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**Peace Agreements as a Means for Promoting Gender Equality and Ensuring
Participation of Women**

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Peace Agreements as a Means for Promoting Gender Equality and Ensuring Participation of Women

Methodology and Summary of the Background Paper

This background paper raises some issues with respect to the objectives of the meeting to:

- Identify good practices and lessons learned for inclusion of gender perspectives in peace agreements and the processes preceding such agreements; and
- Establish standards to be met in peace agreements with regard to incorporation of gender perspectives.

I have adopted the classification of peace agreements suggested by Christine Bell into pre-negotiation agreements, framework/substantive agreements and implementation agreements. The focus of discussion is on the framework and implementation agreements.

I was asked to offer model clauses from peace agreements but the reality is that there is no peace agreement that provides an overall model for appropriate provisions for ensuring that the needs of women within the conflict zone are served alongside those of the men. Nor are there even many provisions that relate specifically, or even indirectly to women. Typically peace agreements are framed in gender-neutral language, that is they are assumed to be equally applicable to, and equally appropriate for, the needs of both women and men within the society in question. Yet while women within a war-torn society share the goal of termination of the violence, it cannot be assumed that their interests and priorities in reconstruction are identical to those of men.

In preparing the paper I have taken provisions and examples of practice (both good and bad) from more treaties than those designated as case studies for the meeting. Reference is made to the following treaties:

- Dayton Peace Accords (Bosnia-Herzegovina), 1995
- Security Council Resolution 1244, (Kosovo), 1999 and the Rambouillet Agreement, 1999 upon which the resolution built
- Security Council Resolution 1272, (East Timor), 1999
- Bonn Agreement (Afghanistan), 2001
- Agreement on a Firm and Lasting Peace (Guatemala), 1996
- Agreement between Ethiopia and Eritrea, 2000
- Bougainville Peace Agreement, 2001
- Peace Agreement (El Salvador), 1992
- Multi-Party Agreement (Good Friday Agreement, Northern Ireland), 1998
- Peace Agreement between the Government of Sierra Leone and the RUF, 1999
- Peace Agreement between the Governments of Rwanda and the Democratic Republic of Congo on the Withdrawal of Rwandan Troops and the Dismantling of the Ex-FAR and Interahamwe Forces in the DRC, 2002
- Agreement Concerning the Sovereignty, Independence, Territorial Integrity and Inviolability, Neutrality and National Unity of Cambodia, 1991
- Peace Agreement, Liberia, 2003

I have supplemented these examples with analyses and critiques primarily by scholars and NGO reports. I do not have expertise in the particular circumstances and contexts of the conflicts and

ensuing peace agreements and anticipate that the paper will be supplemented by the expert reports prepared for the meeting.

I have attempted to present some of the complexities of peace processes and the wide range of issues covered in peace agreements. It cannot be stressed enough that peace agreements are context specific and accordingly many suggestions are general and must be adapted to local requirements. Section One of the paper discusses the nature and categorisation of peace agreements. Section Two considers women and peace agreements and discusses why it is important that gender relations are considered within a peace agreement. Section Three considers questions of substance that should be included within framework peace agreements under the headings of Human Rights, Physical Security, Legal Security, Economic Security, Political Participation. Section Three suggests that in general terms a gender-sensitive peace agreement would address:

- Restricting impunity and ensuring accountability for gendered violence
- Land holding and access to land, including women's right to inheritance
- Return of refugees and internally displaced persons
- Constitutional guarantees for women's political participation at local, regional and national levels
- Human rights, including economic, social and cultural rights

Section Four considers aspects of implementation, in particular the responsibilities of international agencies with respect to women within the conflict zone. Section Five adopts a checklist of questions against which a peace agreement can be tested to assess its effectiveness for women within the post-conflict reconstruction.

Throughout citations from existing peace agreements are in italics. Examples are given in brackets after the particular reference.

1. The Nature and Categorisation of Peace Agreements

There are numerous variables to armed conflict including those relating to its form, length, objectives, participants, targeted persons, intensity, locale (international or internal), means and methods of warfare, duration, legality (*jus ad bellum* and *jus in bello*) and the numbers of casualties and the severity of their injuries. Similarly there is no uniformity between peace processes – that range of initiatives aimed towards managing, containing, stopping or resolving armed conflict and their outcomes in peace agreements.

The interest of the international community in the maintenance of international peace and security and the obligation for the peaceful settlement of disputes means that there is likely to be international involvement in any peace process including that perceived as internal armed conflict. Such involvement may commence before the onset of hostilities and continue throughout a sustained conflict. The warring parties may be brought together in a series of facilitated negotiations under the auspices of international or regional institutions until agreement can be reached. Many different processes may be attempted simultaneously, involving diverse actors and proposals. Attempted peace processes may not be continuous but may be 'on again, off again' as different actors seek solutions through different methods and offer proposed outcomes. Peace processes are typically protracted, punctuated with 'stops and starts' and apparent progress and complete collapse.

However these classifications refer to the ‘upper tier’ of the peace process, that is, the formal talks between protagonists and attended by representatives of the international community, typically directed towards the political settlement of the conflict. Alongside such formal processes are likely to be other, informal, parallel or twin-track processes. Resolving a complex conflict is not a matter of meeting at the peace table and negotiating a peace agreement in one single event. Rather it is a continuum of events taking place at all levels of society. The dominance of the formal process is illustrative of an underlying trend in the participation of women in peace processes: that is that women are active and accepted at the grass-roots or community level, but that their presence and initiatives are not accepted at the elite level of politics. For example, women sought to take a role in seeking genuine and peaceful solutions to the conflict in Bougainville through the Inter-Church Women’s Group Forum, 1996. At the Forum women worked to develop a unified stance on human rights and justice issues, to develop plans and programmes for a peaceful Bougainville, and to establish better cooperation and working relationships between churches.¹ The women’s efforts were not part of the formal peace process. Strategies must be developed to ensure that ideas generated through informal (ie not the recognised official peace process) processes are fed into the formal processes.

Success may be claimed through the conclusion of an agreement, only for it to collapse, perhaps because of changed domestic circumstances or because fighting resumes. This necessitates a further round(s) of negotiations and talks. Despite the collapse of an agreement and resumed hostilities, issues identified and agreed in one phase of the process may be carried forward into subsequent negotiations.

After the adoption of an agreement the internationalisation of the process may be continued through the physical presence within the territory of a range of international (or regional) actors including military and civilian peace-keepers and police, administrators, humanitarian agencies, financial agencies and non-governmental organisations (NGOs).

It may be fortuitous which out of a plethora of initiatives eventuates in a formally adopted peace agreement and which peace agreements are durable. It is necessary to distinguish between cessation of armed conflict and resolution of the underlying disputes that led to the outbreak of violence. Hostilities may be brought to an end (or even be pre-empted) but the issues may remain unresolved, potentially leading to further eruption of violence. Peace processes may continue after the end of hostilities in an attempt to find true resolution of the underlying differences between parties.

Despite the numerous variables some categorisations can be attempted, although it must be recognised that these are artificial. Peace processes are responsive to the particular conflict and any peace agreement that is adopted must be rooted in its own particular historical, political and social contexts. Caution is needed with respect to generalisations about the nature, form, objective or contents of peace agreements. Christine Bell has classified peace agreements according to their timing within the conflict, although this is necessarily fluid:²

- Pre-Negotiation Agreements
- Framework-Substantive Agreements
- Implementation Agreements

¹ Bougainville Inter Church Women’s Forum Tentative Skeletal Program.

² Christine Bell, *Peace Agreements and Human Rights* (Oxford UP) p.20.

A pre-negotiation agreement ‘typically revolves around who is going to negotiate and with what status.’ It seeks to find the conditions for peace talks, set agendas and identify substantive issues. ‘Where international mediation takes place while conflict is ongoing, the pre-negotiation agreements can be understood as including the various blueprints and attempts to structure ceasefires ... Ongoing attempts to find possible frameworks for a settlement are engaged in by all parties in the shadow of their prospects for military victory.’³ Women should be included early in any peace process so that its structure, agenda and priorities can be formulated taking them into account and to allow women to cooperate with the rest of the process underway in their country.

A framework-substantive agreement provides a framework for resolution of the substantive issues of the dispute. Since there is no guarantee that a framework agreement will not collapse there is no decisive line between it and a pre-negotiation agreement. Rather both are attempts at finding some agreement around at first preliminary procedural matters and then more substantive issues that may both become subject to re-negotiation. An implementation agreement addresses the practical responses to realities on the ground as they ‘take forward and develop aspects of the framework, fleshing out the detail.’⁴ An explicit example is the programme of Implementation of the Rwanda-DRC Withdrawal Peace Agreement that sets out in matrix form the Principle in the Peace Agreement, the Related Activity, the required Time Frame and the allocation of Responsibility.

Issues relating to implementation may be negotiated along with the substantive issues, may be left until later, or be dealt with on an ongoing basis starting, at the time of the framework agreement.

Another basis for categorisation of a peace agreement is its objectives, which may be quite narrow and specific, or wide ranging and general. Categorisation that looks to the objective of the agreement is likely to overlap with that based on the timing of the process within the conflict (pre-negotiation; framework-substantive or implementation), with the more complex substantive issues being dealt with at later stages of the process. Objectives may include:

- Cease fire
- Determination of participants in talks (especially important where the protagonists include non-state actors)
- Humanitarian access to conflict zones, issues relating to refugees
- Resolution of a single concern such as border delimitation
- Territorial allocation, boundaries
- Arrangements for interim government
- The post-conflict political and economic reconstruction of society including power sharing, constitutional, administrative and legal structures, resource allocation and social ordering
- The post-conflict physical reconstruction of society – houses, roads, schools, electricity, sewage, hospitals and other infrastructure.

There are likely to be subsidiary issues depending to a large extent on the local and regional disruption caused by the conflict and the form of hostilities, for example refugee and internally displaced persons return, return of prisoners of war, repatriation of foreign armies, property

³ Ibid., at p. 21.

⁴ Ibid., at 27.

claims, decommissioning of arms, landmine removal, provision for addressing atrocities and crimes associated with the conflict, and measures for national reconciliation.

The framework agreement may encompass other agreements that bring together a range of objectives and together provide a comprehensive approach to post-conflict peace building. For example the Agreement on a Firm and Lasting Peace in Guatemala incorporates ten other agreements covering *inter alia* human rights, resettlement of populations, indigenous persons' rights, constitutional and electoral reform and social and economic aspects and agrarian reform.

Another basis for the classification of peace agreements is according to the form of process or processes through which they were negotiated, including any institutional basis and the involvement of international facilitators. These might include:

- Negotiation between the conflicting parties
- Negotiation between the conflicting parties under the auspices or good offices of a regional or international organisation
- Mediation between the conflicting parties through the services of an individual international mediator
- Mediation between the conflicting parties through the services of a team of international mediators
- Mediation between the conflicting parties through the services of a team of mediators from a single state
- International negotiation between the conflicting parties in a process that includes team(s) of mediators, expert participants, other involved participants such as a contact group.

The international involvement may go beyond acting as facilitators/mediators to directly negotiating the immediate post-conflict conditions through the adoption of a Security Council resolution. In the case of East Timor neither Indonesia nor the East Timorese (the direct protagonists) were members of the Security Council, which adopted the mandate and competence of UNTAET in Resolution 1272, 25 October 1999. The Security Council may endorse a peace agreement adopted through internationalised negotiations. For example, in the case of the cessation of the NATO military action against Serbia, the Security Council adopted in resolution 1244, 10 June 1999, the agreement that had been negotiated by the President of the EU, Russian, and US negotiators and formally adopted by the Serbian Parliament. The Security Council or its President may welcome a peace agreement without expressly endorsing it through a resolution. Where the agreement requires international forces mandated by the UN Security Council, the Security Council will have to respond to the request.

In other instances, the institutionalised international community may have little input into the terms of the settlement, although it may be actively involved in implementation. For example, in the case of Bosnia-Herzegovina the UN had little involvement in the Dayton process that resulted in the General Framework Agreement for Peace in Bosnia and Herzegovina, 14 December, 1995 (Dayton Peace Accords). The Constitution, contained in Annex 4 of the Agreement, was formally adopted by the Bosnian Parliament. Similarly the Middle East peace process has been largely continued outside the institutions of the United Nations.

The inclusion of provisions relating to women within a peace agreement may depend upon the awareness of the international negotiators of their importance and their receptiveness to women's initiatives. To this end, there should be a mechanism to remind all those engaged as facilitators of

peace processes and as members of contact groups or negotiating teams of the terms of Security Council Resolution 1325, 2000.

Negotiation/mediation may take place at the site of conflict or elsewhere, perhaps far from the conflict zone. It may be conducted through shuttle diplomacy, through direct negotiations, or through corralling all participants in a secluded place for a sustained period such as at Camp David (1979) and Dayton (1995). The local input is likely only to come from the protagonists in the conflict and political leaders. International mediators are unlikely to have engaged with local women. Indeed despite the theoretical basis of mediation as a process whereby the parties agree the outcome, the reality of international mediation is that the outcome is in effect imposed.

All these variables impact upon the content and form of a peace agreement but in all instances the overall objective of a peace agreement can be summarised as to create security – territorial security, economic security, legal security and personal human security.

2. Women and Peace Agreements

This section examines the inclusion of provisions relevant to women and women's concerns within peace agreements. As is apparent the complexity and diversity of peace processes and peace agreements makes it impossible to assert a template that covers all scenarios. Rather the paper suggests issues that are likely to be recurrent and offers some possible approaches. It focuses on the framework-substantive and implementation agreements.

A peace agreement may provide a pivotal moment for the design of a post-conflict society involving local participants and members of the international community. An agreement for '*comprehensive political settlement*' (Cambodia), that is a 'constitutional' peace agreement goes beyond establishing the conditions for a military ceasefire. It looks to the future and addresses post-conflict political and social ordering (e.g. Dayton Peace Accords; Bougainville; Security Council Resolution 1272 on East Timor; Security Council Resolution 1244 on Kosovo; Guatemala; Liberia; Northern Ireland etc). It designs the relationship between state institutions and the individual and constructs active and participatory citizenship.

The peace agreement may contain the state constitution (Dayton) or provide the framework for subsequent constitutional negotiation from within the conflict zone (Bonn Agreement on Afghanistan). Those responsible for framing constitutional provisions within a post-conflict society must address what have been called the 'most difficult problems of a modern society'.⁵ The legal constitutional framework must be acceptable both to those participating in the process and, in a democratic model, to the society in question.

The issues have been itemised as:

- Relationship between nation and state;
- Conflicting expectations of religious and ethnic minorities;
- Development of nationalism, regionalism, confederalism and federalism;
- The viability of a multi-ethnic state;
- Acceptance of cultural autonomy;
- Requirements of modern democracy and civil society;

⁵ *Unfinished Peace, Report of the International Commission on the Balkans*, Washington, Aspen Institute, 1996, ix (Foreword by L. Tindemans).

- Role of political parties;
- Employment;
- Transition to a market economy;
- The role of the media

This list excludes a significant aspect of modern society that has implications both for determination of priorities and agendas and participation in the peace process: the role of women within the society and gender relations. This topic can (and must) be addressed separately and within each one of these topics.

Addressing post-conflict reconstruction in the context of a peace agreement without ‘asking the woman question’ means that those involved in the peace process failed to take seriously the call by the Security Council in its Resolution 1325 to ‘all actors involved, when negotiating and implementing peace agreements, to adopt a gender perspective’. To do this they must give attention to two separate concerns:

- Gender balance in the peace process
- Gender mainstreaming in the negotiation of the substance of the agreement.

Gender balance relates to the active participation of women in all stages of the peace process, which is not the focus of this paper. Gender mainstreaming refers to:

the process of assessing the implications for women and men of any planned action, including legislation [that might be required by the agreement] policies or programmes in any area and at all levels. It is a strategy for making women’s concerns as well as men’s concerns and experiences an integral dimension in the design, implementation, monitoring, and evaluation of policies and programmes in all political, economic and social spheres so that women and men benefit equally and inequality is not perpetuated.⁶

Gender mainstreaming requires that a ‘gender perspective is part of every policy consideration be that the design of a public information campaign, the creation of an advisory body, a draft law, or devising reporting guidelines and priorities.’⁷

Gender mainstreaming is a useful and practical tool for ensuring attention to the position of women within policies and programmes. Ensuring that those negotiating and implementing a peace agreement understand and are committed to the concept of gender mainstreaming is a major challenge. Negotiators should ask themselves whether peace agreements should be made applicable to the entire population with the expectation that gender-specific aspects will be taken into account (that is gender neutrality) or whether gender-specific provisions should be included, (that is whether the agreement should direct itself explicitly to women). It should of course do both. Gender mainstreaming should be used in addition to, and not instead of, programmes directly targeted at women where they are necessary to redress past imbalances and to address gender-specific harms. For example, if there is a provision on landholding, access to land or land distribution it must explicitly include women (especially if there are legal restrictions with respect to women and land). If there are specific provisions relating to tenancies, farm workers,

⁶ Christine Chinkin, *Gender Mainstreaming in Legal and Constitutional Affairs*, Commonwealth Secretariat (2001), p. 12.

⁷ Kvinna Till Kvinna, *Gender Awareness in Kosovo Getting it Right? A Gender Approach to UNMIK Administration in Kosovo*, 2001, p. 24.

indigenous persons (for example, El Salvador Peace Agreement) there must be specific attention to the position of women within these categories.

There is also the risk that commitment to gender-mainstreaming dilutes specific attention to women so that it becomes no-one's responsibility and is ignored by all involved. The tension between gender mainstreaming and women-specific provisions is evident throughout the discussion in this paper of both the substantive content and implementation of peace agreements.

In paying attention to ensuring that women's concerns are met within a peace agreement a number of preliminary issues must be borne in mind.

First, conflict is highly gendered and women's experiences during the conflict will have been different from those of men. A suggested technique for conflict settlement is first to analyse the conflict through a mapping exercise, that is providing an initial snapshot of the situation.⁸ This requires considering the background, conflict parties and issues, the global, regional and local context in order to achieve fuller understanding of the conflict and to start identifying appropriate points for intervention. The initial map is then followed by 'conflict tracking', that is updating what is occurring, for example leadership struggles, military advances and retreats, readiness of the general population for settlement, possible ways of redefining goals, finding alternative means of dispute settlement, constraints and outcomes. Such a map is limited if it fails to take account of gender relations and women's activities throughout the entire time. An example is to consider the position of women in conflict in South Asia. Mapping must include accounts of women within nationalist struggles, the gender politics of partition and its aftermath, gendered violence in conflicts, human rights discourse, peace activism and initiatives against the militarisation of the subcontinent [the regional context] and the emergence of a national security pathology [the local/global context].⁹

Second, women's different experiences during conflict are likely to be central to their determination of their post-conflict priorities and needs. It is therefore essential that these experiences are fed directly into all stages of the process and taken into account. Further, not all women will have shared the same experiences and there can be no assumption that all women will share the same concerns and priorities. There may be hostility, or at least friction, between different women, in addition to the divisions of the conflict itself.

Diverse priorities may include:

- Women are typically the first to seek to return to their own communities so for internally displaced persons or those who fled across borders, issues relating to return are likely to have priority, including access to housing, land and local communities.
- Discovery of the fate of missing relatives, especially those who have disappeared.
- Where male relatives have died or are missing, presumed dead, legal issues relating to title to land held in the name of those relatives will be a priority.
- Specific health care needs, such as treatment for sexually transmitted disease, including HIV/AIDS, and other consequences of rape.

⁸ Hugh Miall, Oliver Ramsbotham and Tom Woodhouse, *Contemporary Conflict Resolution: the Prevention, Management and Transformation of Deadly Conflicts* (1999) p. 91-3 provides a schema for the processes of conflict mapping and tracking.

⁹ Rita Manchanda, 'Where are the Women in South Asian Conflict?' in Rita Manchanda (ed.), *Women, War and Peace in South Asia Beyond Victimhood to Agency* (2001) p. 28 – 33.

- Attempting to restore normalcy for their children and other family members, including those injured or traumatised during the conflict.
- Access to essential services, electricity, water, sewage etc.
- Economic survival including employment.
- Justice and redress for atrocities committed against them during the conflict.

Certain categories of women may have specific needs. Former women combatants may face particular difficulties in reintegration, especially where they are perceived as having transgressed gender roles or where demobilisation programmes, including rehabilitative measures are directed towards male combatants. Those who are pregnant or who have given birth to children as a result of rape may require particular assistance. There may be girls who were abducted and forced to 'marry' their abductor. Women from the diaspora might find on returning that their perceptions and goals differ from those who have lived throughout the conflict.

Third, an effective peace process should be built on the widest base of experience and therefore must take account of local women's lived experiences and responsibilities before, during and post-conflict. Gender relations may have shifted during conflict through the empowerment of women who assumed roles previously unavailable to them. Women within the society may have developed skills and competencies throughout the conflict that are essential to effective post-conflict reconstruction. What emerges from all conflict zones are the many movements, initiatives and networks that women build up and operate throughout its duration. Such movements may start as humanitarian and practical, for example seeking shared means of acquiring food and water, or creating informal schooling programmes. Other initiatives may be more overtly political such as forming groups to demand information about their disappeared male relatives. Women also occupy positions and take on roles previously filled by the men who are absent. Women may have served as go-betweens due to a greater freedom of movement for women in conflict situations, and have developed skills in communication and intelligence. Some may have worked to end the violence through networks across the conflict divides and have formed an inside knowledge of the conflict pattern that mediators from outside need to have. The local conditions, the factors promoting and inhibiting peace are well known to local women and they can bring that knowledge to the peace table and thus into the agreement. Gender balance does not mean the inclusion of a few highly placed international women but listening and responding to the diverse experiences of women who have lived through the conflict.

Failure to include these views and ideas can lead to an impoverished understanding of peace and security that focuses on militarism and power supported by force. Ensuring the continuation of such empowerment post-conflict is integral to this project. Strategies are needed to ensure that the international negotiators become aware of and take into account the experiences and opinions of a wide cross-section of women within the conflict area. Male negotiators from states/international organisations that sponsor peace processes tend to gravitate towards male centres of power within the conflict zone. Such negotiators must recognise their own biases and change their mindset to find spaces where they can talk freely to local women, for example in localised women's groups or church women's groups. For example in Bougainville, church groups provide women's main opportunities for training, leadership, solidarity, networking and expressing wider experience than beyond their village and even beyond national borders.

Failure by those negotiating the agreement to do this necessary groundwork however denies women an equal stake in the post-conflict reconstruction and ignoring their vital needs can undermine a sense of societal belonging. International mediators must also be aware of the danger of assuming that greater local involvement throughout the process is automatically

beneficial to women and that local leaders speak for women within the society. This point is vividly captured in this quote from a woman from East Timor:

For those who still really suffer, is not the leaders, but the main victims were the civilian people, so in order to make a decision as to how to bring the perpetrators to the court or whether to give an amnesty, the leaders have no right to decide it because they are not the ones who really suffered through the troubles.¹⁰

This speaker is talking about the particular issue of amnesty but the point is a broader one: that the leaders do not necessarily speak for the community, and certainly not for women within the community.

Fourth, the very concept of ‘post-conflict’ and peace agreement may be problematic for women. Just as women experience war differently, so are their experiences of post-conflict gendered. There can be no assumption that the violence stops with a formal ceasefire. The collapse of civilian structures may mean continuing and pervasive lawlessness. The forms and locations of gendered violence change at the cessation of active conflict. Women’s relations with war-traumatised children, family members and former fighters all place gendered demands upon them. Demographic changes flowing from the conflict, in particular the disproportionate number of women and women-headed households, impact upon issues such as access to land, housing, caring responsibilities and social benefits and return after internal or international displacement.

Fifth, not only is ‘post-conflict’ a misnomer for women, so too may be reconstruction, reintegration and rehabilitation.¹¹ These concepts all assume an element of going back, restoring people to a position or capacity that previously existed. But this is not necessarily what women seek. The goal is rather societal transformation, that is, not restored dependence and subordination but rather an enhanced social position that accords full citizenship, social justice and empowerment based upon respect for standards of women’s human dignity and human rights that may never have previously existed. On the other hand, going back may be precisely what is wanted and it should not be assumed that because women have been subordinated by conflict that they have no agency or are unable to formulate their own agendas. Foreign intermediaries need to recognise that women have skills from before and during the conflict that can aid the overall peace process (eg Afghanistan where before the Taliban women were prominent in professional positions such as teachers and doctors). The resources women have are too frequently wasted by assumptions about their place in society that are not tested by those on the ground. A anecdotal example is of a doctor in Kosovo who was on active duty during the fighting, but who afterwards was put in a programme by an international organization to learn to knit ‘for her community’ instead of using her expertise in health care.

Sixth, the focus of the peace talks may be on ethnic, racial, religious or class difference that fuelled the conflict. On the one hand such attention can obscure sex-based discrimination and the intersectionality of sex and other grounds for discrimination. On the other hand it should not be forgotten that women can and do share in violent acts directed towards members of groups defined as the ‘other’ and that reconciliation in a war torn society must also include reconciliation between women

¹⁰ Quote from Susan Harris Rimmer, ‘Untold Numbers East Timorese Women and Transitional Justice’, Interview with East Timorese women, 2002.

¹¹ SC Resolution 1325, 2000 calls upon states to address ‘The special needs of women and girls during repatriation and resettlement and for rehabilitation, reintegration and post-conflict reconstruction;’

Seventh, it is important that a peace agreement is 'owned' by the local community. This is not achieved simply by its adoption by the Parliamentary body (if it exists) as with Dayton. The agreement must be translated into local languages and transmitted through media means available to the population. The Liberian Peace Agreement is a good model: *'The terms of the Agreement shall concurrently be communicated to the civilian population by radio, television, electronic and other media.'* Ideally these should be accompanied by direct contact and discussion of the implications through, for example, women's community groups, churches and other civil society groups.

Finally, the context specificity of conflict and of the position of women within the particular society (before and during conflict) makes difficult generalisation about the objectives for women within a peace agreement and the appropriate terms to achieve those objectives. Nevertheless if these issues are not addressed throughout the peace processes and are not incorporated into any peace agreement a window of opportunity may be lost.

Modern peace agreements are complex instruments that cover a great number of issues and allocate responsibilities for their performance. Silence in a peace agreement on the position of women 'perpetuates and institutionalises the marginalisation of women in the political processes after the conflict.'¹² It allows those implementing the agreement (including international organisations) to commence their mandates with no reference to women or to how their operations impact differentially upon them, while robust language backed by the specific allocation of responsibility for its fulfilment can facilitate appropriate positive action, including active work with local women's organisations. The legitimacy of implementing actions derives from the peace agreement, which tends to acquire a weight and authority of its own. If a particular policy is not within the mandate specified by the agreement it may be hard to convince those implementing the agreement to address the issue. All those involved in the implementation of a peace agreement are likely to be faced with overwhelming tasks and problems. Without the explicit requirement in the peace agreement to address questions relating to women, other agenda items that have been included will have greater legitimacy and be given priority. Without inclusion in the peace agreement there is a risk that any attention to gender will be given (if at all) only through the personal commitment of an individual(s) who may then move prematurely to another post. Donors' commitments are likely to be based on priorities as asserted in the peace agreement and unless women's priorities are included therein it is likely that programmes directed at women will receive low budgetary priority and be seen as peripheral. Omission of women from a peace agreement reinforces the assumption that sex and gender do not matter in post-conflict reconstruction and more broadly in international law and relations. Without the clear mandate for women's issues in the peace agreement funding may have to be constantly renegotiated, the issues may be constantly marginalised and fail to receive proper institutional support. As Sheila Meintjes has expressed it:

... women do gain from the shifts in gender relations during the war, they may lose their wartime gains in the cusp, in the period between war and peace. Thus the transition from war to peace emerges as a critical moment in the shifting terrain of gender power.¹³

It might be argued that requiring negotiators and mediators to give attention to the position of woman and gender relations in the post-conflict society would be time consuming and might

¹² Kvinna Till Kvinna, *Gender Awareness in Kosovo Getting it Right? A Gender Approach to UNMIK Administration in Kosovo*, 2001, p. 23.

¹³ Sheila Meintjes, 'War and Post-War Shifts in Gender Relations' in *The Aftermath: Women in Post-Conflict Transition*, 64.

detract from other issues. Gender relations are rarely perceived as central to the causes of conflict and are therefore not seen as relevant to its resolution. However on a practical level the processes for reaching a peace agreement and its subsequent implementation typically continue over many years and involve large numbers of experts on a range of issues working on different aspects of the conflict. An expression of this is: *'The Parties further acknowledge that the resolution of this matter will be a process and not an event.'* (Rwanda-DRC). It is precisely because peace-building is a lengthy process that any argument about time restrictions are invalid. Within such a time frame it should not be difficult to require the inclusion within negotiating teams of a person(s) with allocated responsibility for ensuring a gendered audit of the consequences of the conflict and attention to gender relations post-conflict through provisions within the peace agreement.

The status of women in the post-conflict zone should be viewed by the international participants as a non-negotiable issue with the priorities and agendas set by local women.

3. Contents of Peace Agreements

3.1 Pre-negotiation Agreements

The groundwork for ensuring the participation of women in the process and the inclusion of women's concerns into the agreement must be undertaken at the pre-negotiation stage. This includes identification of suitable women, ensuring their access to information and meetings, providing them with adequate and appropriate training for negotiation and ensuring their security to participate in meetings. It also requires identification of priorities and agendas, through wide consultation with diverse women.

3.2 Framework-substantive agreements

Before determining the content of substantive agreements there should be a gender audit of the state of the conflict zone and of the consequences of the conflict for social/gender relations, including *inter alia* the number of women headed households as a result of killings and displacements; a consideration of national laws to determine the extent to which legal access to resources (eg land and property) are in the hands of men and how this could be rectified by new laws that take account of post-conflict realities; a gendered health audit, including gendered disaggregated numbers of those infected with AIDS/HIV and who is receiving treatment; the incidence and types of recurring violence, including whether political violence has been replaced by social and economic violence and organised crime; identification of different needs of men and women that have not been recognised or adequately addressed by international organisations or the NGO sector.

This section makes some suggestions as to what might be included within a gendered framework for post-conflict reconstruction. They can perhaps be characterised as encompassing women's physical, legal and economic security within all plans for community reconstruction, although there are no neat divisions between these categories. In each instance account must be taken of local conditions. It is also important that issues do not become labelled as 'women's issues' and other 'more important' issues. There are gendered dimensions to all aspects of political, economic and social reordering and in this sense gender mainstreaming is required throughout all substantive discussions and operational measures.

The degree of detail required within the framework agreement must be considered. Where a constitution is included in the peace agreement (e.g. Dayton) greater specificity may be required. In other agreements it may be sufficient to ensure broad commitments on these points, with a requirement that machinery for their implementation is subsequently addressed.

Those negotiating peace agreements must be careful not to make assumptions about the needs of women within the conflict zone and their priorities. Women themselves often have very clear ideas about what are priority issues within their own context and the fullest account should be taken of their views. For example, in Bougainville women urged that 'care-centres' should be abolished and people allowed to return to their villages; that communication and transport services should be restored to Bougainville; and that non-governmental organisations and church-groups should be allowed to participate in the rehabilitation program for Bougainville.¹⁴ The Afghan Women's Summit for Democracy, December 2001, a 'parallel process' was held at the same time as the summit where the Bonn Agreement was accepted. It urged provisions on education, media and culture; health; human rights and the constitution; refugees and internally displaced women. Women in Burundi focused on issues to protect women and girls, including mechanisms for the prosecution of crimes of sexual violence, legalisation of women's right to inherit land and access to education for girls.

Women may only be able to come together to express their priorities after the peace agreement has been put in place. In East Timor the First Women's Congress of East Timor was held in Dili in June 2002. The Congress allowed differences in both views and approaches to improving the conditions of East Timorese women to be explored. A 'Statement' was adopted at the Women's Congress which *inter alia* urged the United Nations Transitional Administration in East Timor (UNTAET) to fulfil the United Nations commitment to gender equity.¹⁵ The CNRT adopted a Resolution on Women's Rights' which derived from the Women's Congress. The Resolution called for all elected CNRT members to put pressure upon UNTAET to ensure four matters: the allocation of sufficient resources 'for the development and empowerment of women'; the establishment of laws to specifically prohibit violence against women; the creation of government mechanisms to 'meet and guarantee gender equity'; and the development and implementation of an education campaign on the rights of women and children that aims to eliminate 'the practice of discrimination against women, including traditional practices.' The Women's Charter of Rights in East Timor has ten articles: Equality; Right to Security of the Person; Political Rights; Right to Health; Right to education; Social Rights; Labour Rights; Tradition and Women's Rights; Right to freedom from exploitation; Children's Rights.¹⁶

These examples suggest that while there is always need for reference to local conditions during and after the conflict, women's priorities are strikingly consistent. But it remains difficult, if not impossible, for these priorities to be fed into the negotiations. Ideally these priorities would be prepared prior to the substantive-framework agreement for inclusion within it, but if that is not possible a provision in the agreement (or SC Resolution in the case of East Timor) affirming the commitment to women's empowerment on their own terms would strengthen the basis for the subsequent constitutional inclusion of women's agendas.

In some cases women have long been preparing their concerns for a peace settlement that has not yet eventuated. An example is the Saharawi women in the refugee camps in Algeria who have

¹⁴ Bougainville, Inter Church Women's Peace Forum. Position Paper.

¹⁵ Preamble to the Statement from the First Congress of Women of Timor Loro Sae [East Timor], held in Dili from June 14-17 2000.

¹⁶ Susan Harris Rimmer, 'Untold Numbers East Timorese Women and Transitional Justice'.

drawn up their ambitions for the post-conflict society.¹⁷ It is urged that these are taken into account in resolution of the situation.

The peace agreement may make very general statements about the need to take account of women's needs in post-war rehabilitation and reconstruction. For example the Sierra Leone Agreement, 1999 states in Article XXVIII:

(2) Given that women have been particularly victimised during the war, special attention shall be accorded to their needs and potentials in formulating and implementing national rehabilitation, reconstruction and development programmes, to enable them to play a central role in the moral, social and physical reconstruction of Sierra Leone.

Such a general statement is useful in that it mandates special attention to women. It could be used by international and local personnel committed to its goals to introduce programmes and policies, but is too imprecise to ensure positive action with respect to women where there is no prior personal commitment. Such a general clause must be reinforced by specific reference to women in all the areas listed below.

3.3 Human Rights Guarantees

Human rights standards underpin physical, economic and legal security. The inclusion of human rights, including equality provisions has become an accepted content of post-conflict arrangements. Commitment to international human rights standards may be simply referred to as one of the underlying concepts of the agreement (Guatemala), or reasserted (Cambodia), or may be more fully incorporated. The technique adopted in the Dayton Peace Accords in Bosnia and Herzegovina was to make the European Convention on Human Rights (ECHR) directly applicable law and to include a broad range of other European and international human rights treaties as annexes to the agreement. The Multi-Party Agreement (Northern Ireland), article 26 provides that the powers of the Assembly (provided for within the Agreement) to pass primary legislation are subject to:

(a) the ECHR and any Bill of Rights for Northern Ireland supplementing it which, if the courts found to be breached, would render the relevant legislation null and void;

Human rights protection is at the cusp of external guarantees and internal protections. Accordingly inclusion into the peace agreement is inadequate without provision for their incorporation into the national constitutional framework, for example through a Bill of Rights that implements the international standards into domestic law. Such constitutional protection must be given explicit priority over all legal systems applicable within the state, including customary law and religious law.

Incorporating international human rights standards in the peace agreement and thereby into the state constitution is by itself insufficient to guarantee to women the same protection of their rights as men. There must be full understanding of and reference to the concept of women's human rights, their incorporation into the national legal system and a commitment to their implementation. This also requires consideration of the legal/social obstacles to elimination of

¹⁷ Pascale Harter, Sahara women relish their rights, BBC, 30 October 2003, available at <http://news.bbc.co.uk/1/hi/world/africa/3227997.stm>

discrimination, including the need to look at who is presenting these obstacles and to consult with and listen to local women and to ensure that their views are heard on this.

Discrimination *inter alia* on the basis of sex/gender must be prohibited and an equality before the law clause included. A model is that contained within the South African Constitution, 1996:

Equality

9. (1) Everyone is equal before the law and has the right to equal protection and benefit of the law.

(2) Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken.

(3) The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.

(4) No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3). National legislation must be enacted to prevent or prohibit unfair discrimination.

(5) Discrimination on one or more of the grounds listed in subsection (3) is unfair unless it is established that the discrimination is fair.

The Multi-Party Agreement (Northern Ireland) section on Rights, Safeguards and Equality of Opportunity affirms:

The right to equal opportunity in all social and economic activity, regardless of class, creed, disability, gender or ethnicity.

The Agreement goes on to affirm the right to be free from sectarian harassment but does not include sexual harassment.

The British Government states its intention to ‘*create a statutory obligation on public authorities in Northern Ireland to carry out all their functions with due regard to the need to promote equality of opportunity in relation to ... gender...*’. Public authorities will be required to draw up statutory schemes to show how they will implement their obligation. A statutory Equality Commission is provided for to ‘*advise on, validate and monitor the statutory obligation*’ and to investigate complaints.

An equality clause in the peace agreement must be made mandatory for inclusion in any Constitution that may be subsequently negotiated (for example the constitutional processes in East Timor, Afghanistan and Iraq). Provision must also be made for this to apply at all levels of administration within the country and for all systems of law.

An equality clause must be backed by a definition of discrimination (for example that contained in the Convention on the Elimination of All Forms of Discrimination against Women) and provision made for proactive measures for identifying systemic discrimination and introducing

positive measures to redress past discrimination, in accordance with the Convention on the Elimination of All Forms of Discrimination against Women, article 4.

If the state is not a party to the Convention on the Elimination of All Forms of Discrimination against Women, 1979 provision should be made for assistance to it to ratify or accede to that Convention and the Optional Protocol providing implementation measures. The Afghan Transition Administration acceded to the Convention in March 2003 and the independent Timor-Leste to both the Convention and the Optional Protocol in April 2003. This should be supplemented by becoming party to any relevant regional instrument. Thus for European states ratification/accession to the European Convention on Human Rights, Protocol No. 12 should be mandated; for American States the American Convention on the Elimination of Violence against Women and for African States the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, 2003. Indeed this last instrument, as the most advanced international instrument for the guarantee of women's human rights, should be considered as a model, for provisions on all aspects of women's human rights. In addition, technical and practical assistance might be offered for fulfilment of the state's obligations under these instruments. This is provided for within the Peace Agreement, Liberia.

The guarantee of economic and social rights is essential. Even those peace agreements that emphasise human rights do not necessarily give the same attention to economic and social rights. For example, while the Dayton Peace Accords incorporated the ECHR into Bosnian law its economic and social counterpart, the European Social Charter, was not given the same priority (indeed it is not even listed). The only enumerated economic or social right is that to education and the only reference to economic and social rights is the inclusion of the International Covenant on Economic, Social and Cultural Rights among the listed Conventions. The Peace Agreement, Liberia refers to '*basic civil and political rights*' including the rights to life, liberty, freedom from torture etc but without reference to economic and social rights.

Although the El Salvador Peace Agreement has a chapter on '*Economic and Social Questions*' these are not presented in terms of rights. Keen cites an Oxfam report on the El Salvador Peace Process:

Generally it was recognised that whilst the Agreements dealt in detail with issues related to the demobilisation and demilitarisation processes, limited attention was given to fundamental economic and legal issues which constituted root causes of the internal conflict.¹⁸

In the Multi-Party Agreement (Northern Ireland) the British Government commits itself to pursue policies '*for sustained economic growth and stability in Northern Ireland and for promoting social inclusion, including in particular community development and the advancement of women in public life.*' However these provisions are under the heading of 'Economic, Social and Cultural Issues' which are separate from 'Human Rights'. Further, provision is made for the establishment of a consultative mechanism on social, economic and cultural issues. The proposed Civic Forum comprises representatives of the business, trade union and voluntary sectors and is distinct from the National Human Rights Commission and Equality Commission. Similarly the Agreement for a Firm and Lasting Peace in Guatemala affirms the need for citizen participation (male and female) in achieving social justice and economic growth. Article 8 provides that economic policy must be directed towards raising the standard of living and ensuring health care,

¹⁸ Cited David Keen, *The Economic Function of Violence in Civil Wars* (1998), p. 16.

education, social security and training for Guatemalans and as a preconditions for sustainable development. These guarantees of an adequate standard of living are phrased in terms of economic policy not economic and social human rights and are given no gendered dimension.

This is unfortunate as the guarantee of economic and social rights has been considered especially significant for women's pursuit of citizenship on equal terms with men. Such rights are given constitutional status in South Africa and the South African Constitutional Court has shown them to be justiciable. The lack of emphasis on such rights in a peace agreement weakens its claim to embedding a democratic order. Economic and social rights must therefore be guaranteed on a non-discriminatory basis and a rights-based approach taken towards the provision of needs, especially access to health-care and education. Such healthcare and education should be accessible, available, affordable and appropriate to the needs of local women and girls.

Education is central to the reconstruction of society including of gender relations. Schools may need to be re-established after conflict (with special attention to schools for girls) and the curriculum appraised, for example to eliminate materials that present discriminatory or stereotyped views of women, or which omit salient facts. International forces should be mandated to give special attention to the security of women and girls accessing places of education.

Access to healthcare includes allocation of resources for treatment of war time injuries to women, recognising civilian injuries (for example through landmines or attacks on civilians) alongside those of former fighters. Immediate health-care needs must be identified and addressed such as attention to women's psycho-social health care, emergency and reproductive health needs. There should also be planning for long term health needs such as provision for courses at village and neighbourhood level to train women in health services, including health-education, child-delivery and mother-child health-care. A matter of special urgency post-conflict is rehabilitation measures for children traumatised and physically injured during the war and who require specialist educational, medical and psychological care.

Mention may be made in peace agreements (eg Liberia), or in the reports of Special Representatives, or human rights groups of the need to give priority to such children, including child soldiers. However much of this social burden is likely to fall the traditional carers of children – women - and their needs and resources in undertaking this responsibility must be directly addressed. The Liberian Peace Agreement says somewhat cryptically that '*The NGTL in formulating and implementing programs for national rehabilitation... shall ensure that the needs and potentials of the war victims are taken into account and that gender balance is maintained in apportioning responsibilities for program implementation.*' This could reinforce and strengthen the position of women within these programmes, but could also be a basis for apportioning social responsibility to women (for example with respect to children) and omitting them from other areas.

Employment is another area where women tend to suffer post-conflict discrimination. In Bosnia-Herzegovina discrimination post-Dayton illustrates the combined effects of not incorporating an equality clause into the Peace Agreement/Constitution and the lack of attention to economic and social rights. Discrimination against women was prevalent in employment-related matters (including access to pensions) and in education. Indirect discrimination against women was constituted by the employment preference given to the families of deceased members of the Republika Srpska army where no other member of the family was employed, disabled war

veterans, demobilized Republika Srpska soldiers, and those unemployed for over two years.¹⁹ By 2000 legislation in the Bosnia-Herzegovina Entities sought to address the persistent employment-based discrimination, but a lead on this in the peace agreement could have facilitated women's equal access to employment in the immediate aftermath of conflict. Another form of employment discrimination against women is protective legislation, excluding women from certain forms of employment, deemed dangerous. This in reality can exclude them from better paying, or even the only, local employment. Taking employment possibilities from women, enhances their vulnerability to poverty and insecurity, including to prostitution and becoming a victim of trafficking.

The El Salvador Peace Agreement provides for a Forum for Economic and Social Consultation with the mandate to propose changes to labour legislation for the promotion of harmonious labour relations. However the provision did not require the inclusion of gender issues in labour law. Its composition is stipulated as high level with representative business and labour organisations, as well as government. Such a composition is not conducive to the inclusion of women and while other '*social and political sectors*' may participate, on invitation, as observers there is again no explicit requirement that this include women's groups.

Supervision of human rights guarantees might be entrusted to international mechanisms (The UN Commission on Human Rights, Cambodia) or, potentially far more effectively, provision might be made for national human rights institutions and localised implementation mechanisms. For example, the Multi-Party Agreement (Northern Ireland) section on Rights, Safeguards and Equality of Opportunity provides for the new Northern Ireland Human Rights Commission which is required to advise on the particular situation in Northern Ireland. However the focus of this situation is the '*identity and ethos of both communities in Northern Ireland*' without reference to gender. The Dayton Peace Accords also establishes specific bodies for the implementation of human rights: the Constitutional Court and the Commission on Human Rights, comprising the Office of the Ombudsman and the Human Rights Chamber. Provision is made for mixed international and local personnel. Security Council Resolution 1272 provided for the development of an independent East Timorese human rights institution. The Peace Agreement, Liberia provides for the establishment of an Independent National Commission on Human Rights.

However in none of these instances case is gender included, nor is it expressly provided that there is jurisdiction over economic and social rights. The limited attention given to both gender and economic and social rights within peace agreements needs to be addressed, including with respect to access to constitutional courts national human rights institutions and other localised implementation mechanisms.

Another consideration is provision for governmental machinery dedicated to gender equality, women's rights, and policies affecting women (e.g a Ministry for Women's Affairs; Women's Affairs Unit).

3.4 Physical Security

Security is central to any peace agreement but it is typically not dealt with in a way in peace agreements that takes account of the particular post-conflict threats to women's security, including gendered violence. Violence against women undermines their autonomy, citizenship

¹⁹ Employment Discrimination in Bosnia and Herzegovina, Report June, 1999.

status and human dignity.²⁰ Provisions must be made to deal with violence against women that occurred during the conflict including investigation and prosecution whether by international, national or hybrid courts. Accountability for violent crimes against women should never be negotiable within a peace process, allowing impunity for violators. Impunity signals to those within the post-conflict zone and to those within other conflict areas that violence against women is not regarded as of the highest gravity. Prosecution must be provided for in accordance with internationally accepted definitions of rape and other forms of sexual abuse (ICTY, ICTR and the Rome Statute for an International Criminal Court). Legal understandings should be incorporated from this same jurisprudence, that is the jurisprudence of *Celebici*; *Furundzja*; *Kunarac*; and *Akayesu* around such issues as recognition that a single incident of rape can constitute an international crime and the circumstances that constitute rape as torture, genocide, and sexual slavery. All those involved with transitional justice – investigators, prosecutors, judiciary – should receive training in the developments of the international criminal tribunals and more broadly on the engendering of international criminal law.

There may be a need for more than the possibility of criminal sanction in national or international criminal proceedings, for example measures for compensation, retraining, ‘truth commission’ type procedures, the provision of safe places for those who have testified, health care and counselling services.

Provision for a truth and reconciliation process must include specific mention of the need to include violations of the human rights of women, including but not limited to sexual abuse.

Post-conflict arrangements may make provisions for the reintegration of soldiers – usually men – back into society (eg Liberia Peace Agreement), but without mention of the particular needs of women combatants. Nor is there provision for the reintegration of survivors of rape and other forms of sexual abuse and their return to normal life, other than the inclusion of such offences in catalogues of international crimes committed in the conflict. This need has been graphically expressed: ‘Why is it that men who are tortured by the military forces are seen as heroes whereas women who are tortured (including rape) are seen as traitors?’²¹ This ‘double standard’ can exclude women from rehabilitation provision.

Accordingly provisions such as those requiring the Government to ‘*design and implement a programme for the rehabilitation of war victims*’ (Peace Agreement, Sierra Leone, 1999) must specify that this includes women, combatants and civilians, and that harms include those of sexual assault. The Peace Agreement, Liberia goes further in asserting that *The NTGL shall accord particular attention to the issue of the rehabilitation of vulnerable groups of war victims (children, women, the elderly and the disabled) within Liberia, who have been severely affected by the conflict in Liberia.*’ No guidance is given as to how to do this, nor is reference made to women’s agency in addressing their needs as well as their vulnerability. Nevertheless the provision mandates international agencies to direct their attention towards women. Such attention should include exposing attitudes that condemn or ostracise women and men who have suffered sexual abuse and to reverse such attitudes through broad education, training and support.

Provisions must also be directed towards gendered violence that is likely to continue in ways still connected to the conflict, for example violence committed by those suffering from post traumatic

²⁰ Committee on the Elimination of All Forms of Discrimination Against Women, Recommendation No.19 (1992).

²¹ Oxfam Community Aid Abroad, 1999, ‘Women fight for Freedom: The Struggle for Human Rights and Independence in East Timor’, cited Susan Harris Rimmer, ‘Untold Numbers East Timorese Women and Transitional Justice’.

stress, by men returning to households headed by women during the war, by men facing dislocation and unemployment on return, by a reinforcement of traditional/conservative attitudes towards women, and by continued violence from armed groups, as continues in Afghanistan. The destruction of communities in the conflict may also mean the loss of social structures that might previously have offered a safety-net against such violence. Post-conflict gendered violence has been reported for example in Bosnia-Herzegovina,²² East Timor,²³ Kosovo,²⁴ Afghanistan,²⁵ and Iraq,²⁶ despite the presence of international forces. The peace agreement should expressly reject impunity for any continued violence against women by armed militia or other groups and provide for investigation and prosecution of such violence. It should also assert the state's obligation to exercise due diligence in the matter of the prevention, punishment and eradication of violence against women, for example by the incorporation into national law of the principles and recommended measures contained in the 1993 General Assembly Declaration on the Elimination of Violence against Women and the Beijing Platform for Action, 1995, paragraphs 112-30. These include requirements for the prohibition of all forms of gender-based violence, including domestic violence, to be incorporated into national legislation. The reports of the special rapporteur on violence against women provide good models for such national legislation.

The agreement should also require establishment of a legal framework for the punishment of violence against women and implementation of programmes for the rehabilitation of women victims and 'establish mechanisms and accessible services for effective information, rehabilitation and reparation for victims of violence against women.' (African Protocol on the Rights of Women in Africa, article 4 (2) (f)). There must be an insistence that cultural traditions never justify violence against women, while drawing upon local expertise in determining ways to address it. The state should be required by the agreement to introduce legislation to protect women 'who are at risk of being subject to harmful practices [such as those based on traditional and customary practices and attitudes towards women] or all other forms of violence, abuse and intolerance' (African Protocol on the Rights of Women in Africa, article 5 (d)). The Women's Charter of Rights in East Timor also addresses concern about the impact of tradition on women's rights, seeking that the Constitution 'regulate the dowry system to prevent violence against women.' (Article 8(2)). The Charter also requires Constitutional guarantees for women's participation in traditional decision-making processes. (Article 8(3)).

Peace agreements frequently contain provisions for international peacekeeping and civilian policing (by international or national police forces), especially where there is a return from military rule. The mandate for the deployment of international security forces must include protection for women and girls, for example from armed groups. The Liberian Peace Agreement requires the International Stabilization Force to '*Take the necessary means whenever the need arises and as it deems within its capabilities to protect civilians, senior political and military leaders under imminent threat of physical violence*'. This does not explicitly refer to the threat of gender-specific violence associated with the end of conflict. However it does recognise the vulnerability of certain groups to violence in requirements to assist in humanitarian assistance to and protection of '*displaced persons, refugees, returnees and other affected persons.*' Again this

²² Bosnia has had a disturbing incidence of domestic violence for reasons directly connected to the war; International Human Rights Law Group, *A National NGO Report on Women's Human Rights in Bosnia and Herzegovina*, 1999.

²³ Violence against women by male family members is estimated to have constituted 40% of all offences committed in East Timor during the year 2000; Maggie O'Kane, 'Return of the Revolutionaries', *The Guardian*, 15 January 2001.

²⁴ Kvinna Till Kvinna, *Gender Awareness in Kosovo Getting it Right? A Gender Approach to UNMIK Administration in Kosovo*, 2001, p. 16.

²⁵ Amnesty International Report, Women in Afghanistan, October 2003.

²⁶ 'Veiled and Worried in Baghdad', *New York Times*, 16 September 2003.

provision would have been strengthened by explicit mention of the added vulnerabilities of women within these categories.

All members of the community need to have trust in the integrity and impartiality of the civilian police force but yet again peace agreements do not address women's interactions with the police. These are essential for effective measures against ongoing violence against women. There are likely to be new recruits to all law enforcement bodies, including the police and judiciary. The initial training of police officers, judiciary, those offering social aid, housing officials and health personnel in dealing with violence against women must include women's human rights and this should also be a priority with respect to persons who are retaining previously held positions and who have not been subject to such training. That training is not too detailed an issue for inclusion in a peace agreement is shown by the Liberia Agreement which provides for *Education and Communication programs to sensitise the Liberian public to the mission and activities of the restructuring plan* and training of the National Police Force, Immigration Force, Special Security Service custom security guards in *'democratic values and respect for human rights, a non-partisan approach to duty and the avoidance of corrupt practices.'* Unfortunately gender awareness is not included. The El Salvador Peace Agreement, which has very full provisions on the national police, provides for *'new doctrine'* and *'new education and training'* for them. The doctrine includes that the police be free from all ideology and discrimination and respect for human rights of all persons, but again without any specific reference to sex/gender. If training on gender awareness/sensitivity/the needs of women is mandated within the peace agreement, international bodies offering such training will not be able to dismiss the appropriateness of raising these issues in the particular context, as sometimes occurs.

Women should be appointed to all such positions. The El Salvador Peace Agreement provides that *'Special consideration shall be given to the recruitment of women'* to the new national police force. Other required measures are safe places for reporting violence, secure refuges and social security. A women's protection officer might be designated within UN administration (or elsewhere) to play a co-ordinating role.²⁷

There are peace agreements with provisions for reintegration of soldiers – usually men – back into society, but there are none providing for special treatment of rape-victims – whether male or female - and their return to normal life, other than inclusion of such crimes in catalogues of war crimes/crimes against humanity etc. Girls abducted as sexual partners and as domestic slaves are not seen as captive prisoners of war entitled to appropriate treatment (eg ICRC access as provided for in the Peace Agreement Liberia) and may be excluded from programmes to trace missing persons and to reunite families. Provisions for the release of *'political prisoners, prisoners of war, including non-combatants and abductees'* (Peace Agreement Liberia) should affirm that this includes such women and girls.

In some post-conflict areas, human trafficking has greatly increased and provision should be made in peace agreements for its prevention. The obstacles that women face post-conflict in realising economic security such as discrimination in employment and in access to credit, enhance their vulnerability to the risk of being trafficked, while privatisation as part of post-conflict economic reconstruction reduces the availability of social safety nets.²⁸ The spread of trafficking in Bosnia could have been foreseen, especially in a state where women were

²⁷ 'At a minimum someone with particular expertise on gender issues should be leading a task force on protection issues affecting women and children.' Julie Mertus, *War's Offensive on Women* (2000) p. 51.

²⁸ Situation of Human Rights in Bosnia and Herzegovina, the Republic of Croatia and the FRY, Report of the Special Rapporteur on Bosnia and Herzegovina, UN Doc A/54/396,S/1999/1000, 24 October 1999, paragraph 37.

dehumanised and sexually abused throughout the conflict. No attempt was made to address this in Dayton and a strategy to tackle trafficking on a long term basis, including through a national plan of action, was not commenced until three years later. Lessons should be learned from Bosnia for other post-conflict situations, including provision for preventive and punishment mechanisms in the peace agreement. Civil registration systems should be established. The agreement should provide for the state's acceptance of the Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, 15 November 2000, the adaptation of its domestic law to bring it into line with the Protocol and the preparation of a national plan of action using as a basis the Recommended Principles and Guidelines on Human Rights and Human Trafficking, 20 May 2002 prepared within the UN Office of the High Commissioner for Human Rights.

3.5 Legal Security

Peace agreements that are intended to promote economic stability, sustainable development and increased investment must also lay the basis for institution building – the infrastructure for democratic governance, application of the rule of law and civilian power and security. *'The ending of the armed conflict affords a historic opportunity to renew the country's institutions...'* (Guatemala). Procedures for law reform (potentially the entire framework for civil and criminal law and procedures) might have to be put into place (eg where there has been a collapse of the legal system or it is rejected as belonging to the previous regime as in East Timor and Afghanistan). Reform of substantive law must operate alongside the reform of the police and judicial systems, all of which are central to the constitution-building function of peace agreements. These are technical legal tasks that cannot be undertaken in a peace agreement. What can be provided for are the constitution and mandate of the bodies undertaking such tasks and the requirement that they incorporate women's rights.

Legal security is closely related to physical security. Judicial independence and measures to eliminate corruption among police, judiciary, other law enforcement agencies are required. Such measures offer a significant opportunity to build capacity for the protection of the rights of women. The applicability of non-discrimination and equality to legal institutions must be emphasised and a strategy put in place to ensure their implementation.

The inclusion of sufficient numbers of women in leading positions in such institutions must be guaranteed. Where ethnic divides have been integral to the conflict the agreement may include provisions relating to the ethnic composition of leading institutions (legislature, judiciary, army). Any such guarantees should also include gender requirements (See Dayton; Burundi where the former were included but the latter were not). The Peace Agreement, Liberia provides that *'nominations for such judicial appointments shall be based on a shortlist of candidates for each position recommended by the National Bar Association, including the female lawyers.'* This is a good start but is insufficient to ensure the appointment of women. The language of the International Criminal Court where it is required that states take into account the need for *'a fair representation of female and male judges'* (article 36 (8) (a) (iii)) could be copied within peace agreements for incorporation into national Constitutions and followed up with nomination and election processes that ensure the desired outcome. There must be training of women to enable them to assume positions of authority within the legal system, including the administration of criminal justice.

3.6 Economic Security

Economic security may be undermined in many ways including by way of discrimination; for example discrimination in the context of labour and job allocation and in laws relating to access and ownership of land. Quotas might be set that take account of ethnic or religious difference, especially when the conflict was fought on these grounds, or giving priority to men who were involved in the conflict. Such quotas can deprive women of access to employment and pension rights, thus contributing to their poverty and that of their children where they are the sole means of family support. Even if non-discrimination is included within a new post-conflict constitution, ensuring compliance may be difficult, especially where unemployment is high. Local lawyers may not have been trained in discrimination law, and post-conflict confidence in the independence of the judiciary and in the suitability of law as a means of redress may be low. Women may be reluctant to litigate for lack of resources, of confidence in a fair hearing or for fear of retaliation.

Provisions relating to non-discrimination in the workforce are irrelevant for the many women surviving only through their participation in the informal economy rather than through waged labour. The state obligation to respect economic and social rights denotes a primary level of obligation, requiring the state to act with restraint with respect to individuals' enjoyment of their rights, including respect for any self-help (or informal) measures people have undertaken to enhance their own position. Thus the state should not interfere with the operation of the informal economy without ensuring alternative means of subsistence. This may lead to difficult questions of implementation and conflicting objectives. For example, prevention of trafficking requires border controls and regulation of bars and other enterprises. On the other hand women benefit from being able to cross borders to buy and sell market commodities. Border regulation in many places would greatly restrict the informal economy on which they depend. In balancing such concerns states and international implementing agencies should be guided by human rights principles.

In many countries, women are excluded from full participation in economic life through unequal access to land and property, which in turn denies them the means of subsistence, security for obtaining mortgages, credit and loans. In agricultural communities this also denies women food security. Landholding systems are complex and highly specialised, especially where they depend upon a mix of legislation and customary law, and communal and personal property rights. In many systems women suffer through both legal discrimination and traditional attitudes and customs that deny them property rights, including inheritance. The position of women with respect to land and property ownership is exacerbated by conflict which destroys existing structures (already prejudicial to women) and causes massive displacement. Describing the situation in many African states Beyani says:

Breakdown in social stability and in law and order leaves a socio-economic vacuum in which the subordinate position of women, their social support systems and their access to land and property are compromised by traditional and customary laws.²⁹

The situation does not ease post-conflict. For example, women may have been able to move on to unoccupied land during the war but are then evicted by returning owners.³⁰ In customary land

²⁹ Chaloka Beyani, 'Key Issues' in *Women's Land and Property Rights in Situations of Conflict and Reconstruction*, UNIFEM, 2001.

³⁰ Rachel Waterhouse, 'Women's Land Rights in Post-War Mozambique', in *Women's Land and Property Rights in Situations of Conflict and Reconstruction*, UNIFEM, 2001.

ownership where proof of title is through possession and occupation, the land becomes subject to competing claims between displaced persons and new occupiers. Women whose male relatives have died or disappeared and have no recognised capacity to inherit remain permanently dispossessed. Although the peace agreement may be seen as an opportunity to address social justice through landholding the position of women may not be directly addressed. The El Salvador Peace Agreement, for example, addresses the '*agrarian problem*' including land tenure, micro and small scale enterprise, loans and technical assistance but has no gendered provisions.

Beyani argues that state intervention through legislation, enforceable through the courts, is needed to provide women with full access to land and property and inheritance rights, informed by a human rights approach that addresses their unequal position within the traditional family structure. Such legislation should be foreshadowed in the peace agreement and be informed by a prior gender audit of the existing legal and de facto situation, in which local women have been consulted. Even where such legislation is passed, its implementation is likely to be ineffective. People have no legal security where they are ignorant of, or can make little use of, their existing or new rights. The court structures may be weak, financially out of reach, or unavailable in rural areas. Judges may be unwilling to give effect to the new laws and fall back on applying custom that is disadvantageous to women. Tradition may still exclude women from local land management.

Legislation must be coupled with a comprehensive package of legal advice and assistance, practical steps to facilitate access to the law, education and training of judicial and legal officers in relevant subjects including anti-discrimination laws, education of those administering land rights, and a public awareness campaign around the disadvantages suffered by women through lack of access to land.

3.7 Political Participation

A peace agreement may provide for a provisional or temporary administration until such time as elections can be held and the country's constitutional framework stabilised. The peace agreement may provide for power sharing, or the conversion of a warring entity into a political party, but be silent about women's participation in political structures.

Provision for gender balance in the provisional administration will set the scene for the long term political participation of women. For example, the establishment of the Bougainville Reconciliation Government stipulated in the Lincoln Agreement, was central to reconciliation of divided Bougainville. Its establishment was one of the most divisive issues in the peace process, making it impossible for it to be a fully democratically elected government. Bougainville male leaders established the Reconciliation Government under their own arrangements.³¹ Although the leaders included representatives of six women's groups, the undemocratic nature of this process undermined their legitimacy for the grass roots women on Bougainville. But even this level of representation was not followed up in the Bougainville Peace Agreement, 2001, which does not provide special positions for women.

The Bonn Agreement, provisions on the Interim Administration in Afghanistan noted in Article III (3) that:

³¹ Anthony Regan, *Bougainville: The Peace Process and Beyond*, Submission to the Foreign Affairs Sub-committee of the Joint Standing Committee on Foreign Affairs, Defence and Trade of the Parliament of Australia, p. 46.

The Chairman, the Vice Chairmen and other members of the Interim Administration have been selected by the participants in the UN Talks on Afghanistan, as listed in Annex IV to this agreement. The selection has been made on the basis of professional competence and personal integrity from lists submitted by the participants in the UN Talks, with due regard to the ethnic, geographic and religious composition of Afghanistan and to the importance of the participation of women.

The Special Independent Commission for convening the Emergency Loya Jirga, Article IV (2) provided that the Special Independent Commission which has the final authority for determining the procedures for and the number of people who will participate in the Emergency Loya Jirga ‘will ensure that due attention is paid to the representation in the Emergency Loya Jirga of a significant number of women as well as all other segments of the Afghan population.’

In the Peace Agreement of Liberia it is stated that members of the Governance Reform Commission ‘shall include women’ and that members of the National Transitional Legislative Assembly shall come *inter alia* from Women Organizations. There is no explicit reference to women with respect to the executive or the cabinet but article XXVIII exceptionally states:

The parties shall reflect national and gender balance in all elective and non-elective appointments within the NGTL.

The Agreement calls upon international agencies, including the World Bank to assign trained personnel to assist the Transitional Government and offer expertise. It could have added that such expertise should include that in gender matters.

In other interim arrangements the inclusion of women has depended upon the will of the administrator. In Kosovo, there were no women on the first Kosovo Transitional Council created by the Special Representative of the Secretary-General and 17% after its expansion to 36 members. However the Interim Administrative Council had become the major consultative body for the Special Representative of the Secretary-General which included no Kosovo Albanian women (the Serbian representative was a woman). Women from civil society groups were included as observers but it is to be regretted that ‘women were associated with “civil society” and NGOs, which are considered “soft issues” when it comes to policy making and conflict resolution.’³²

In Iraq the interim Governing Council was handpicked by the Authority (US and UK occupying forces), making the inclusion of women dependant upon the willingness of the Authority to do so. The UN Special Representative was given a general mandate by Security Council Resolution 1483, 2003 to coordinate humanitarian and reconstruction assistance by UN agencies and NGOs with specific reference *inter alia* to the promotion of human rights, rebuilding the capacity of the Iraqi police force, the return of refugees and displaced persons, but with no reference to women.

The participation of women in the political bodies of the reconstructed constitutional order appears largely to be left to chance and is not spelled out in peace agreements. The Multi-Party Agreement (Northern Ireland) section on Rights, Safeguards and Equality of Opportunity affirms the ‘right of women to full and equal participation’ but does not make any special provision for

³² Kvinna Till Kvinna, *Gender Awareness in Kosovo Getting it Right? A Gender Approach to UNMIK Administration in Kosovo*, 2001, p. 14.

ensuring that this in fact occurs, although there is provision for ensuring representation from the different communities.

Designated quotas for women are more precise than vague formulae such as 'equitable gender balance', '*shall include women*' a '*significant number*' or '*shall have regard to...*'. Peace agreements do not usually provide for quotas in political bodies to ensure women's participation, although they do so for political groups. They can be subsequently introduced. The Dayton Peace Accords made no provision for the political participation of women. It did request the OSCE to 'adopt and put in place an elections program for Bosnia and Herzegovina'. This has allowed the OSCE to take the lead in ensuring women's participation in political bodies. In particular it introduced change in the provisional election rolls so as to require three women to be evenly distributed among the top ten candidates on each party list, a strategy that led to significant electoral gains for women at the Canton, Entity, and State levels in elections after 1998. However the increase in legislative representation is not matched in the executive branch: there are no women in the Councils of Ministers of Bosnia and Herzegovina, of the Federation, or of the Republika Srpska and this is not required in Dayton.

In Kosovo the OSCE supported a women's quota in the candidate lists on the same model as Bosnia. However the quotas were undermined by voting through 'open lists'. To be effective quotas must be introduced as a long term perspective and be accompanied by public awareness campaigns, identification and training of women candidates, networking between political women (including from other countries), political education, capacity-building initiatives for newly elected officials and for the institutions in which they work.

Quotas are not always accepted. No provision was made in SC resolution 1272 relating to women's political participation. Women in East Timor have made subsequent demands. The Rede Da Mulher Timor Lorosae (REDE, the East Timorese Women's Network) proposed a legal requirement for political parties to field in elections women in at least 30% of their nominated representative positions. UNTAET was very negative about the proposal, arguing that quotas infringe the concept of free and fair elections. Quotas were not accepted.

Women's political participation cannot be addressed by quotas or other measures directed at representation alone. These must be accompanied by measures for identifying obstacles to women's participation, identifying and training women candidates, facilitating networking between women in politics, including across different countries and education of women voters. Of particular concern is the need to ensure that international or national security is provided for women candidates for political positions and at elections for women voters. In Afghanistan women delegates at the emergency Loya Jirga were subject to harassment and intimidation and a woman member of the Iraqi Governing Council has been killed. The international community has a responsibility to secure an environment in which all people – including women – can speak out freely. 'Debate is crucial to achieving inclusive solutions to complex issues of abuses of women's rights.'³³

4. Implementation Agreements

The peace process continues through implementation. The substance of a peace agreement will have required an assessment of priorities and a determination of whether certain matters should be introduced immediately, in the short, medium or long term future. A peace agreement that has

³³ Amnesty International Report, Women in Afghanistan, October 2003 p. 21.

been negotiated between the warring parties under the auspices of, or observed by, international mediators and institutions is in some sense a bargain between the international community and the people of the territory – who have not been involved in the terms of the agreement – with an obligation on the former to assist in implementing the terms.

Implementation may therefore involve international institutions (military and civilian administrators), at least in the short term, providing both military security and detailed regulations and programmes that flesh out the peace agreement and make it operational. The mandates of military forces, variously named ‘stabilisation forces’, ‘peacekeepers’ may be limited to ceasefire monitoring or border patrol or may extend to disarmament and other security functions (eg the very detailed functions set out in the Liberia Peace Agreement). A third state(s) may be named within the peace agreement as having powers of implementation (eg., South Africa in the DRC). There may also be provision for the establishment of a local body to work on these issues, either immediately, or after some further process (eg the Commission for the Consolidation of Peace in Sierra Leone, the Afghan Transition Authority) and also for a monitoring/evaluative body designated from international or regional institutions, or through a designated group (e.g. the Peace Implementation Conferences in Bosnia; Joint Implementation Committee in Sierra Leone under the chair of ECOWAS; Joint Monitoring Committee in Liberia with representatives from ECOWAS, the UN, the African Union and the International Contact Group; OSCE Verification Mission in Kosovo; third party verification Rwanda-DRC). These bodies have different mandates and working processes, but it is essential that they are required to ensure the implementation of provisions in the peace agreement relating to women, and to be ready to make further demands to this end where required.

The long term goal of a peace agreement is its national implementation. Exit strategies for the international body must include guarantees with respect to the status of women.

Implementation is especially important with respect to women. Inclusion within a peace agreement of substantive provisions with respect to the status of women, for example, participation of women in interim and then permanent government structures, may not be taken seriously by the parties and is not sufficient to ensure their implementation without the allocation of responsibility and resources. For example the Multi-Party Agreement (Northern Ireland) is apparently more inclusive of women than many other agreements but as no-one has been given the specific task to ensure their inclusion, it has been hard to secure women’s participation at each point of the process. It is important that the representatives of the international community insist upon compliance with provisions relating to women and more generally to gender relations and find ways to make them effective.

A budget audit of implementation should be carried out that analyses costs to compare expenditures with respect to women and men and their different interests. This could be tied immediately into donors’ conferences for the funding of the post-conflict reconstruction and subsequently into progress reviews. At donor conferences a certain percentage of committed funds should be especially allocated for the political empowerment of women and for training of police and other law enforcement agencies, administrators, civil servants, health officials etc in the post-conflict needs of women. Donors should require that reform of law enforcement agencies and judicial institutions supports the guarantee of women’s human rights. An example of failure to ensure this is Afghanistan:

In both planning and implementation, donors funding the reconstruction of the justice system have displayed an alarming lack of attention to the specific needs of

women who come into contact with the justice system as well as to violence against women.³⁴

The peace agreement cannot provide for all the details of implementation over what is likely to be a long process (eg., there were recent celebrations for the 10th anniversary of the Mozambique Peace Agreement). The framework for implementation must therefore be both sufficiently precise as to core requirements and sufficiently flexible to allow for contingencies and change. As above the following are suggestions for issues that might be addressed.

In many post-conflict situations there is a three-way relationship among the designated leaders, the local population and international agencies (both intergovernmental and non-governmental). Where the presence of UN or regional, military or civilian personnel is envisaged, their level of involvement and mandates must also be determined. The presence of international agencies may be advantageous to the furtherance of women's interests post-conflict. Members of the international institutions may be allies for women against local communities resistant to women's empowerment and may be able to assist in accessing resources and in identifying leaders. However they may also be an obstacle. A bureaucrat who is not versed in gender matters may prove an additional hurdle for local women to overcome in presenting issues and concerns. International agencies may be ignorant of local initiatives and programmes and make no attempt to find out what is happening on the ground. They may marginalize local women's groups. Telling is the comment that 'the international community has marginalised us women in a way we never have been before. We have never felt so pushed aside as we feel now.'³⁵ It cannot be assumed that greater community involvement necessarily ensures greater attention to women. International personnel may focus on liaison with male dominated community groups and be willing to accept myths and stereotypes of women's place within the community without testing the reactions of local women. An example is given of the inter-agency legal working group on domestic violence in Kosovo. The UN appointed expert was a male professor of family law who asserted that 'it would be unthinkable to forbid all kinds of domestic violence' in Kosovo. This became the accepted position of the working group until the late intervention of a female prosecutor from Kosovo who strongly asserted the opposite viewpoint.³⁶ Members of international agencies can be positively harmful to women as when peacekeepers become involved in sexual abuse and trafficking.

Some structural issues which should be addressed in the peace agreement as integral to the post-conflict presence of the international community include:

- The participation of women at all levels and in all the functions of the international agencies (which are likely to be many with diverse functions) present in the post-conflict zone. This means overcoming the male predominance and bias of international institutions, but it is extremely difficult to urge gender equality in national institution building if there is no example from the international bodies implementing the agreement. This should be a requirement from the outset. In East Timor a directive issued from the Transitional Administrator on 7 September 2000, after intense lobbying by REDE (the East Timorese Women's Network) stated that 'a minimum of all national and district hiring shall comprise 30% women within every

³⁴ Amnesty International Report, Women in Afghanistan, October 2003 p. 3.

³⁵ Member of Motrat Qiriazhi, an umbrella of four Kosova rural women's networks, cited in OSCE, Gender Aspects in Post-Conflict Situations, 1. Code and Custom, 5.

³⁶ Kvinna Till Kvinna, *Gender Awareness in Kosovo Getting it Right? A Gender Approach to UNMIK Administration in Kosovo*, 2001, p. 16.

classification/level of employment within UNTAET. Where there are two candidates (male and female) of equal merit, priority will be given to the female candidate; indeed, we shall set as a target gender balance within all hiring. Training shall be given to women on a priority basis.³⁷ This was not achieved before the termination of UNTAET's mandate.

- The requirement that the law-making powers of international officials (OHR in Bosnia-Herzegovina; the Special Representative of the Secretary-General in Kosovo; Transitional Administrator in East Timor) be exercised with gender awareness. This can be done through consultation with local women's group(s), for example in East Timor a group of East Timorese women was convened by the GAU to discuss proposed UNTAET regulations and gender.
- Ensuring attention to gender throughout the administrative structures of an international administration. There are different models ensuring a gender focus within an international administration, for example through a separate specialist section or unit on gender relations with expert dedicated staff, through allocation of gender focal points within agencies and programmes, through the appointment of gender advisers to significant units or through attempts to ensure the mainstreaming of gender throughout all agencies and functions of the international bodies, including peacekeeping, and of the municipal and national bodies.

Different models can be combined. One tension is between allocating responsibility widely and risking it being ignored by all and creating a specialist unit that becomes an excuse for all other bodies ignoring gender. Another tension is between directing attention towards gender at the administrative centre and ensuring its application on the ground, especially in remote rural areas far from the capital. One suggestion is the institution of municipal gender focal points with established channels of communication between themselves and with the central bodies.

Actual experience has been limited. In East Timor SC Resolution 1272, 1999 provided for a number of specialist components in UNTAET: a governance and public administration component; a humanitarian assistance and emergency relief component; and a military component. No gender component was specified. However the importance of including within UNTAET personnel with appropriate training in gender-related provisions was spelled out. This was the first such reference in the mandate of a comparable body. A proposal for a Gender Administrative Unit (GAU) was included in the original structure proposed for the UNTAET in November 1999 but was not implemented because of budget priorities. The GAU was set up in April 2000 as a result of external pressure. However the initial abandonment of the proposal for a gender unit had critical repercussions for the efficacy and internal profile of the GAU because funding that was initially allocated for the payment of gender affairs officers was redistributed, and no programme or operational budget was subsequently created. The objectives and functions of the Gender Affairs Unit in UNTAET are: to advocate for gender equity and equality and to promote women as equal participants and beneficiaries of sustainable development, peace and security, governance and

³⁷ UNTAET Internal memo, dated 7 September 2000, sent to all Cabinet ministers, heads of departments, district administrators and Chair of the Public Service Commission.

human rights. The GAU undertook advocacy, communication, coordination and policy and programme evaluation.

Security Council Resolution 1244, 1999 gave the UN the task of running the civil administration in Kosovo until determination of its political status. The United Nations Interim Administration Mission in Kosovo (UNMIK) was the first peace-keeping mission to have an administrative unit dedicated to gender issues – the Office of Gender Affairs.

A Senior Gender Advisor post has been created within UNAMA (UN Assistance Mission to Afghanistan, established to assist the Afghan Transition Authority with the implementation of the Bonn Agreement) but the post has been largely unfulfilled.

Whatever model(s) is adopted it must be central to operational decisions and located sufficiently high within the administrative hierarchy for its input to carry weight across the range of administrative departments. The professional staff of such units/focal points must have experience in gender. Demonstrated commitment to and experience of the importance of gender awareness in policy making should also be a condition of appointment. ‘Hands-on’, practically oriented, ongoing gender-awareness training should be instituted for all levels of staff, with a requirement for participation.

- Whatever approach is taken to co-ordination of gender throughout the international administrative units, provision must be made for communication, co-operation and co-ordination with local women, including with those far from the centre of the international operations. Gender focal points across the territory might be included. All those responsible for gender issues should be accessible and available. The head should be of sufficient seniority to command respect and be personally committed to the gender programme. Adequate budgetary provision must be made.
- Facilitating support for local women from the international community and establishing genuine partnership among local NGOs and agencies and administrators is required. *‘The role of the international community in supporting civil society networks that link local, national and international initiatives is crucial to the peace process.’* (European Parliament Resolution on Participation of Women in Peaceful Conflict Resolution 2000/2025 (INI)). Channels for communication between local women and the international agencies must be established. These must not become dominated by women from any one area, class or ethnicity. International agencies should not be tempted to treat local women as ‘cheap service providers’ but must ‘respect local agendas and involve local women in decision-making processes over the design of internationally sponsored projects.’³⁸ Responsibility, monitoring and accountability for their operation must be allocated within the international agency.
- Ensuring adequate and accessible budgetary allocation for gender programmes in the reconstruction and ensuring that promises of resources that are made by the international community are kept in a timely and non-bureaucratic matter. Too often donors delay in honouring their commitments while the situation on the ground is urgent. This may have a particular downside for women in that the first resources that

³⁸ Julie Mertus, *War’s Offensive on Women* (2000) p. 50.

are received are likely to be allocated to what are perceived as priorities and these rarely include those identified by women. If resources are delayed the moment might be lost.

- Consideration of how gender intersects with other identities such as ethnicity and religion. Ensuring that quotas (for example quotas on the basis of ethnicity for positions of power within the state institutions) do not exclude gender balance.
- Facilitating co-ordination and co-operation between local NGOs and the international community; between international NGOs and intergovernmental institutions; between local and international NGOs in order to avoid duplication of programmes, wasting resources and local priorities and experiences being swamped by the internationals. There may also be tensions between international NGOs and it cannot be assumed that all of them will be sympathetic to gender goals.
- Identifying short, medium and long-term objectives. There may have to be immediate attention to essentials such as security, shelter, health-care, provision of food and water. The work of UNHCR in identifying gender concerns in refugee camps might provide some useful analogies for this.

The presence of UN and other institutional military and civilian forces can provide a safe space for the civilian population in place of the conflict and fear of attack that preceded their mobilisation. Nevertheless the presence of large numbers of unattached men creates physical security concerns for women, especially when they have comparatively large amounts of money available, and can offer forms of employment. As seen in Cambodia, Bosnia, Somalia, East Timor, the DRC and elsewhere their presence creates the potential for increased prostitution, sexual violence and connivance or even participation in trafficking. The consequences of such acts are serious and safeguards must be put in place to protect the local community. These might include:

- checks against recruitment of personnel with criminal records of violent behaviour or sexual harassment, including instances when recruitment is carried out through private agencies;
- the recruitment of more women within peace-keeping and civilian police forces, including at senior levels;
- the provision of appropriate and regular training in gender relations and cultural mores, including awareness of the potential for social exclusion of women who suffer sexual abuse or have sexual relations with foreign men;
- acceptance of codes of conduct for international personnel, which codes are seen to be monitored and to lead to appropriate disciplinary action when violated;
- removal of immunity from criminal procedure in local courts for those accused of criminal activity, including sexual violence
- safeguards against the re-deployment elsewhere on another international mission of anyone who has been dismissed for violations of the code of conduct.

It has also been suggested that including more women in international military, police and civilian forces would bring some positive differences in values and perspectives to peace-keeping, for example, it might reduce incidents of sexual harassment and deter abuse of the local population. Evidence also suggests that good relations and trust between peace-keepers and the local community can be more easily developed by women UN personnel.³⁹ Greater attention should also be given to the provision of gender-specific security such as providing escorts for women to local decision-making bodies, or to locations of food supplies.

5. Conclusion: Checklist of Questions

The following is a list of questions adapted from I. Skjelsboek, *Gendered Battlefields: A Gender Analysis of Peace and Conflict*.⁴⁰ It can serve as useful checklist against which a peace agreement can be assessed for its potential effectiveness in addressing the post-conflict needs of women:

- What are the goals of the Agreement? Who decided them? What was the involvement of representatives of the international community? Who was consulted from within the conflict zone? Who was consulted from the diaspora? Are the goals shared equally between women and men? By all women and all men? How do we know? If these goals are not widely supported, why should they be pursued?
- Does the Agreement contain gender-specific or gender-inclusive terms? Whom is it really directed at? Women? Men? Both? Do they have similar roles under the Agreement? How are they conceptualized: As active agents of change, passive victims/ recipients of the terms of the agreement, stakeholders, beneficiaries, experts, or professionals? What is the gender breakdown of this conceptualization, and how is it rationalized?
- Who has constructed “woman” and “man”? Who will do so in the future? Are women and men constructed differently? How do those negotiating peace agreements know what is good for women?
- Whose constraints and potentials are addressed throughout the Agreement?
- Whose interests are given priority through the Agreement? Why?
- What assumptions are made about the gendered division and allocation of resources? On what evidence are these assumptions made?
- What are the presumed benefits of the agreement? What are the disadvantages? Are they shared equally by all? Who is going to have to implement them?
- Does the agreement take account of the immediate, underlying, and structural causes of the conflict? Whose account of those causes is given credence? Is the analysis gender-blind or gender-aware? Are any strategic gender interests addressed by the intervention? Does addressing gender interests require transformation of existing gender relations and gender culture? If so, can this transformatory potential be built

³⁹ Report of the Secretary-General, Peace: Women in International Decision-Making, UN Doc. E/CN.6/1995/12, 21 February 1995, paragraph 38.

⁴⁰ Peace Research Institute (Oslo) Report (1997).

into the Agreement? What kinds of resistance would follow? How should that resistance be met?

- Does the envisaged reconstituted society take account of gender relations? How will gender be constructed within political, legal and social reform, and institution-building? What are the presumed benefits of the Agreement? What are the disadvantages? Are they shared equally by all? Who is going to implement them? What resources have been allocated commensurate with implementation responsibilities?

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