largely ineffective as they do not operate independently of active politicians, are under resourced, and only operate programs in and around Kinshasa.<sup>167</sup>

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<sup>161</sup> Hersch, p. 16.

<sup>162</sup> Ibid, p.22.

<sup>163</sup> Ibid, p. 16.

<sup>164</sup> Ibid, p. 10.

<sup>165</sup> Ibid.

<sup>166</sup> Ibid, p. 16.

<sup>167</sup> Thematic Group on Women's Rights and Sexual Violence and National Coalition of Non-Governmental Organisations for Monitoring and Reporting on the Human Rights Situation, 'Additional Shadow Report To The 6th And 7th Combined Report of

Since 2009, the DRC has been the site of a UN pilot project called the ‘Comprehensive Strategy to Combat Sexual Violence’. This pilot project incorporates UN agencies, NGOs, government and civil society actors.<sup>168</sup> The project was intended to be a coordination strategy and to provide a common framework for different actors working towards ending SGBV in the DRC.<sup>169</sup> However, the Comprehensive Strategy framework has at times been unable to prevent the duplication of activities or generate momentum on tackling SGBV, and has added to the bureaucratic hurdles faced by humanitarian actors.<sup>170</sup>

## V. Conclusion

The most urgent concern yet to be addressed by the NAP is the persistence of SGBV. This submission recommends that systemic, structural reforms are urgently needed to address SGBV and women’s low level of engagement in politics and peace processes. These reforms should be led by the government (with development partners and civil society playing a supportive, secondary role) to prevent, eliminate and end impunity for rape and all forms of sexual violence.

The government’s failure to adhere to its international legal obligations as laid out in SCR 1325, and the wider framework on women, peace and security, has been highlighted in the CEDAW Committee’s Concluding Observations on the DRC’s state reports under the Convention. In 2006, the Committee expressed deep concern “about the continuing occurrences of rapes and other forms of sexual violence against women and the ingrained culture of impunity for such crimes.”<sup>171</sup> Most recently, in its Concluding Observations of July 2013, the Committee expressed extreme concern about: “the failure of the authorities to prioritize the protection of civilians and the denial by key State officials of the extent of the violence committed against women in conflict-affected areas.”<sup>172</sup> These emphatic comments underscore the importance of reporting processes like those of the CEDAW Committee that remind states of their obligations under the wider international legal framework on women, peace and security.

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the DRC On The Implementation Of CEDAW’ (2013) available from:

[http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/COD/INT\\_CEDAW\\_NGO\\_COD\\_13595\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/COD/INT_CEDAW_NGO_COD_13595_E.pdf) p. 7.

<sup>168</sup> United Nations Organisation Stabilisation Mission in the Democratic Republic of the Congo ‘The Comprehensive Strategy On Combating Sexual Violence In The DRC’ (2015) available from: <http://monusco.unmissions.org/Default.aspx?tabid=10818>.

<sup>169</sup> Ibid.

<sup>170</sup> Hersh, p. 2.

<sup>171</sup> CEDAW Committee, *Concluding Observations: Democratic Republic of the Congo* (25 August 2006) CEDAW/C/COD/CO/5.

<sup>172</sup> CEDAW Committee, *Concluding Observations on the combined sixth and seventh periodic reports of the Democratic Republic of the Congo* (30 July 2013) CEDAW/C/COD/CO/6-7.

# NEPAL– WOMEN’S PARTICIPATION AND CIVIL SOCIETY LEADERSHIP IN A POST-CONFLICT NAP

## **I. An Overview of Conflict in Nepal**

Nepal is a post-conflict country. A decade-long civil war, which ended in 2006, took place between the Communist Party of Nepal (Maoists) and the monarchy, resulting in at least 13,000 deaths and over 1,300 forced disappearances.<sup>173</sup> In recent years, human rights organisations have documented wide scale sexual, physical and verbal abuse of women, perpetrated by both government security forces and Maoist fighters during the conflict.<sup>174</sup> The government has publicly acknowledged the violence directed at women during this time.<sup>175</sup> The conflict officially ended on 21 November 2006, when the government and Maoists signed the Comprehensive Peace Accord (CPA).<sup>176</sup> The resulting election showed a marked preference for a federal democratic republic over a monarchy. The interim constitution of 2006 replaced the monarch King with an interim House of Representatives. In 2007, Nepal became a federal republic with a president as the head of state. A key aspect of the CPA was drafting a new constitution, which afforded equal rights to the peoples of Nepal, with particular emphasis placed on eradicating caste and ethnic divisions in the country.<sup>177</sup> However, progress on this project has been hamstrung by differing visions for the future of Nepal and an agreed draft remains forthcoming.<sup>178</sup> This uncertainty has left the nation in a seemingly intractable state of political deadlock for some years.

## **II. Nepal’s National Action Plan (2011-16)**

By adopting a National Action Plan (NAP) on the Implementation of Security Council Resolutions 1325 and 1820 (which condemns rape and sexual violence)<sup>179</sup> on 17 February 2011, Nepal was the first country in South Asia and the second in Asia to implement a NAP.<sup>180</sup> The NAP, which was adopted by the Ministry of Peace and Reconstruction (the Ministry) remains in force until 2016. The NAP was the result of an

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<sup>173</sup> Human Rights Watch, ‘World Report 2014 Nepal’, available from: <http://www.hrw.org/world-report/2014/country-chapters/nepal?page=1>

<sup>174</sup> Human Rights Watch, ‘Silenced and Forgotten’, available from: [http://www.hrw.org/sites/default/files/reports/nepal0914\\_ForUpload\\_0.pdf](http://www.hrw.org/sites/default/files/reports/nepal0914_ForUpload_0.pdf)

<sup>175</sup> Ibid.

<sup>176</sup> United Nations Development Programme (UNDP) ‘Support to Participatory Constitution Building in Nepal’ (2014) available from: [http://www.np.undp.org/content/nepal/en/home/operations/projects/crisis\\_prevention\\_and\\_recovery/spcbrn/home/](http://www.np.undp.org/content/nepal/en/home/operations/projects/crisis_prevention_and_recovery/spcbrn/home/).

<sup>177</sup> Ibid.

<sup>178</sup> International Institute for Democracy and Electoral Assistance (IDEA) ‘A Milestone for Nepal’, available from: [http://www.idea.int/asia\\_pacific/nepal/](http://www.idea.int/asia_pacific/nepal/).

<sup>179</sup> See UN Security Council Resolution 1820 (19 June 2008) UN Doc S/RES/1820 (SCR 1820).

<sup>180</sup> UN Women, ‘A Time for Peace: Nepal Adopts National Action Plan on Women, Peace and Security’ (17 February 2011) available from: <http://www.unwomen.org/en/news/stories/2011/2/a-time-for-peace-nepal-adopts-national-action-plan-on-women-peace-and-security>.

**extensive consultation** process, led by the Ministry and including other government agencies, international NGOs and donor organisations, development partners, and civil society.<sup>181</sup> Nepal has been praised for holding “of one of the most, if not the most, consultative processes including 52 district level consultations, 10 regional consultations, and separate special consultations with women and girls directly affected by conflict.”<sup>182</sup> The NAP has also been lauded for its comprehensiveness, both in providing a detailed and frank background to conflict and post-conflict issues in Nepal and in setting out a rigorous and detailed plan.<sup>183</sup>

The NAP is structured around five pillars.<sup>184</sup> These include the four pillars of SCR 1325, and an **important fifth pillar on resourcing that should arguably be included in every country’s NAP**. The pillars are: 1) Ensuring that women gain equal and meaningful opportunities to participate in decision-making during the peace building process; 2) The protection of women and girls from the violation of their rights during the post-conflict period and prevention of such violations; 3) Promoting the rights of women and girls and particularly the importance of gender-mainstreaming in all phases of the conflict transformation and peace building process; 4) Ensuring that women are a part of the formulation and implementation of post-conflict relief and recovery measures to ensure that their special needs are adequately met; and 5) Ensuring that resource mobilisation, and monitoring and evaluation of the NAP is sufficient to efficiently meet its stated goals.

Nepal’s NAP, like that of the DRC, **reflects binding obligations under the legal framework** on women, peace and security, drawn not only from the SCRs but also from CEDAW and the BPfA. The NAP lists several policies and plans that are relevant to women, peace and security. These include the National Action Plans: on the Implementation of CEDAW (2004); on Gender Equality and Empowerment of Women (2005) which outlines Nepal’s commitments in relation to the BPfA; and against Gender-Based Violence is also relevant to addressing conflict-related SGBV. The Government’s three-year national human rights plan and its Local Peace Committees are also relevant to the legal framework, and the NAP notes the need for women’s participation in the latter.<sup>185</sup> Although Nepal’s international legal obligations are not an explicit focus of the NAP, the inclusion of these documents in the NAP reflects Nepal’s whole-of-government, multi-sectoral and holistic approach, grounded in the legal framework, to upholding the rights of conflict-affected women, girls, men and boys.

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<sup>181</sup> *ibid.*

<sup>182</sup> Peace Women, ‘National Action Plan: Nepal’, available from: <http://www.peacewomen.org/nap-nepal>.

<sup>183</sup> *ibid.*

<sup>184</sup> *ibid.*

<sup>185</sup> Ministry of Peace and Reconstruction, ‘National Action Plan on the Implementation of United Nations Security Council Resolutions 1325 and 1820: 2011/12-2015/16’, available from: [http://www.peacewomen.org/sites/default/files/nepal\\_2011.pdf](http://www.peacewomen.org/sites/default/files/nepal_2011.pdf), (Nepal NAP) pp. 12, 14-16.

### III. Implementation of the NAP by the Government, Development Agencies and Civil Society

#### Government

While Nepal's NAP is acknowledged for an inclusive design that prioritised women's participation, it is important that the Government's progress does not fall victim to complacency. Government actions so far have focused on **collaborating with dynamic civil society actors, including women's organizations, in monitoring and evaluating** the NAP. The Ministry and the 1325 Action Group (led by local civil society organization Saathi) produced a mid-term monitoring report of the NAP in September 2014 (the report).<sup>186</sup> The mid-term report followed a one-year monitoring report, produced by the same partners in 2012. The report covers three years of implementation, via indicators and strategic objectives for all five pillars. The report records major achievements of the NAP so far: increased general awareness of women, peace and security issues; resource allocation for implementation; capacity building; and infrastructure development. However, the report also identifies gaps in implementation at the national and local levels and makes recommendations to remedy these. Implementation has occurred predominantly at the central government level and "needs to be promoted and extended to the local level for greater outreach to conflict affected women and girls".<sup>187</sup> The report calls for improved responses to rape and domestic violence by service providers, policing and government agencies; improved measures to increase women's participation in all levels of government-decision-making; and more widespread promotion mechanisms in major local dialects.<sup>188</sup>

The mid-term report should provide guidance for Nepal's next NAP, due in 2017, to address key problem areas and continue to build on the successes of the current NAP. It is unclear how the transition to the next NAP will take place. However, the collaborative process that led to the first NAP will prove a good model for designing and implementing the second plan.

#### Development Agencies and Civil Society

The NAP is a product of an exemplary collaborative process involving local NGOs and civil society stakeholders. Consequently, it received significant implementation support from these actors. Saathi notes that the civil society 1325 Action Group helped implement and monitoring the NAP.<sup>189</sup> In particular,

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<sup>186</sup> Ministry of Peace and Reconstruction and 1325 Action Group Nepal, 'National Action Plan on Implementation of Resolutions 1325 and 1820: Midterm Report' (September 2014) (Mid-Term Report) available from: <http://www.saathi.org.np/images/stories/pdf/saathimidtermreportenglish.pdf>

<sup>187</sup> Ibid, p. 87.

<sup>188</sup> Ibid, pp. 87-9.

<sup>189</sup> Ibid, Preface.

Saathi's own leadership in the mid-term report exemplifies the prominent role of local stakeholders in the provision of technical support and research.<sup>190</sup>

#### **IV. Other Actions by the Government, Development Agencies, and Civil Society**

##### **Government**

In 2013, the President passed an Ordinance creating a Truth and Reconciliation Commission (Commission) which was subsequently struck down by the Supreme Court. The initial proposal was widely criticised for failing to consult victims or international or national human rights organisations and NGOs.<sup>191</sup> Shortly after the ordinance was struck down, a second ordinance was promulgated seeking to establish a Commission that would seek to investigate known violations of human rights in addition to investigating those reported by victims.<sup>192</sup> However, the Commission's mandate remains limited to addressing only "serious violations of human rights" which are defined as those perpetrated against "the civilian population or unarmed persons in a systematic manner".<sup>193</sup> It is likely that many instances of sexual and gender-based violence (SGBV) will fall outside this definition; as such crimes tend to be perpetrated on an individual basis rather than in a systematic manner in Nepal.<sup>194</sup>

Amnesty for gender-based crimes also presents a potential problem for the Commission. The ordinance provides that "serious crimes which lack sufficient reasons and grounds for granting amnesty following the investigation of the Commission, including rape, shall not be recommended for amnesty by the Commission".<sup>195</sup> It is heartening that rape is specified as a serious crime unlikely to attract an amnesty (in line with Nepal's international criminal law, international humanitarian law and other obligations under the legal framework, outlined in Section 1). However, amnesties could be applied to other SGBV-related crimes, further limiting the Commission's effectiveness.

##### **Development Agencies and Civil Society**

Nepal's strong local NGO culture includes the active participation of women's organizations, many working on SGBV and trafficking issues. Several reports note the significant contribution that civil society is making to the implementation of the NAP but also that there is no formal monitoring and evaluation process in

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<sup>190</sup> Ibid.

<sup>191</sup> International Justice Resource Centre, 'Truth and Reconciliation Commission for Nepal Continues to Face Criticism' (9 April 2013) available from: <http://www.ijrcenter.org/2013/04/09/flawed-truth-and-reconciliation-commission-for-nepal/>.

<sup>192</sup> Ibid.

<sup>193</sup> Government of Nepal, 'Ordinance on Investigation of Disappeared Persons, Truth and Reconciliation Commission' (Ordinance) available from: <http://www.simonrobins.com/missing/wp-content/uploads/2013/02/Nepal-TRC-Ordinance.pdf>

<sup>194</sup> International Commission of Jurists, 'Compromising Justice: Nepal's Proposed Ordinance on Commission on Disappeared Persons, Truth and Reconciliation' (Briefing Paper) (2012) available from: <http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2012/10/TJ-Ordinance-Briefing-Paper-FINAL-VERSION.pdf>

<sup>195</sup> Ordinance, *ibid.*



place to document the contributions of civil society, especially women's organizations. The UN Entity for Gender Equality and the Empowerment of Women (UN Women) supported the development of the first NAP, and works with NGOs to build their capacity to monitor the NAP. The next step could be recording the rich contributions of the civil society sector.

## **V. Conclusion**

There are three actions needed to address rights of women in post-conflict Nepal. First, a **new NAP must follow the inclusive process** of the existing NAP, supported by effective monitoring and evaluation by the Government and Nepal's active civil society sector, especially women's organizations. It is important that the contributions of civil society to the NAP process are recognised and supported. Two related, but also politically fraught, post-conflict projects are the **creation of a new constitution** and a **need to redesign the Commission**. Women must be included in the decision-making processes behind both projects, in line with the first pillar of the NAP. It is also crucial that both substantively provide the necessary protections to women and girls. Women's rights must be privileged in the constitution in order to build upon the work in this field already achieved under the NAP. Equally, the Commission requires a redesign of its mandate and structure to vigorously pursue gender-based crimes.

## MYANMAR – A JOURNEY TOWARDS A NAP THAT DRAWS ON THE LEGAL FRAMEWORK

### I. An Overview of Conflict in Myanmar

Myanmar is simultaneously on the cusp of change and affected by ongoing conflict. The country's future depends on the widely anticipated upcoming general election, due to be held in October/November of this year. There is currently a window of opportunity to channel the reformist momentum from its transition toward democracy to progress the women, peace and security agenda. Myanmar remains affected by protracted internal conflict between ethnic minorities and the Burmese military, characterised by gross violence against civilians, human rights abuses, brutal offensive military attacks and widespread displacement, with thousands displaced and fleeing to refugee camps in neighbouring countries. Communal violence persists in discrete areas, notably in Rakhine State between Buddhists and the Muslim Rohingya. Since 2012, and accusations of mass rapes of women and girls have resulted in brutal clashes between members of these two groups.<sup>196</sup> In November 2014 the Women's League of Burma, an umbrella organisation of 13 women's groups of different ethnic backgrounds, published a report detailing the ongoing and systematic use of rape by the Burmese Army as a form of subjugation of ethnic communities.<sup>197</sup>

### II. Developments on Women, Peace and Security – Towards a National Action Plan

Myanmar is yet to launch a National Action Plan (NAP) on SCR 1325, which is currently under development. Women do not feature prominently in civil decision-making and are excluded from meaningful involvement in the ceasefire negotiations and broader peace-building efforts. There are no women in the Union Peace Making Central Committee, and only two women parliamentarians in the 52-member government-established Working Committee established under it.<sup>198</sup> Myanmar does not yet have any laws prohibiting violence against women in the home. There are, however, indications that women's issues are being increasingly prioritised. As part of Myanmar's growing openness, there is an unprecedented policy space for discussion and action, by the Government, civil society (especially women's organizations) and

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<sup>196</sup> BBC News, 'Why is there communal violence in Myanmar?' (3 July 2014) available at: <http://www.bbc.co.uk/news/world-asia-18395788>.

<sup>197</sup> Women's League of Burma, 'If They Had Hope, They Would Speak: The ongoing use of state-sponsored sexual violence in Burma's ethnic communities', available at: [http://womenofburma.org/wp-content/uploads/2014/11/VAW\\_Iftheyhadhope\\_TheywouldSpeak\\_English.pdf](http://womenofburma.org/wp-content/uploads/2014/11/VAW_Iftheyhadhope_TheywouldSpeak_English.pdf).

<sup>198</sup> Ja Nan Lathaw and Nang Raw, 'Myanmar's current peace processes a new role for women?' (Opinion) (Centre for Humanitarian Dialogue, December 2012) available from: <http://www.w4nv.com/assets/files/HDMyanmar%20FINAL.pdf>

development partners on making progress on gender equality in the context of the legal framework on women, peace and security.<sup>199</sup>

### III. Efforts to establish a National Action Plan (NAP) using the Legal Framework

#### Government

The commitment to a NAP sits alongside recently introduced governmental measures aimed at raising the women's profile in Myanmar society and safeguarding women from violence. In October 2013 the Government launched the **National Strategic Action Plan for the Advancement of Women** (NSPAW) a comprehensive ten-year plan based on the principles of CEDAW and the 12 Priority Areas of the BPfA (the latter of which include priorities on women and armed conflict and violence against women; see Section 1). Both CEDAW and the BPfA are key elements of the legal framework that outline Myanmar's international obligations and commitments in relation to women, peace and security. By drawing on CEDAW and the BPfA, the Government has positioned the NSPAW as an overarching document on gender equality to complement the forthcoming NAP.

The NSPAW recommends practical ways to address barriers to women's development, including in the areas of access to education, political leadership, civil service employment, health care and gender-based violence prevention. The Government, in collaboration with NGOs, is responsible for implementation. Although the precise level of implementation is uncertain,<sup>200</sup> the NSPAW represents a significant step towards enhancing women's rights in Myanmar. The NSPAW also signals a **renewed commitment by the Government to CEDAW**. Although Myanmar acceded to the Convention on 22 July 1997, it has only sporadically reported to the CEDAW Committee, in 2000 and 2008 (states are required to report to the Committee every four years).

#### Development Agencies and Civil Society

Alongside government efforts on the implementation of the NSPAW, development agencies and international and local NGOs, especially women's organizations, are promoting women's rights. In the **absence of a NAP, these actors are drawing on an integrated understanding of SCR 1325 and the legal framework that reflects Myanmar's obligations under international law**.

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<sup>199</sup> UN Women, 'In Myanmar, efforts to bring women to the centre of peacebuilding', available at: <http://asiapacific.unwomen.org/en/news-and-events/stories/2013/11/in-myanmar-efforts-to-bring-women-to-the-centre-of-peacebuilding>.

<sup>200</sup> See commentary by D Baulk, 'Burma's 'transition' leaves women's rights behind', (3 December 2014) *New Internationalist*, available from: <http://newint.org/blog/2014/12/03/burma-womens-rights/>.

Development agencies and Myanmar-based NGOs are building government and community support for **women's participation in peacebuilding**, in line with the legal framework. CARE Myanmar recently concluded a project focussing on 'Strengthening the Implementation of UNSCR 1325 in Myanmar' in 44 communities in Kayah State. Women in these communities received training in the areas of gender and human rights, gender-based violence and legal awareness and education on CEDAW and SCR 1325.<sup>201</sup> UN Women is building the capacity of local women and men to access the peace table, with international partners Swiss Peace, ATHENA and national NGOs including Shalom Foundation and the Gender Equality Network. Negotiators from Chin, Kachin, Kayah, Karen, Mon, Shan and Rakhine States have been trained since October 2012 to be part of a critical mass of gender-responsive peace builders who can influence the peace negotiations.<sup>202</sup>

Myanmar's vibrant civil society engagement on women, peace and security is evident in growing **national and regional collaboration**. In January 2013, the Women Peace Initiative (Win-Peace) a Burmese network of 38 women's organisations was founded. Its mission is to foster collaborative work in conflict prevention, peace making, peacebuilding and post-conflict reconstruction. In September 2013, Win-Peace facilitated an exchange programme in the Philippines at which Myanmar and Filipino women peacebuilders shared their experiences.<sup>203</sup> In November 2013, Columbia University partnered with Burmese women's groups, including the Gender Equality Network and the Women's Organisations Network, to organise a day of dialogue on "Peace, Security and Development in Myanmar." Attended by 300 people, the dialogue focused on women's needs in relation to political dialogue, economic development and humanitarian action.<sup>204</sup>

Addressing **sexual and gender-based violence (SGBV)** has been another focus of NGOs, raising women's awareness of their rights as victims and survivors. Action Aid is assisting victims of domestic violence in Myanmar. Recent work has included training community paralegals on documenting evidence of violence and, in partnership with Legal Clinic Myanmar, providing women victims and survivors with free legal advice on possible action against perpetrators.<sup>205</sup>

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<sup>201</sup> Asia-Pacific Women's Alliance for Peace and Security, 'CARE Myanmar Project Synopsis' (2014) available from: <http://apwaps.net/2014/08/19/care-myanmar/>.

<sup>202</sup> Swiss Peace, 'Working in and on Myanmar: Reflections on a 'Light Footprint' Approach' (Working Paper, May 2014), available from: [http://www.swisspeace.ch/fileadmin/user\\_upload/Media/Publications/WP\\_5\\_2014.pdf](http://www.swisspeace.ch/fileadmin/user_upload/Media/Publications/WP_5_2014.pdf), p. 15.

<sup>203</sup> Insight on Conflict, 'Women Peace Initiative for Peace (WIN-Peace)', available from: <http://www.insightonconflict.org/conflicts/myanmar/peacebuilding-organisations/win-peace/>.

<sup>204</sup> Columbia University Institute for the Study of Human Rights, 'Advancing Women's Empowerment: Peace, Security and Development', available from: [http://hrcolumbia.org/peacebuilding/womens\\_empowerment/](http://hrcolumbia.org/peacebuilding/womens_empowerment/).

<sup>205</sup> Action Aid, 'Five ways we're tackling violence against women in Myanmar' (15 January 2015), available from: <http://www.actionaid.org.uk/blog/voices/2015/01/15/5-ways-were-tackling-violence-against-women-in-myanmar>.

The CEDAW Committee urged the Government to address SGBV in its Concluding Observations on Myanmar's 2008 CEDAW report. The Committee recommended the elimination of widespread conflict-related SGBV against women and girls, which was endemic against ethnic minorities in conflict areas. To achieve this, the Committee recommended that Myanmar adopt a NAP to fully implement SCRs 1325 and 1820, in line with Articles 2, 4(1), 5, 7 and 8 of CEDAW (which cover states obligations' to ensure: positive steps to eliminate discrimination against women; temporary special measures to eliminate discrimination; measures to eliminate sex role prejudice and stereotyping; women's national political participation; and women's political participation at the international level, respectively).<sup>206</sup> By indicating that the NAP should incorporate both the SCRs and CEDAW, the Committee supported an integrated understanding of SCR 1325 as part of the wider legal framework on women, peace and security (see Section 1).

#### IV. Conclusion

Myanmar is still journeying towards a NAP, against a backdrop transitioning to democracy. A major milestone on this journey has been the development of the NSPAW to address women's empowerment and development in the country. The NSPAW will provide the overarching context to complement a NAP on the specific conflict-related concerns of women and girls in Myanmar. The Government's renewed commitment to its CEDAW obligations via the NSPAW should be harnessed to create a NAP that, in line with the CEDAW Committee's recommendations, supports an understanding of SCR 1325 as grounded in the wider legal framework. The work of Myanmar's active civil society organizations and development agencies, provide many good practices for the Government to incorporate as it finalizes a NAP.

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<sup>206</sup> CEDAW Committee, *Concluding Observation on the combined 2<sup>nd</sup> and 3<sup>rd</sup> reports of Myanmar*, (7 November 2008) CEDAW/C/MMR/CO/3, p. 8.

## EUROPE

### BOSNIA AND HERZEGOVINA – AN OLD NAP FEATURING FRAGMENTATION, A NEW NAP THAT DRAWS ON THE LEGAL FRAMEWORK

#### **I. An Overview of Conflict in Bosnia and Herzegovina**

Bosnia and Herzegovina (BiH) is a post-conflict country that is in a fragile state.<sup>207</sup> The Balkans War resulted in high civilian casualties and widespread violence, especially among women and children. The conflict was notorious for its endemic sexual and gender-based violence (SGBV) most notably the creation of rape camps to facilitate the use rape and SGBV as a weapon of war, and the involvement of UN personnel in trafficking and SGBV.<sup>208</sup> The Dayton Peace agreement of 1995 created a state with two entities and one district. The entities each have a legislature, executive and judiciary. Although these are technically subordinate to the state-level constitution, in practice there is a very high level of deference shown by the state-level government. This has resulted in the fragmented state response to addressing women's rights in post-conflict BiH, discussed below.

#### **II. Bosnia and Herzegovina's National Action Plan 1 (2010-13) and 2 (2014-17)**

##### **First NAP (2010-13)**

The Gender Equality Agency and the Ministry of Human Rights and Refugees adopted the first National Action Plan (NAP) in 2010 and a new NAP in 2014. The first NAP had five focus areas: Women's participation in politics; (2) Military and police structures; (3) Peacekeeping; (4) Trafficking; and (5) Survivors of wartime sexual violence.

##### **Second NAP (2014-17)**

The current NAP's three priorities are the three "Ps" of the SCR 1325's pillars: (1) Equal participation; (2) Prevention; and (3) Protection. The new NAP is notable for: sparking cross-regional cooperation among former enemies; inclusive drafting process led by the Gender Equality Agency involving a coordination

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<sup>207</sup> Human Rights Watch, 'World Report on Human Rights 2014: Bosnia' (January 2014) available from: [http://www.hrw.org/sites/default/files/related\\_material/Bosnia%20and%20Herzegovina.pdf](http://www.hrw.org/sites/default/files/related_material/Bosnia%20and%20Herzegovina.pdf)

<sup>208</sup> See Women Under Siege, 'Bosnia Conflict Profile' (8 February 2012) available from: <http://www.womenundersiegeproject.org/conflicts/profile/bosnia>.

board of 14 ministries and agencies and civil society; and significant monitoring and evaluation elements that consider lessons learned from the first NAP.<sup>209</sup>

The new NAP focuses on lessons learned. It is the only case study to specifically incorporate the CEDAW Committee's recommendations, and the wider international legal framework on WPS. The NAP explicitly includes the international and domestic legal frameworks on WPS that underpin its protections. The NAP incorporates the CEDAW Committee's Concluding Observations on the state reports of BiH on women in post-conflict situations, trafficking and women's participation in public and political life.<sup>210</sup> While it is too early to assess the implementation of this NAP, by including the CEDAW Committee's recommendations, BiH is tackling its post-conflict issues in direct response to its international obligations. These include a comprehensive approach to improve the status and position of women victims of war, including addressing the stigma of SGBV, and measures to support victim rehabilitation and ensure equal access to services no matter where victims live.<sup>211</sup>

### III. Implementation of the First NAP by the Government, Development Agencies and Civil Society

#### Government

Several **constitutional** and **legal measures** contribute to the Government's duty to implement SCR 1325. Despite these measures, there has been limited success in implementing the first NAP. As in the DRC, government initiatives must be understood against a context of **women's low levels of political participation, and a lack of access to justice for victims and survivors of SGBV**.

At the **constitutional** level, there are provisions on equality in the Constitutions of: BiH; the Federation of BiH; and the Republika Srpska; as well as the Statute of Brčko District. However, none of these documents guarantee specific representation of sexes.<sup>212</sup> The Law on Gender Equality requires that members of the less represented gender must make up at least 40% of the members of public bodies (Article 20). The Election Law of BiH also requires that there is one member of the less represented sex in the first two candidates on the electoral ballot, two in the first five, and three in the first eight (Article 4.19). The Election and Gender Equality laws have been harmonized to require women to constitute at least 40% of the candidates on the list. Other initiatives include the Federation Law on Fundamentals of Social

<sup>209</sup> Institute for Inclusive Security, 'National Action Plans: Bosnia and Herzegovina: Highlights' (Second NAP) available from: <http://actionplans.inclusivesecurity.org/countries/bosnia-and-herzegovina/>.

<sup>210</sup> Gender Equality Agency of Bosnia and Herzegovina, 'Action Plan for Implementation of UNSCR 1325 in Bosnia and Herzegovina 2014-2017' (2014) (First NAP) available from: <http://www.inclusivesecurity.org/wp-content/uploads/2014/12/Bosnia-NAP-ENG.pdf>, pp. 4-6.

<sup>211</sup> Ibid, p. 6.

<sup>212</sup> First NAP.

Protection, Protection of Civilian Victims of War and Protection of Families with Children and the Republika Srpska Law on the Protection of Civilian Victims of War.

**Women's low level of participation in political and public life** in BiH echoes the situation in the DRC, where women's social exclusion due to conflict-related SGBV compounds their invisibility in politics. Currently women constitute only 21.4% of parliamentarians in BiH.<sup>213</sup> Women are also underrepresented in executive bodies. While women represents around 40% of employees in the Ministry of Defence, only one woman holds the position of a deputy minister, and all other key positions are filled by men.<sup>214</sup> Women occupy 26.4% of leadership positions in the police force.<sup>215</sup> Women make up only 5% of the armed forces personnel,<sup>216</sup> and constituted just 1.3%-6% of peacekeeping forces deployed between 2000 and 2010.<sup>217</sup>

In BiH, victims and survivors of **SGBV** face discrimination due to fragmented and inconsistent government policies, while **trafficking** and **forced marriages** are among persistent gender-based crimes. Women and girls affected by SGBV face different levels of protection depending on the entity responsible for providing basic services. In Republika Srpska, survivors do not have an independent victim of war status and must prove 60% of bodily injury to access social services including income support. In the Federation of BiH the 60% threshold does not apply, but discrimination persists regarding the treatment of survivors in terms of rehabilitation and restitution compared to war veterans.<sup>218</sup> BiH is also an origin and destination country for trafficking.<sup>219</sup> As noted by the CEDAW Committee and affirmed in the new NAP, BiH is yet to comply with its international obligations on trafficking. There are no statutes criminalizing trafficking, which has been addressed via amendments to anti-prostitution laws, exacerbating the fragmentation of government efforts to address the problem. The additional and interrelated problem of forced marriage is becoming more frequent for minors, especially Roma children.<sup>220</sup>

### Development Agencies and Civil Society

Development agencies and civil society are at the **forefront of tackling conflict-related SGBV**. The Organization for Security and Cooperation in Europe (OSCE) Mission to BiH is working with the government

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<sup>213</sup> Edita Miftari, *Politicka participacija zena u Bosni i Hercegovini: analiza ucesca na stranackim listama i konacnih rezultata opcih izbora 2014*. (Fondacija CURE & Sarajevski Otvoreni Centar 2015), available from: [http://zenskamreza.ba/site/wp-content/uploads/2015/02/Mapa\\_Politicka-participacija\\_Edita\\_Knjizni-blok\\_Za-stampu.pdf](http://zenskamreza.ba/site/wp-content/uploads/2015/02/Mapa_Politicka-participacija_Edita_Knjizni-blok_Za-stampu.pdf).

<sup>214</sup> Ministry of Defence, 'Struktura', available from: [http://www.mod.gov.ba/MO\\_BiH/Struktura/?id=21752](http://www.mod.gov.ba/MO_BiH/Struktura/?id=21752).

<sup>215</sup> First NAP, p. 13.

<sup>216</sup> Ibid.

<sup>217</sup> Ibid.

<sup>218</sup> Amnesty International, *Whose Justice?* (London: 2009).

<sup>219</sup> Ministry of Security, Trafficking Report 2014.

<sup>220</sup> Ibid.



to provide training for peacekeepers, and is monitoring the wartime rape prosecutions and redress for victims and survivors.<sup>221</sup> NGOs are providing essential services including counselling and other support to victims and survivors SGBV, most notably: Women to Women Sarajevo, Women United Banja Luka, Center for Women – Flame Sarajevo, Women BiH Mostar, Helsinki Citizens Parliament, Local Democracy Foundation, Trial Sarajevo and Medica Zenica. Of the more than 20,000 survivors of wartime sexual violence in BiH, many of whom face daily discrimination and stigmatization, access to justice has been impeded by insufficient protections as witnesses in war crimes trials, and inadequate insufficient support and counselling during this process.<sup>222</sup>

Civil society has also been proactive in **improving women's political participation**. Following the 2014 election, an NGO initiative was formed to pressure the government to apply the Gender Equality Law and ensure that women make up 40% of the membership of the official bodies. The Zenica-Doboj Canton and Sarajevo Canton assemblies agreed provisionally to this requirement, following lobbying by the Women's Legal Aid Centre, Infohouse, Cure, and Sarajevo Open Centre.<sup>223</sup>

#### IV. Conclusion

Under the first NAP, unified state action was near impossible to achieve, evident in varying levels of legislative protections and a fragmented government response that led to discrimination in practice against women and girls affected by conflict. Civil society has been doing much of the work that should be done by the government, and NGOs are often the only recourse for victims and survivors of SGBV to achieve access to justice. BiH needs significant political buy-in and coordination at all levels of government to protect women and girls in its unique post-conflict context, especially those facing a lack of access to justice and meaningful redress for rape and SGBV-related crimes. The new NAP provides a solid foundation for improved government action, by directly incorporating CEDAW Committee recommendations and referring to BiH's obligations under the legal framework.

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<sup>221</sup> Organization for Security and Cooperation in Europe (OSCE) 'Delivering justice for wartime sexual violence in Bosnia and Herzegovina' (3 April 2014) available from: <http://www.osce.org/bih/117037>.

<sup>222</sup> Ibid.

<sup>223</sup> Sarajevski Otvoreni Centar 'Skupština KS će traziti zastupljenost žena u vladi od minimalno 40 posto' available from: <http://soc.ba/skupstina-ks-ce-traziti-zastupljenost-zena-u-vladi-od-minimalno-40-posto/>.

### CHILE – A NAP FOR NATIONAL AND INTERNATIONAL COOPERATION

#### **I. An Overview of Post-Conflict Chile**

Chile is a country not currently affected by conflict, having had more than 40 years to heal from the dictatorship of Augusto Pinochet. Violence, especially against women, was systematic and widespread during the Pinochet regime. The 2005 report of the National Commission on Political Imprisonment and Torture (the Valech Report) recorded that more than three thousand women, in addition to being victims of torture methods used against all the detainees, suffered sexual violence from state agents. Of the 3,400 women who testified in the Valech Report, most reported being some form of sexual and gender-based violence (SGBV) and more than 200 reported being arrested while pregnant.<sup>224</sup> It has been observed that SGBV during the dictatorship has “many common elements with the widespread sexual violence committed against women in wars and armed conflicts...The bodies of women are attacked and occupied as part of a military strategy to attack the enemy, as if their bodies also represent enemy territory to be occupied, invaded, violated”.<sup>225</sup>

#### **II. Chile’s National Action Plans 1 (2009-unspecified) and 2 (2015-18)**

##### First NAP (2009-unspecified)

Chile was the first Latin American country to adopt a NAP in August 2009, co-signed by President Michelle Bachelet, the Foreign Affairs and Defence Ministers, and the Minister and Director of the National Women’s Service. While the consultation process leading to the NAP included many government and academic institutions,<sup>226</sup> only one NGO working on women’s rights was involved.<sup>227</sup> In December 2009 the Foreign Affairs Minister organized a seminar on ‘Challenges in the Implementation of Resolution 1325’, to better involve civil society in implementing the NAP.

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<sup>224</sup> National Commission on Political Imprisonment and Torture Report (the Valech Report) (2005), available from: <http://www.derechoshumanos.net/paises/America/derechos-humanos-Chile/informes-comisiones/Informe-Comision-Valech.pdf>.

<sup>225</sup> ‘Violence sexual contra mujeres en dictadura: un crimen invisibilizado’ (3 September 2013) available from: <http://radio.uchile.cl/2013/09/03/violencia-sexual-contra-mujeres-en-dictadura-un-crimen-invisibilizado>

<sup>226</sup> Institute for Inclusive Security, ‘National Action Plan: Chile’ (2014) available from: <http://actionplans.inclusivesecurity.org/countries/chile/>.

<sup>227</sup> Barbara Miller, Milad Pournik and Aisling Swaine, ‘Analysis of Chile’s National Action Plan’ (2014) available from: [http://peacewomen.org/sites/default/files/chile\\_specificity\\_pournik\\_2014.pdf](http://peacewomen.org/sites/default/files/chile_specificity_pournik_2014.pdf).

The first NAP was unique in focusing on regional cooperation and foreign relations.<sup>228</sup> The NAP had five pillars: (1) Applying a gender focus to respecting and promoting human rights in Chile and beyond Chile's borders; (2) Promoting women's equal participation in peace operations, including decision-making; (3) Considering gender-responsive policies in the design, implementation and execution of Chile's international cooperation; (4) Strengthening the technical capacity of public officials and civil society on gender, security and conflict; and (5) Promoting the implementation of SCR 1325 in the region by sharing experiences, bilaterally and via regional peacekeeping mechanisms, and through international cooperation.

The first NAP referred to Chile's commitment to "the main human rights principles, including the obligation of non-discrimination in the exercise of individual rights".<sup>229</sup> It affirmed Chile's obligations on gender equality under CEDAW, noting that these were reinforced at the regional level via the Inter American Convention on the Prevention, Punishment and Eradication of Violence against Women 1994 (Convention of Belém do Pará). The first NAP recognised Chile's international commitments on gender equality under the BPfA and the Millennium Development Goals, as well as its international criminal law obligations under the Rome Statute of the International Criminal Court 1998.<sup>230</sup> Chile also referred to the NAP in its country report to the CEDAW Committee in 2011, as a sign of Chilean "commitment to full engagement in international action and, as part of that effort, to mainstreaming the social and gender perspective into peace operations".<sup>231</sup>

### **Second NAP (2015-18)**

Chile's very recently completed second NAP (adopted on March 2015) makes two key improvements compared to its predecessor. The new NAP seeks **integrate all of the SCRs on WPS**, to fulfil the obligations contained in them. As discussed in Section 1, the resolutions that follow SCR 1325 reflect a wider range of state obligations under international law, and their inclusion in the new NAP shows Chile's acknowledgement of its commitments beyond SCR 1325 and the international and regional treaties already mentioned in the first NAP. The new NAP also includes outcome indicators that allow for the measurement of concrete results. As this second NAP is implemented, monitored and evaluated, these

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<sup>228</sup> Ibid.

<sup>229</sup> Ministry of Foreign Affairs, Ministry of National Defense, National Women's Service, *National Action Plan for the implementation of the UN Security Council Resolution 1325: women, peace, security*, available from: [http://www.gnwp.org/sites/default/files/resource-field\\_media/Chile%20NAP.pdf](http://www.gnwp.org/sites/default/files/resource-field_media/Chile%20NAP.pdf), pp.11-13.

<sup>230</sup> Ibid, p. 11.

<sup>231</sup> CEDAW Committee, *Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women, Combined 5<sup>th</sup> and 6<sup>th</sup> periodic report of States Parties: Chile*, 17 March 2011, CEDAW/C/CHL/5-6, p. 10.

indicators will be crucial to ensuring its effectiveness. It is not yet known whether women and girls, and their civil society organizations, were included in the shaping these indicators, or whether consultations on the indicators and the wider NAP process were held via a whole-of-government approach (as with the previous NAP).

The new NAP follows the four pillars of SCR 1325, slightly modifying the fourth pillar (relief and recovery) to address aid and recuperation:

(1) Prevention, namely: a) incorporating a gender perspective in all activities and strategies of conflict prevention and the maintenance and promotion of peace; b) creating effective and gender-responsive ‘early warning’ mechanisms; and c) strengthening instruments to prevent gender-based violence (GBV) against women and girls on gender grounds, especially SGBV.

(2) Participation, namely: a) promoting and supporting women’s active and meaningful participation of women in all peace processes and their representation at all levels of decision-making concerning conflict prevention, management and resolution; and b) strengthening partnerships and communication with national and international women's rights organizations.

(3) Protection, namely: a) strengthening and broadening methods to ensure women and girls’ safety, physical and mental integrity, sexual and reproductive health, welfare, economic autonomy and dignity; and b) respecting and guaranteeing the full exercise of human rights of women and girls, incorporating a gender perspective in the institutions that play a role in peacekeeping, conflict and post-conflict situations.

(4) Aid and Recuperation, namely: a) facilitating women’s to support services mechanisms and distribution, and b) considering women’s specific needs and requirements concerning transitional justice.

### **III. Implementation of the First NAP by the Government, Development Agencies and Civil Society**

#### **Government**

Lessons learned from the first NAP should that Chile will need to focus on **national-level implementation** for its new NAP, based on **women’s low level of participation in politics and public life** and high rates of **violence against women**. The latter issue has not been linked to the NAP because Chile is a post-conflict country. However domestic violence is a peace and security issue in all countries, and must be addressed in the new NAP. One of the new NAP’s objectives is consolidating progress at the national level on SCR 1325. However, this appears to focus on incorporating a gender perspective in the armed forces and the work of public officials, rather than on women’s political engagement or SGBV.

Chile has made some progress on **women's political participation**, with women represented at the highest levels of government, including President Bachelet (re-elected in 2014) as well as women in 39% of ministerial roles.<sup>232</sup> However, women only represent 15.8% of parliamentarians ("deputies") in Chile's lower house of parliament, and 18.4% of members of the Senate in 2014.<sup>233</sup> The CEDAW Committee, in its 2012 Concluding Observations on Chile's most recent country report, noted "the persistence of patriarchal attitudes and stereotypes and the lack of temporary special measures continue to impede women's participation in Parliament and in decision-making positions at the State and municipal levels, including indigenous women".<sup>234</sup> The Committee reiterated its concern that the binominal electoral system unfavourably impacted women's political representation.<sup>235</sup>

**Violence against women** and the denial of **sexual and reproductive health rights** are also major problems in Chile. A 2004 national survey showed that in their lifetimes, 15% of Chilean women had experienced physical violence, 15% had experienced sexual violence, and 36% had experienced physical and/or sexual violence.<sup>236</sup> In 2012 the CEDAW Committee noted the Government's efforts to combat domestic violence, including amending Chile's Penal Code to include the crime of femicide perpetrated by spouses or ex-spouses, and to provide redress to victims and survivors of domestic violence. However, domestic violence is not defined as a criminal offence including psychological and physical violence, and the penal code has procedural barriers to prosecuting perpetrators of violence. Sexual harassment is only criminalized as workplace conduct and against minors.<sup>237</sup> The denial of women's rights is perhaps most evident in the illegality of abortion in Chile and women's inability to access the right to a safe abortion, in all circumstances.<sup>238</sup> The Committee was also concerned about reported forced sterilization of women living with HIV/AIDS and mandatory HIV/AIDS testing.<sup>239</sup> While these issues are not conflict-specific, they require the government's urgent attention and are obstacles to fulfilling the obligations in the legal framework.

Chile has been more successful in implementing its NAP via **international peacekeeping** efforts. Since SCR 1325 was adopted, 218 Chilean women have joined peacekeeping operations: 214 in Haiti, and 4 in Bosnia; 78 have been officers, 125 permanent staff and 15 civilians. Women's participation has increased annually,

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<sup>232</sup> UN Women and the Inter-Parliamentary Union, 'Women in Politics: 2014' (1 January 2014), available from: [http://ipu.org/pdf/publications/wmnm14\\_en.pdf](http://ipu.org/pdf/publications/wmnm14_en.pdf).

<sup>233</sup> Ibid.

<sup>234</sup> CEDAW Committee, *Concluding Observations on the 5<sup>th</sup> and 6<sup>th</sup> periodic reports of Chile* (12 November 2012) CEDAW/C/CHL/CO/5-6, (CEDAW Committee Concluding Observations: Chile) p. 6.

<sup>235</sup> Ibid.

<sup>236</sup> See UN Women, 'Violence against Women Prevalence Data: Surveys by Country' (December 2012) available from: [http://www.endvawnow.org/uploads/browser/files/vawprevalence\\_matrix\\_june2013.pdf](http://www.endvawnow.org/uploads/browser/files/vawprevalence_matrix_june2013.pdf), p. 2.

<sup>237</sup> CEDAW Committee Concluding Observations: Chile, p. 4.

<sup>238</sup> Ibid, p. 34.

<sup>239</sup> Ibid, p. 8.

with 38 women deployed in 2014 compared to 13 when the first NAP was launched in 2009. Chilean women in peacekeeping missions have taken on numerous roles, including serving as pilots, radio operators, mechanics of motor vehicles and helicopters, doctors, nurses, police, legal and communications advisers, staff officers, machinery commanders, quartermasters, surveyors and machinery operators.<sup>240</sup> Chile currently has personnel deployed in the United Nations Stabilisation Mission in Haiti (MINUSTAH), the United Nations Peacekeeping Force in Cyprus (UNFICYP), the Military Observer Group of the United Nations in India and Pakistan (UNMOGIP), the United Nations Truce Supervision Organization (UNTSO), and the Mission of the European Union in Bosnia and Herzegovina (EUFOR-ALTHEA).

### Civil Society

While Chile's active civil society sector is not engaged on peace and security issues (given the lack of current conflict) there is widespread support for the NAP process, especially in raising women's profile in peace-building and post-conflict reconstruction. Women's organizations are working on domestic violence and sexual and reproductive health rights. NGOs also focus on wage parity and women's economic empowerment is a focus area, given that Chile fell from 46<sup>th</sup> place in 2011, to 91<sup>st</sup> place in 2013 on the World Economic Forum's Gender Equality Index. Chile has since risen to 66<sup>th</sup> place out of 142 countries in the Index in 2014.<sup>241</sup>

## **IV. Conclusion**

Chile's first NAP was implemented with mixed success, with domestic efforts lagging behind the country's successful international cooperation. However, there is a chance for national-level implementation to be strengthened, and for international action to continue to improve (little is known about women's actual decision-making power in peacekeeping missions, for instance). An inter-ministerial committee led by representatives of the Ministries of Defence and Foreign Affairs, and the recently created Ministry of Women and Gender Equity will lead the implementation of the new NAP. The inclusion of the new women's ministry will hopefully lead to a prioritisation of issues facing Chilean women, especially regarding SGBV, sexual and reproductive rights, and women's political participation. This would complement the good work being done internationally by Chile.

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<sup>240</sup> See 'President Bachelet on women in the Armed Forces: 'They are the ones who broaden the horizons of what is possible in peace missions'' (9 March 2015) available from: <http://www.gob.cl/2015/03/09/president-bachelet-on-women-in-the-armed-forces-they-are-the-ones-who-broaden-the-horizons-of-what-is-possible-in-peace-missions/>.

<sup>241</sup> World Economic Forum, *Global Gender Gap Report 2014: Chile* (2014) available from: <http://reports.weforum.org/global-gender-gap-report-2014/economies/#economy=CHL>

## THE MIDDLE EAST

### IRAQ – A NAP AMIDST CURRENT CONFLICT, FOLLOWING WAR AND OCCUPATION

#### I. An Overview of Conflict in Iraq

For the last four decades, Iraqi women have been among the main victims of armed conflict, including the war with Iran in 1980-1988, the Gulf War in 1991 and the U.S. invasion of Iraq in 2003.<sup>242</sup> The U.S. invasion reinforced sectarian and ethnic divisions and the dominance of Islamist political parties.<sup>243</sup> Neither the Iraqi nor U.S. leaderships installed the basic principles of equality, which permitted religious conservatives and extremists to exploit the law to strengthen their conservative positions with respect to women's rights.<sup>244</sup> Conflict and sanctions have resulted in significant deterioration in Iraq's economic and social conditions, taking a particularly high toll on women. Effects include: the exclusion of women from participation in government; restrictions on freedom of movement in public places; and increased victimization, including murder, kidnappings, and sexual and gender-based violence (SGBV). Conflict-related violence has led to restrictions on the freedom of women and girls in all provinces, negatively impacting educational opportunities and contributing to the rise in child marriage under the pretext of protection. Iraqi women have also suffered the negative effects of forced migration and displacement.<sup>245</sup>

Increasing violence from extremist groups, including the Islamic State of Iraq and Levant (ISIL) is exacerbating existing social problems. According to a UN report in March 2015, ISIL is responsible for significant atrocities in Iraq, including mass killings and kidnapping of women and girls for use as sex slaves, which may amount to war crimes.<sup>246</sup> Human Rights Watch reports that women in Iraqi detention facilities are routinely raped and tortured and are often targeted by Iraqi Security Forces for the purpose of harassing male relatives.<sup>247</sup> Notwithstanding the billions of dollars allocated for reconstruction, the Iraqi government continues to suffer from poor management and corruption. The current security situation, economic marginalization, damage to the education sector and the resulting increase in illiteracy rates, are all major obstacles to advancing women's rights in Iraq.<sup>248</sup>

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<sup>242</sup> Iraqi Women in Armed Conflict and Post Conflict Situations, *Shadow Report Submitted to the CEDAW Committee at the 57<sup>th</sup> Session* (February 2014) (Shadow Report) p. 22.

<sup>243</sup> Ibid

<sup>244</sup> Ibid, p. 8.

<sup>245</sup> Ibid, pp. 7-9.

<sup>246</sup> Office of the High Commissioner for Human Rights, *Report on the human rights situation in Iraq in the light of abuses committed by the so-called Islamic State in Iraq and Levant and associated groups* (13 March 2015) UN Doc A/HRC/28/18.

<sup>247</sup> Human Rights Watch 'No One is Safe: Abuse of Women in Iraq's Criminal Justice System' (6 February 2014) available from: <http://www.hrw.org/sites/default/files/reports/iraq0214webwcover.pdf>.

<sup>248</sup> Shadow Report, pp. 7-8.

## II. Iraq's National Action Plan (2014-18)

Iraq is the first country in the Middle East and North Africa region to develop a NAP, adopted by the government in February 2014, to be implemented until 2018. A Cross-Sector Task force for development of a NAP was formed by representatives from the executive and legislative authorities of the Federal Government in Baghdad and the Kurdish Regional Government (KRG) and women's civil society organizations. The "Task Force CPA1325" is responsible for implementing the NAP the NAP and using the budget to support implementation. Relevant tasks include adopting an internal structure with clear responsibilities and duties. The Task Force CPA1325 is also responsible for the coordination and cross sector cooperation necessary for implementation

The NAP is structured around six pillars, three of which follow the pillars of SCR 1325. They are: (1) Participation; (2) Protection and Prevention; (3) Promotion; (4) Social and Economic Empowerment; (5) Legislation and Law Enforcement; and (6) Resource Mobilization, Monitoring, and Evaluation. Each pillar has strategic objectives with corresponding specific actions, expected results and indicators. The pillars propose activities and programs to addressing women's concrete needs, which are to be implemented through women's direct involvement, changes in legislation, and through proactive approaches on behalf of the Iraqi government and the KRG. The NAP includes strategic objectives to address women's needs. These are: increasing women's participation in all areas of government; harmonizing national legislation with international standards and mechanisms for women's human rights; integrating and mainstreaming gender in all policies and processes concerning conflict prevention; conflict resolution and peace building; and contributing to the elimination of violence against women.

In addition to recognizing Iraq's commitments under SCR 1325, the NAP reflects Iraq's obligations under the legal framework on women, peace and security. While the NAP is situated as complementary to Iraq's existing international and domestic commitments on gender equality, the **government is frank in admitting that while Iraq has ratified CEDAW and the Convention on the Rights of the Child 1989 (CRC) it has not yet met its obligations** under these treaties. Like Nepal, the NAP is **notable for its honesty and openness** regarding Iraq's conflict-related issues, as well as financial obstacles to implementing its obligations. For instance, while the NAP notes the importance of the National Strategies to Combat Violence against Women, and on the Advancement of Women, it also notes that both strategies lack budgets for implementation.<sup>249</sup>

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<sup>249</sup> Government of Iraq, *National Action Plan for Implementation of the United Nations Security Council Resolution 1325: Women, Peace and Security* (2014) available from: [http://www.peacewomen.org/assets/image/iraq\\_nap.pdf](http://www.peacewomen.org/assets/image/iraq_nap.pdf), p. 10.



### III. Implementation of the NAP by the Government, Development Agencies and Civil Society

#### Government

To date, a little more than a year after the NAP was adopted, obstacles stall implementation efforts. On an SCR 1325 “Open Day” on October 15, 2014 in Baghdad, the **Special Representative of the United Nations Secretary-General for Iraq, Mr. Nickolay Mladenov**, participated in a forum at the headquarters of the United Nations Assistance Mission for Iraq. Civil society representatives and women leaders were also present to debate a broad range of issues concerning women’s rights and gender equality. Mr. Mladenov told the participants that **more cooperation and collaboration was needed between the civil society and the government** to implement the NAP. He also stressed the **importance of additional commitments including CEDAW and the National Strategy for the Advancement of Women**. Mr. Mladenov also encouraged civil society and women organizations to better coordinate with UN agencies to fulfill the urgent humanitarian needs of displaced persons, and urged them to share their findings on the human rights abuses, including SGBV committed by ISIL and other armed groups, with the Office of the High Commissioner for Human Rights.<sup>250</sup>

On February 4-5, 2015, representatives from the Task Force CPA1325 and the Executive Director of Euromed Feminist Initiative IFE-EFI (the Delegation) met with Iraq’s President, Deputy Prime Minister, and the Minister of Women Affairs. Over the course of two days the group discussed the obstacles to implementation as well as the political commitment of the government relating thereto.<sup>251</sup> The Delegation requested the government’s commitment to implementing the NAP and stressed the necessity of government commitment to implementation. The Deputy Prime Minister expressed his support and intention to discuss the NAP with Iraqi government officials.<sup>252</sup>

In February 2014, the CEDAW Committee issued its Concluding Observations on the combined fourth to sixth periodic reports of Iraq. While noting the efforts and commitments of Iraq in the face of challenges of political instability, insecurity and violence, the Committee expressed serious concerns with respect to the persistence of discriminatory laws, the increase of violence against women by state and non-state actors, and government reinforcement of deep-rooted patriarchal attitudes and stereotypes that perpetuate the

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<sup>250</sup> UN in Iraq, ‘SC Resolution 1325 Open Day: SRSG Mladenov calls for implementation of the National Action Plan’, available from: [http://www.uniraq.org/index.php?option=com\\_k2&view=item&id=2739:sc-resolution-1325-open-day-srsg-mladenov-calls-for-implementation-of-the-national-action-plan&Itemid=605&lang=en](http://www.uniraq.org/index.php?option=com_k2&view=item&id=2739:sc-resolution-1325-open-day-srsg-mladenov-calls-for-implementation-of-the-national-action-plan&Itemid=605&lang=en).

<sup>251</sup> Euromed Feminist Initiative, ‘One Year of NAP 1325 in Iraq’, available from: <http://www.efi-ife.org/news/one-year-nap-1325-iraq>.

<sup>252</sup> Ibid.

subordination of women within the family and society and limit the rights of women and girls.<sup>253</sup>

### **Civil Society**

Based on SCR 1325, local NGOs have led successful campaigns to prevent violence against women in Kirkuk and to empower illiterate women. Additionally, they have organized non-violent campaigns by collecting signatures and organizing sit-ins. These activities illustrate the ability of the civil society to build bridges of trust between citizens to reduce sectarian divisions fostered by politicians. The work of NGOs has also impacted the government with respect to its adoption of the concepts of gender and gender based violence.<sup>254</sup>

## **IV. Other Actions by Government, Development Agencies, and Civil Society Concerning Women, Peace, and Security**

### **Government**

In March 2013, the Iraqi government ratified the National Strategy to Combat Violence against Women (the Strategy). Civil society organizations participated in developing the Strategy. For the past several years, the State Ministry of Women's Affairs, with international support, has been working to develop a National Strategy for the Advancement of Women, which the Government of Iraq has yet to approve. In 2011, the KRG approved a law against domestic violence. Its application is still facing obstructions. Moreover, it did not achieve its intended purpose in creating legal protection for women due to the absence of guidelines concerning implementation and the failure to form the reconciliation committee stipulated therein.

### **Civil Society**

While significant obstacles stand in the way of progress for women in Iraq, effective and sustainable local organizations are making a difference. For example, the Iraqi Women Network, founded in 2003, is a collection of more than eighty organizations from different parts of Iraq. The network works to coordinate the efforts of women's NGOs and gatherings with the aim of fostering democracy, the rule of law and human rights, and achieving the elimination of violence and all forms of discrimination against women in Iraq.

In February 2014, an NGO commission submitted a Shadow Report concerning women in armed conflict

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<sup>253</sup> Committee on the Elimination of Discrimination Against Women (CEDAW Committee) *Concluding observations on the combined fourth to sixth periodic reports of Iraq*, (10 March 2014) CEDAW/C/IRQ/CO/ pp. 4-6.

<sup>254</sup> Shadow Report, p. 10.

and post conflict in Iraq to CEDAW. The commission consisted of several Iraqi women's organizations, including the Iraqi Women Network (comprised of more than 80 organizations) and the Coalition of Al Rafidain Women (5 organizations), among others. In the summer of 2014, when ISIS led extremists seized control of several cities, the Organization of Women's Freedom in Iraq (OWFI) worked with an American NGO to relocate residents in of women's shelters to safer areas and to provide emergency food and shelter.<sup>255</sup>

Additionally, in the majority of Iraqi provinces, NGOs are in charge of family counselling centres, which offer social, psychological and legal consulting. These services are free for victims of domestic and community violence. These centres have played a significant role in breaking the silence on to violence against women and in monitoring and documenting the violations women experience. These centres also raise awareness and education among women in communities as well as official institutions about violence and discrimination against women in the context of CEDAW and the SCR 1325.

## V. Conclusion

Iraq is a country deeply affected by its **current conflict, and the long-lasting effects of political, economic and social instability as a result of war and occupation**. Crucial to the implementation of the NAP will be the sustained involvement of Iraq's active civil society sector, especially women's organizations. However, as in the DRC, the actions of civil society and the UN should supplement, and not replace, the work of the Iraqi Government. The state retains primary responsibility for implementing the NAP and upholding Iraq's obligations under the wider legal framework on women, peace and security. It remains to be seen whether the Taskforce CPA1325 will be able to effectively implement the provisions of the NAP amidst the military campaign presently being waged by ISIL, and the prevailing insecurity in a country that remains a live conflict zone.

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<sup>255</sup> Organization of Women's Freedom in Iraq 'Militants Sweep Towards Baghdad: Women's Rights Groups Mobilize' (12 June 2015) available from: [www.owfi.info/EN/article/militants-sweep-towards-baghdad-womens-rights-groups-mobilize/](http://www.owfi.info/EN/article/militants-sweep-towards-baghdad-womens-rights-groups-mobilize/).

## SECTION 2 CONCLUSIONS AND RECOMMENDATIONS

Section 2 of this submission makes the following conclusions and recommendations.

The diverse country case studies showcase the NAP process, from design to implementation and monitoring and evaluation (and, for BiH and Chile, creating new NAPs from lessons learned). The case studies also consider the success factors that make for an effective NAP process, such as **capacity-building for women's political participation** in creating and enforcing a NAP, as in Nepal. In Myanmar, the journey towards a NAP has been strengthened by the adoption of a **comprehensive strategy to advance women's rights**, as well as innovative work by a **dynamic civil society sector**. All countries in the case studies face obstacles to fully implementing not only SCR 1325, but also the broader legal framework on women, peace and security. Most notably, BiH, the DRC and Iraq must address the ongoing effects of conflict and instability to make meaningful gains on gender equality.

A useful starting point is the support for **women and girls' meaningful participation and inclusion** in designing and implementing NAPs, together with a whole-of-government approach that involves political leaders, legislators, policy-makers and officials at all levels of government, and across ministries and agencies. Governments retain primary responsibility for implementing NAPs. Women's ministries, national women's machineries, and women leaders must lead implementation, supported by the highest levels of government. The NAP process must take a **holistic, multi-stakeholder and multi-sectoral approach**. However, governments are not working alone, and the **contributions of civil society must be both recognised and supported**, via adequate financial and human resources to facilitate their role in decision-making processes at all levels.

### **Recommendation 2: Implement SCR 1325 and the legal framework by increasing women and girls' meaningful participation and inclusion in the National Action Plan (NAP) process (design, implementation, monitoring and evaluation)**

- SCR 1325 National Action Plans (NAPs) must be created with the meaningful participation and inclusion of women and girls and their non-governmental organizations (NGOs) and allies. Women and girls, and their civil society organizations, should be empowered to jointly design, implement, monitor and evaluate NAPs together with governments, development partners, and other stakeholders, including private actors (especially non-state actors involved in post-conflict reconstruction and transitional justice situations).

An active and engaged civil society plays a key role in ensuring that NAPs are substantively implemented. States must budget for adequate financial and human resources so that the following groups can shape, enforce and continually improve the NAP process: female political leaders, women's and girls' organizations, victims and survivors of conflict-related violence, and women, girls, men and boys affected by conflict.

**Recommendation 3: Implement SCR 1325 and the legal framework by ensuring government buy-in at all levels (national, regional, provincial/district and local) and across all of government**

- Government buy-in is essential to creating NAPs via a robust process, and to holding states accountable to their obligations under SCR 1325, the other resolutions on WPS, and the entire legal framework. Key decision-makers should lead the NAP process including legislators, policy-makers and political leaders, especially women, supported by the highest levels of government. The NAP process should involve all levels of government (national, regional, provincial/district and local government, including urban and rural authorities).
- The NAP process should take a multi-stakeholder, multi-sectoral cross-government approach, and provide adequate financial and human resources to involve the following government bodies: women's and children's ministries; national women's machineries and government bodies dealing with children's rights e.g. children's commissions; national human rights institutions; truth and reconciliation commissions and other transitional justice bodies; and ministries and agencies responsible for: justice, security, peace and reconstruction, migration, economic and social development, labour and employment, education, foreign affairs, and all issues relevant to the legal framework. It should budget for adequate financial and human resources build political will across of all relevant levels of government, especially women leaders.

### SECTION 3: RE-ENVISIONING REMEDIES – IMPROVING EXISTING UN MONITORING AND ACCOUNTABILITY PROCESSES AND PROVIDING TRANSFORMATIVE REMEDIES

Section 3 of this submission considers the **monitoring and accountability processes**, and **avenues for remedies**, relevant to Security Council Resolution 1325 (SCR 1325)<sup>256</sup> and the legal framework on women, peace and security (WPS) outlined in Section 1. The current patchwork of processes at the United Nations (UN) to monitor states' progress on achieving their obligations under the legal framework is fragmented, with inadequate financial and human resources. The fragmentation and lack of resourcing for these processes must be addressed, to enable access for women and girls' to hold states accountable to their commitments under the legal framework, and to end impunity for all those responsible for rights violations. Remedies at the UN and elsewhere are also considered, in light of the legal framework's guarantee of substantive and transformative equality, especially under the Convention on the Elimination of All Forms of Discrimination Against Women 1979 (CEDAW)<sup>257</sup> and its General Recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations (CEDAW GR No. 30) (see Section 1). The UN's existing processes may need to be supplemented by transformative remedies for women and girl victims of rights violations.

Three **UN monitoring and accountability processes** are considered in terms of their relevance to tracking states' progress in implementing their obligations under SCR 1325 and the legal framework, and their facilitation of access to justice to provide **substantive equality** under the legal framework. These include the Universal Periodic Review (UPR) of the Human Rights Council, the Commission on the Status of Women (CSW) and Committee on the Elimination of Discrimination against Women (CEDAW Committee).<sup>258</sup>

**Transformative remedies** are discussed in relation to **transformative equality**. The regional human rights law jurisprudence of the Inter-American Court of Human Rights is considered, namely the case of *Gonzalez*

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<sup>256</sup> UN Security Council Resolution 1325 (30 October 2000) UN Doc S/RES/1325 (SCR 1325).

<sup>257</sup> Convention on the Elimination of All Forms of Discrimination against Women (adopted on 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13 (CEDAW); Committee on the Elimination of Discrimination against Women (CEDAW Committee) General Recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations (adopted on 18 October 2013) CEDAW/C/GC/30 (CEDAW GR No. 30).

<sup>258</sup> The following are not discussed but are acknowledged as relevant UN monitoring and accountability processes that could assist with tracking states' implementation of SCR 1325 and the legal framework on women, peace and security: reporting by the Security Council; the reporting requirements and communications procedures of committees of other UN human rights treaties; the UN System-Wide Action Plan (UN SWAP); the UN Action against Sexual Violence in Conflict (UN Action); reporting by the Secretary-General relevant to WPS; reporting by the Special Representatives of the Secretary-General on Sexual Violence in Conflict and Children and Armed Conflict; and reporting by the special procedures of the Human Rights Council on thematic issues and territories relevant to WPS, including: the Special Rapporteurs on: Violence against Women, its causes and consequences; the human rights of internally displaced persons; truth, justice, reparation and guarantees of non-recurrence; and the Special Rapporteurs on: the situation of human rights in Somalia; the Sudan; the Syrian Arab Republic; and the Palestinian territories occupied since 1967.

*et al ('Cotton Field') v Mexico*.<sup>259</sup> The work of the Truth and Reconciliation Commission of Sierra Leone is also discussed in providing transformative remedies for victims of rights violations, especially women, girls, their families and communities who are denied access to justice and meaningful redress.

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<sup>259</sup> I/A Court H.R., *Case of González et al. ("Cotton Field") v. Mexico*, Preliminary Objection, Merits, Reparations and Costs, Judgment of November 16, 2009.

## SCR 1325 AND UN MONITORING AND ACCOUNTABILITY PROCESSES

SCR 1325 does not have a mandatory monitoring mechanism to hold states accountable for implementation, to supplement the voluntary National Action Plan (NAP) process (see Section 2).<sup>260</sup> There are no established expectations for states regarding their enforcement of SCR 1325.<sup>261</sup> However, the **effective implementation of SCR 1325 is contingent on adequate monitoring, reporting and reviewing mechanisms**.<sup>262</sup> Without such mechanisms, it will prove difficult to track progress on implementing SCR 1325 and its related resolutions<sup>263</sup> and to hold states accountable for a lack of action or rights violations.<sup>264</sup> The weakness of SCR 1325 is that it does not compel states to act.<sup>265</sup> However, the strength SCR 1325 and its following resolutions is that they do not exist in isolation. They are part of a legal framework which includes three processes that can help address the gaps in monitoring the enforcement of SCR 1325.

### I. The Universal Periodic Review

The Universal Periodic Review (UPR) established in 2006,<sup>266</sup> holds potential to monitor the implementation of SCR 1325 for three key reasons. First, states have so far had a **high rate of compliance** with the UPR, which is a mandatory process with significant visibility within the UN system.<sup>267</sup> Second, in the words of the former High Commissioner for Human Rights, Navi Pillay, the UPR gives “a new important space to civil society’s contributions, including **women’s knowledge and perspectives**.”<sup>268</sup> Finally, because of its coverage of a spectrum of international legal obligations, the UPR is a unique avenue to **monitor all of states’ compliance** relevant to SCR 1325, including binding obligations and voluntary commitments under the **legal framework** on WPS (see Section 1).

The five-yearly UPR process takes a holistic view of states’ obligations that encompass: the UN Charter, the Universal Declaration of Human Rights (UDHR) human rights instruments to which the state is party as well as voluntary pledges and commitments made by the state, and, where applicable, international

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<sup>260</sup> Aisling Swaine, ‘Assessing the Potential of National Action Plans to Advance Implementation of United Nations Security Council Resolution 1325’(2009) 12 *Yearbook of International Humanitarian Law* pp. 403-33, (Swaine) p. 409.

<sup>261</sup> Ibid p. 416.

<sup>262</sup> Ibid p. 423.

<sup>263</sup> The related UN Security Council Resolutions on women, peace and security are: UN Security Council Resolution 1820 (19 June 2008) UN Doc S/RES/1820 (SCR 1820); UN Security Council Resolution 1888 (30 September 2009) UN Doc S/RES/1888 (SCR 1888); UN Security Council Resolution 1889 (5 October 2009) UN Doc S/RES/1889 (SCR 1889); UN Security Council Resolution 1960 (16 December 2010) UN Doc S/RES/1960 (SCR 1960); UN Security Council Resolution 2106 (24 June 2013) UN Doc S/RES/2106 (SCR 2106); and UN Security Council Resolution 2122 (18 October 2013) UN Doc S/RES/2122 (SCR 2122).

<sup>264</sup> Swaine, p. 424.

<sup>265</sup> Ibid p. 409.

<sup>266</sup> UN General Assembly, Resolution 60/251 (15 March 2006) UN Doc A/60/251, p. 3.

<sup>267</sup> See Hilary Charlesworth, Emma Larking (eds) *Human Rights and the Universal Periodic Review, Rituals and Ritualism* (Cambridge University Press 2014) (Charlesworth and Larking) p. 3.

<sup>268</sup> Navanathem Pillay, “Women’s Rights in Human Rights Systems: Past, Present and Future” (Sixth Dullah Omar Memorial Lecture delivered at the University of the Western Cape on 1 July 2009) 13(2) *Law, Democracy and Development*, pp. 3-46, p. 45.



humanitarian law.<sup>269</sup> This creates a space to track the implementation of SCR 1325 in the context of the entire legal framework, especially where states are parties to CEDAW and other treaties that are relevant to women's rights and have made commitments under "soft law" documents like the Beijing Platform for Action (BPfA).<sup>270</sup>

Governments' high compliance with the UPR process presents a window of opportunity to consolidate progress on fulfilling obligations under the legal framework. While the UPR is a space for civil society engagement, the process has so far been state-centric, and there is space for women's concerns to be better prioritised. **A "Women, Peace and Security" section in national reports, summaries of stakeholders' information (NGO reporting) and working group reports** would guarantee sustained attention by states, the UN and civil society on the legal framework. National women's ministries and women's machineries (supported at the highest levels of government, including with financial and human resources), could build the capacity of women's and girls' organizations to provide a substantive civil society perspective on state compliance with the legal framework. As discussed in Section 2, the role of civil society is crucial in monitoring the implementation of SCR 1325.

## **II. The Commission on the Status of Women**

The Commission on the Status of Women (CSW) despite being a voluntary monitoring process linked to the non-binding BPfA, is an important forum to monitor states' progress under the legal framework, of which the BPfA is a key element (see Section 1). While not technically a "system-wide" process, the CSW is valuable because it brings together a multiplicity of stakeholders discussing overall progress on gender equality by states and the UN system. The CSW involves the **diverse and extensive participation of women's organizations**, and their annual convergence to discuss wide-ranging issues of concern to the women's movement is unmatched elsewhere in the UN system. This is particularly important given the lack of regular world conferences on women. The CSW is, in practical terms, the biggest platform at the UN for global women's and girls' networks working on the WPS agenda to meet and share good practices, lessons learned, and knowledge and information from their various countries and regions. Formally the CSW is an annual forum for governments, civil society and the UN to discuss the implementation of the BPfA. **Politically, it is a strategic avenue for feminist organizations to collaborate, advocate and lobby their governments and the UN system to take action on SCR 1325 and the legal framework.**

The CSW's recommendations on WPS also form a key part of the legal framework. The CSW Agreed Conclusions of 2013 on violence against women add value to understanding the obligations in SCR 1325

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<sup>269</sup> Charlesworth and Larking, *ibid.*

<sup>270</sup> *Beijing Declaration and Platform of Action, adopted at the Fourth World Conference on Women, 27 October 1995 (BPfA).*

(see Section 1). It is recommended that the CSW, like the UPR, include a **“Women, Peace and Security” section in its Agreed Conclusions**. As with the UPR process, government officials and civil society would require financial and human resources and capacity-building to help them report effectively on state compliance with the legal framework. Including a Women, Peace and Security section in the Agreed Conclusions would also ensure that the rights of women and girls in relation to conflict continue to be prioritised by governments and development partners, and do not lose international attention or resourcing. Governments should also be encouraged to include the WPS agenda in the resolutions and other key outcome documents of the CSW.

### III. The Committee on the Elimination of Discrimination against Women (CEDAW Committee)

The Committee on the Elimination of Discrimination against Women (CEDAW Committee) is the most relevant human rights treaty body to track progress on SCR 1325 and the legal framework, and is increasingly playing a lead role in doing so.<sup>271</sup> This is because of CEDAW’s status as the normative heart of the legal framework, reflecting many protections in SCR 1325 (see Section 1). The CEDAW GR No. 30<sup>272</sup> explicitly asks states to provide information on the implementation of SCRs 1325, 1820 1888, 1889, 1960 and 2106 as part of their CEDAW reporting obligations (see Section 1).<sup>273</sup> Two key objectives of CEDAW and its GR No. 30 guide the Committee’s monitoring of state compliance: protecting women’s human rights and **advancing substantive equality** at all stages of the conflict cycle (prevention, conflict, resolution, post-conflict and transitional justice situations) and **integrating women’s diverse experiences into peacebuilding and reconstruction**.<sup>274</sup> The relevant processes of the Committee are CEDAW’s **mandatory reporting** requirement,<sup>275</sup> the **communication procedure** under CEDAW’s Optional Protocol<sup>276</sup> and the Committee’s work with **civil society on building an understanding of SCR 1325 as integrated with CEDAW GR No. 30**. These processes must be strengthened, via capacity-building for states and civil society and improving women’s and girls’ access to them, as discussed below.

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<sup>271</sup> Niamh Reilly, ‘Seeking gender justice in post-conflict situations: towards a transformative women’s human rights approach’ (2007) 3 *International Journal of Law in Context*, pp. 155-72, p. 168.

<sup>272</sup> CEDAW Committee, ‘General Recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations’ (18 October 2013) UN Doc CEDAW/C/GC/30.

<sup>273</sup> CEDAW GR No. 30, para 83. Note that SCR 2122 was adopted on the same day as the CEDAW GR No. 30, and as such is not included in the list of SCRs on WPS.

<sup>274</sup> Yoko Hayashi (Chairperson, CEDAW Committee) ‘Open Letter to Ms. Radhika Coomaraswamy, Lead Author of the Global Study on the Implementation of Resolution 1325 (2000)’ (6 March 2015) available from: <http://www.ohchr.org/Documents/HRBodies/CEDAW/OpenLetterGlobalStudy1325.pdf>, p. 3.

<sup>275</sup> CEDAW, Article 18.

<sup>276</sup> UN General Assembly, Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women (6 October 1999), UN Doc A/RES/54/4 (Optional Protocol).

The weaknesses of the **state monitoring** system are well known.<sup>277</sup> Efforts must be made to improve the rate of state reporting under CEDAW and to build governments' capacity to effectively track progress on the legal framework, especially for conflict-affected countries. This includes **mainstreaming the CEDAW GR No. 30** into state and shadow reports, by developing guidelines and supporting capacity-building via training and resource-sharing. Many states due to appear before the CEDAW Committee are in conflict or post-conflict situations. Lebanon, Liberia, Myanmar, Timor-Leste and Yemen are among countries that took part in Pre-Sessional Working Groups with the CEDAW Committee or are set to report in the coming year.<sup>278</sup> Greater financial and human resources could be provided to the CEDAW Committee to hold Pre-Sessional Working Groups, with a focus on understanding SCR 1325 in the context of the the GR No. 30. These resources should be shared with women's and girls' organizations to support effective shadow reporting by them.

The **communication procedure**, introduced in 2000 for women or groups of women to submit claims of rights violations under CEDAW, has been under-used. As of 1 September 2014, 41 cases have been brought before the Committee, 19 of which were held to be inadmissible.<sup>279</sup> There appear to be several reasons for the under-utilization of the procedure. First, the procedure is **not well-known**.<sup>280</sup> Second, **women's access** to the procedure is hampered by the requirement for domestic remedies to be exhausted, which seems to slow down the procedure fails to recognise the fact that access to justice in some countries may be limited.<sup>281</sup> Third, CEDAW is formulated in terms of obligations of states rather than rights and the **communication procedure decisions cannot be enforced**.<sup>282</sup> Finally, there is the problem of CEDAW violations by non-state actors.<sup>283</sup> In response to the latter, Article 2(e) of CEDAW and the CEDAW GR No. 28<sup>284</sup> provide some relief. Article 2(e) imposes a due-diligence obligation on states to eliminate discrimination against women by private actors and obliges states to take 'appropriate measures' to eliminate discrimination by non-state actors.<sup>285</sup> This due diligence obligation is reinforced in the GR No. 30 in relation to conflict (see Section 1).

<sup>277</sup> Ineke Boerefijn, 'Article 18', in Marsha A. Freeman, Christine Chinkin, Beate Rudolf (eds) *The UN Convention on the Elimination of all Forms of Discrimination against Women: A Commentary* (Oxford, Oxford University Press, 2012) pp.489-508 (Boerefijn) p. 491. For a list on the status of report submissions by country as of 2006: United Nations, 'Report of the Committee on the Elimination of Discrimination against Women' 2006 A/61/38, Annex VI.

<sup>278</sup> See Office of the High Commissioner for Human Rights (OHCHR) "Sessions for CEDAW", available from:

[http://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/SessionsList.aspx?Treaty=CEDAW](http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/SessionsList.aspx?Treaty=CEDAW)

<sup>279</sup> See "Optional Protocol to CEDAW", available from: <https://opcedaw.wordpress.com/communications/all-communications/>.

<sup>280</sup> Boerefijn, p. 491.

<sup>281</sup> Ibid.

<sup>282</sup> Ibid.

<sup>283</sup> Ibid.

<sup>284</sup> Committee on the Elimination of Discrimination against Women, 'General Recommendation No. 28 on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women' (16 December 2010) UN Doc CEDAW/C/GC/28 (CEDAW GR No. 28).

<sup>285</sup> Ibid, 3.

Despite these challenges, the procedure empowers the Committee to hear individual complaints and investigate claims of serious and systematic violations of CEDAW.<sup>286</sup> When used, the communication procedure **compels states into a public dialogue** on gender-based discrimination.<sup>287</sup> The procedure could be promoted by **publicising its existence**, via public education campaigns. There should also be targeted information-sharing with officials and professionals who come into contact with women and girl victims of rights violations, including lawyers, police and military personnel, healthcare and service providers, and civil society organizations. **Access to justice could be improved** by removing the requirement to exhaust domestic remedies, providing legal aid, and publicising the decisions of the CEDAW Committee.

The Committee's **work with civil society on implementing the CEDAW GR No. 30** as a “complementary accountability mechanism”<sup>288</sup> to SCR 1325 and the legal framework should be strengthened. The growth of well-organized transnational NGO networks around CEDAW and SCR 1325 is an opportunity for local groups to strategically use the legal framework to achieve substantive and transformative justice.<sup>289</sup> Like the CSW, CEDAW processes attract the **intensive involvement of transnational women's groups, which dedicate significant attention and resources to engaging with CEDAW**. The Committee and the Global Network for Women Peacebuilders recently trained women peacebuilders from Asia to utilise SCR 1325 and the CEDAW GR No. 30.<sup>290</sup> **Financial and human resources** should be allocated **to the Committee and organizations** that build the capacity of women and girls to hold states accountable under the legal framework.

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<sup>286</sup> Laboni Amena Hoq, 'The Women's Convention and its Optional Protocol: Empowering Women to Claim Their Internationally Protected Rights' (2001) 32 (3) *Columbia Human Rights Law Review* p. 677-726, p.703.

<sup>287</sup> Ibid 723.

<sup>288</sup> Global Network of Women Peacebuilders, 'Training on CEDAW GR 30, December 15-16<sup>th</sup>, Jakarta, Indonesia', available from: <http://www.gnwp.org/news/training-cedaw-gr-30-december-15th-16th-jakarta-indonesia> (GNWP).

<sup>289</sup> O'Reilly, *ibid*.

<sup>290</sup> GNWP.

## SCR 1325 AND TRANSFORMATIVE REMEDIES FOR VICTIMS OF RIGHTS VIOLATIONS

There are strong indications from SCR 1325 that the right to a remedy exists, despite the absence of the words “remedy” or “reparations” in its text. SCR 1325 reaffirms the need to implement fully international humanitarian and human rights law that protect the rights of women and girls during and after conflicts.<sup>291</sup> The right to remedy in human rights law has been widely acknowledged, particularly by the UN General Assembly’s adoption of the “Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law” (the Principles).<sup>292</sup> The Principles require the adoption of a ‘victim-oriented’ approach and set out the importance of accessible and meaningful remedies, **including transformative remedies**. SCR 1325 requires that all actors that conclude peace agreements must adopt a gender perspective regarding the special needs of women and girls during repatriation and resettlement, rehabilitation, reintegration and post-conflict reconstruction.<sup>293</sup> Arguably, transformative remedies are an essential component in effectively addressing this requirement. This is also further supported by calls to “respect fully international law applicable to the rights and protection of women and girls” in SCR 1325,<sup>294</sup> and the emphasis on the responsibility of States to end impunity in the context of international wrongs committed against women and girls.<sup>295</sup> As elaborated in Section 1, the following resolutions on WPS, CEDAW and its GR No. 30, and the broader legal framework, reinforce the right to a remedy.

Transformative remedies strive to break down existing inequalities and discrimination against women, in addition to providing reparations for violations of their rights.<sup>296</sup> Reparations can include monetary compensation or restitution, other material compensation, an apology, infrastructure, education, the enactment of new laws, increased cultural awareness through film or other media, employment, rehabilitation, or any other measures that are directed towards repairing the harm suffered by the victims. They can be collective (for example, skills training or building infrastructure in a particular community) or individual in nature, where the remedy can be granted either through a voluntary, administrative or judicial process. Remedies can also be layered, allowing for individual violations to be adjudicated in

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<sup>291</sup> UN Security Council Resolution 1325 (30 October 2000) UN Doc S/RES/1325, preparatory paragraph 6 (PP 6) (SCR 1325).

<sup>292</sup> United Nations General Assembly, ‘Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law’ (adopted on 16 December 2005) A/RES/60/147.

<sup>293</sup> SCR 1325, operative paragraph 8(a) (OP 8(a)).

<sup>294</sup> SCR 1325, OP 9.

<sup>295</sup> SCR 1325, OP 11.

<sup>296</sup> UN Secretary-General, ‘Guidance Note of the Secretary General: Reparations for Conflict-Related Sexual Violence’, (June 2014) p. 8 (UNSG Guidance Note).

accordance with due process as well as having the effect of apologising to a community as a whole for the wrongs endured in times of conflict.

In the context of SCR 1325, transformative remedies have the potential to guarantee transformative equality, especially for victims of conflict-related violence and other grave human rights abuses. Transformative remedies are those best suited to ensuring women and girls are not returned to the same subordinate positions in patriarchal structures which allow rights violations to happen in the first place. Reparations can be made by individual perpetrators of crimes, by non-state actors, or by states that have failed in their obligations under CEDAW or SCR 1325. To ensure their effectiveness in a transformative way, victims must be enabled with access to remedies in a manner that is suitable in the context of their community and religion.<sup>297</sup>

### Cotton Fields Case of the Inter-American Court of Human Rights

The Inter-American Court of Human Rights has issued important guidance on the need for reparations in cases concerning women, peace and security. *Gonzalez et al ('Cotton Field') v Mexico* concerned the disappearances and deaths of a number of women and girls in a cotton field in Ciudad Juárez, Mexico. A number of incidents had been reported over a long period of time, and there was evidence of extreme violence, rape and torture in many incidents. The Court found that the violations were especially addressed against women.<sup>298</sup>

An important aspect of the case was Mexico's failure to comply with its international obligations to provide adequate reparations. The Court held that Mexico was required to provide adequate reparations for the victims and their next of kin, and the reparations ordered were transformative in nature. The Court concluded that the violations had resulted from structural discrimination. Therefore, the reparations had to be "designed to change this situation, so that their effect is not only of restitution, but also of rectification".<sup>299</sup> As a result, the Court ordered monetary, non-pecuniary and structural reparations to be made, as adopted from a gender perspective. This was the first time in which transformative reparations had been ordered by an International Court directly as a result of a breach of international obligations towards women.<sup>300</sup>

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<sup>297</sup> UNSG Guidance Note, p. 11.

<sup>298</sup> I/A Court H.R., *Case of González et al. ("Cotton Field") v. Mexico*, Preliminary Objection, Merits, Reparations and Costs, Judgment of November 16, 2009. Series C No. 205 at [114]-[121].

<sup>299</sup> Ibid at [450].

<sup>300</sup> Katrin Tiroch, 'Violence against Women by Private Actors: The Inter-American Court's Judgment in the Case of

## Sierra Leone's Truth and Reconciliation Commission

Following the conflict in Sierra Leone, the Truth and Reconciliation Commission has recommended a number of measures for the purposes of transforming the place of women and girls in the cultural life of the country. The measures have included the provision of free healthcare, educational support, provision of skills and training, provision of housing, symbolic reparations and urgent reparations for those in greatest need of an effective outcome (for example, victims of sexual violence or widows). Further, more progressive legislation on issues relating to women was recommended. The report resulted in three bills being passed in Sierra Leone on gender inequality issues, as well as a public apology for a failure to protect women during the armed conflict and promises to prevent the recurrence of such wrongs.<sup>301</sup>

The examples above indicate the crucial role played by transformative remedies in guaranteeing that women and girls actually achieve access to justice and meaningful redress for rights violations. It is essential that transformative remedies are available under SCR 1325 and the legal framework, to guarantee the transformative equality that the framework provides. The **existing UN monitoring and accountability processes, even if improved, do not provide transformative equality.**

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Gonzalez et al. ("Cotton Field") v. Mexico" (2010) 14 *Max Planck Yearbook of United Nations Law* pp.371-408, p. 379; Ruth Rubio-Marín and Clara Sandoval, 'Engendering the Reparations Jurisprudence of the Inter-American Court of Human Rights: The Promise of the Cottonfield Judgment' (2011) 33 *Human Rights Quarterly*, pp. 1062-91, p.1063.

<sup>301</sup> UNSG Guidance Note, p. 9.

## SECTION 3 CONCLUSIONS AND RECOMMENDATIONS

Section 3 of this submission makes the following conclusions and recommendations.

The reporting on states' implementation of SCR 1325 is **fragmented**, given that SCR 1325 lacks a mandatory monitoring or accountability mechanism. The UPR and CSW processes provide opportunities to address this fragmentation, and better track states' progress on fulfilling their obligations under the legal framework. Having a **dedicated "Women, Peace and Security Section" in key outcome documents of the UPR and CSW processes** would ensure that conflict-affected women's and girls' voices and experiences are meaningfully incorporated into state and NGO reporting. Focusing attention on WPS in these processes would also sustain a spotlight on the legal framework, sustaining the political will that is necessary to compel governments, development agencies, civil society and other decision-makers to act to protect the human rights of women and girls.

Improving CEDAW's monitoring and reporting processes would also prevent fragmented tracking of progress on the enforcement of SCR 1325 obligations. These processes face problems of **inadequate state compliance, information-related and procedural barriers preventing access to justice for victims of rights violations**, and **inadequate resources** to support the Committee's work, especially capacity-building for conflict-affected states and civil society. It is clear that **capacity-building is needed for governments' compliance with state reports and civil society contributions via shadow reports**. Access to justice to the communication procedure could also be improved via providing public information services, removing procedural barriers to the procedure, providing legal aid and publicising outcomes in cases.

Gender-responsive, victim-oriented reparations for rights violations are an essential complement to the UN's existing monitoring and accountability mechanisms. The ability of transformative reparations to challenge structural discrimination helps achieve the overarching aims of SCR 1325 and the legal framework. As Rashida Manjoo notes in her Report as Special Rapporteur on violence against women, "violence against individual women generally feeds into patterns of pre-existing and often cross-cutting structural subordination and systemic marginalisation".<sup>302</sup> To achieve **transformative equality in a meaningful way requires the long lasting effect of preventing future rights violations**, including acts of sexual violence in conflict and other grave human rights abuses against women and girls. Existing UN processes must be combined with transformative remedies to produce transformative gender equality in situations of conflict.

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<sup>302</sup> Rashida Manjoo, *Report of the Special Rapporteur on violence against women, its causes and consequences*, (14 May 2013) A/HRC/23/49, p. 71.



**Recommendation 4: To guarantee substantive equality, which is a minimum protection under the legal framework on women, peace and security**

- To guarantee *substantive equality*, the UN's existing monitoring and accountability processes must be accessible to women and girls and their organizations and advocates, to ensure access to justice, and provide effective monitoring and reporting on state compliance with the legal framework, including by:
  - Creating a dedicated “Women, Peace and Security” section in key Universal Periodic Review (UPR) and CSW reports and outcome documents, and building the capacity of government officials and civil society, especially women's and girls' organizations, for gender-responsive reporting on conflict;
  - Mainstreaming the CEDAW GR No. 30 into CEDAW country and shadow reporting, and budgeting for adequate financial and human resources to the CEDAW Committee, governments, women's and girls' organizations and others to provide capacity-building training on implementing the SCR 1325 and the CEDAW GR. No 30 in the context of the overarching legal framework on women, peace and security.
  - Improving the CEDAW communication procedure by publicising its availability and enabling women and girls to meaningfully access the procedure, including by removing the requirement to exhaust domestic remedies, providing legal aid, and publicising all decisions.

**Recommendation 5: To allow for transformative equality, which is provided for in the legal framework, especially under CEDAW, including by providing transformative remedies for women and girl victims of rights violations**

- To guarantee *transformative equality*, international, regional and national courts, judicial and quasi-judicial bodies, informal justice mechanisms and all relevant bodies with the power to provide remedies to victims of rights violations, including those in transitional justice situations, should apply transformative remedies that both provide meaningful redress for victims and survivors, and hold perpetrators fully accountable for their actions.

