

**PREPARED BY DAWN
(DEVELOPMENT ALTERNATIVES WITH WOMEN FOR A NEW ERA)**

**SUBMISSION TO THE CEDAW
COMMITTEE
DAY OF GENERAL DISCUSSION ON
GENERAL
RECOMMENDATION
ON WOMEN IN ARMED
CONFLICT & POST-CONFLICT SITUATIONS
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This document is submitted to the CEDAW Committee, by Development Alternative with Women for a New Era (DAWN), in the context of the Committee's ongoing deliberations on a General Recommendation on the protection of women's human rights in conflict and post conflict contexts. It is framed primarily on discussions held at a global consultation in Colombo, Sri Lanka, in May 2010 on the 'Application of Women's Human Rights Frameworks on the Issues of Women Affected by Conflict'.¹ This paper selectively focuses on the following area highlighted at the consultation while it also uses other relevant illustrative experiences.

Defining the Obligations of States for Conduct and Policies Effecting Rights Extraterritorially

The nature of conflict and war has changed from predominantly inter-State to intra-State conflict with civilians, mainly women and children being severely affected. Conflict and attendant militarization are often buttressed by juridical situations that suspend the normal rule of law with the introduction of emergency powers and repressive legislation creating a 'State of exception' in which citizens are reduced to 'bare life' stripped of their ordinary rights (Agamben 2005). In such militarized environments, law and order and accountable governance are suspended for military ends. This environment results in the disintegration of democratic rights, such as freedom of expression, freedom of association, and freedom of mobility, among others. Thus, the State of exception becomes the norm.

However, the lines dividing intra-State and inter-State conflict are blurred. Secessionist claims may be supported--militarily, economically or politically--by other sovereign States or, armed conflicts over natural resources can cross international borders. When natural resources, not only energy resources but also key minerals, primary products, and narcotics, are at the center of militarized struggles for power, conflicts tend to take longer to resolve and its internationalization makes resolution even more complicated to achieve, as political struggle over legitimate grievances becomes enmeshed with economic greed. In many situations, the struggle for control of key resources with involvement of former colonial powers is at the heart of conflict.²

The new General Recommendation should therefore recognize the diversity of actors responsible for rights violations in conflict and post-conflict settings and find ways to hold such actors responsible, whether they act within their State of origin or extraterritorially. CEDAW, like most human rights treaties, is predicated on the State as the single actor responsible for the protection and enforcement of rights. The State party to the Convention is held accountable for both the violation of rights and is at the same time the guarantor of rights. However, such a straightforward paradigm cannot effectively cover contemporary realities. In a globalised and militarised world which is increasingly interconnected through

¹ The consultation was organized by International Women's Rights Action Watch Asia Pacific and hosted by Women & Media Collective, Sri Lanka. The planning team for the consultation, in addition to the above organizations, included the Global Network of Women Peacebuilders, Women's International League for Peace and Freedom, Development Alternatives with Women for a New Era and WILD for Human Rights with the University of California at Berkeley Law School.

² DAWN. Development Debates in a Fierce New World, Concept Note January 2010.

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trade, business, aid and geopolitical interests, conflict settings inevitably involve far more actors than the State in which hostilities are geographically located. These include but are not limited to State actors, non-State actors, international organizations, and financial infrastructures such as international lending and trade agreements. We wish to emphasise that CEDAW and other treaty bodies must find ways to link the actions of diverse actors to the legal obligations of States parties in order to more completely address rights violations in these increasingly globalized settings.

State actors

State actors remain major contributors to rights violations in conflict and post-conflict settings, both in direct and indirect ways. The most direct example is the instance in which a State is the primary party to a conflict, or exerts its control within its own territory in a way that violates its obligations under CEDAW or other human rights treaties. However the CEDAW Committee needs to take into account examples that are less well-addressed in treaty body work, such as that of States having a more distant but none the less grave impact on conflict, including through troop or arms contributions or bilateral militarization policies.

a. State Actors as Third Parties in Peace Processes

In addition to State actors involved directly and indirectly in contributing to active hostilities, it must be noted that States play diverse roles in post-conflict and transition across territorial boundaries. In particular, it is important to remind States engaged in negotiations that, if they are signatories of CEDAW, they must comply with their obligations under the treaty even where they are acting outside of their sovereign territory. Such States should be reminded of the obligation to afford women equality and meaningful participation in the negotiation process and be called upon to ensure that accords and agreements that emanate from peace processes are gendered and include women's concerns.

According to research on 21 major peace agreements conducted by UNIFEM, it was found that women were signatories to only 2 per cent of them and no women have been appointed chief or lead peace mediators in UN-sponsored peace talks. Further women made up only an average of 6 per cent in negotiation delegations.³ In terms of content only 16 per cent of peace agreements signed between January 1990 and January 2010 contain specific references to women. These agreements were qualitatively inconsistent with little reference to equality or gender justice. Research and the lived experience of women indicate that *issues that are not specifically mentioned in the agreement can be difficult to prioritize post-agreement, and importantly, international implementation mechanisms and donor funding flow from agreement priorities.*⁴

Illustrative of this is the fact that only one woman was involved, as a member of a support group to the Free Aceh Movement (GAM) in the final round of peace talks on Aceh.⁵ This absence of women often results in agreements that are gender blind or make compromises

³ UNIFEM, 2009. *Women's Participation in Peace Negotiations: Connections between Presence and Influence*, New York: UNIFEM.

⁴ Bell C. and Catherine O'Rourke, 2010. *ICLQ Vol.9*, p. 7. available at <http://journals.cambridge.org>

⁵ The Helsinki Memorandum of Understanding between the Government of the Republic of Indonesia and the Free Aceh Movement can be accessed at www.aceh-mm.org/download/english/Helsinki%20MoU.pdf

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that are detrimental to women. As was illustrated during the Aceh peace process, the 2005 Aceh agreement refers to gender only in the context of the re-integration of female combatants. The absence of women and the non-inclusion of gender concerns in peace processes can also result in new forms of rights violations and discrimination in peacetime. For instance, Sharia law was introduced in Aceh in 2001 as part of an autonomy deal offered by the government and is enforced by the Sharia police bringing in new forms of authoritarianism, violations and discrimination against women, post conflict.

It is imperative therefore, even in cases where a State party to CEDAW was hosting peace talks or otherwise facilitating negotiations⁶ that it should bring pressure on negotiating parties to take steps to protect the substantive equality of women in the transition and post-conflict recovery and political reconstruction processes. So too can countries from intergovernmental associations facilitating peace processes such as those in ASEAN, the EU, the AU, etc.

The nature of conflict also requires special attention in processes of conflict resolution. For instance extractive resource based conflicts involve the production and both licit and illicit trade of natural resources, which include timber, minerals, oil and diamonds. Armed groups and States often use monies gained from such trade to wage or prolong wars. Conflicts are also waged over “direct use” resources such as water and land. The solution of these conflicts must take into consideration their impacts on women and must involve the inclusion of women and gender concerns in the processes of resolution.

b. The Granting of Amnesties

The CEDAW committee must also be aware of the pattern of granting amnesties to State actors and non State actors without including women from the various affected parties in the decision making process. Given that women on all sides often face severe rights violations during and after conflict, we feel strongly that amnesties cannot be legitimately granted without diverse women’s input. Conversely peace agreements rarely deal with gender based crimes such as sexual violence against women and States parties including third party negotiators must be held accountable for ensuring redress and reparations for women survivors of both direct and indirect human rights violations during conflict.

c. State Parties Engaged in Peacekeeping

States engaged in peacekeeping operations and contributing troops to countries in transition and post conflict settings must be reminded, if they are signatories to CEDAW, that they must comply with their obligations under the treaty even where they are acting outside of their sovereign territory. Peacekeepers are essentially deployed to provide protection to populations under threat yet peacekeepers themselves have been culpable of sexual exploitation and abuse. During 2005 investigations were completed into allegations

⁶ Among many such countries are Norway, Japan, Switzerland, Russia, France, Spain, Liberia, South Africa.

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concerning 296 peacekeeping personnel.⁷ There is rising frustration that peacekeeping troops who were frequently sanctioned and deployed under UN mandates, included troops from countries with troubling human rights records and lax or non-existent accountability processes. In effect, the troops are exported along with their practices of violating the rights of less powerful communities, and in particular the rights of women and girls.

CEDAW needs to clarify that States are obligated to ensure that persons within their control are protected from rights violations at the hands of all parties, including peacekeeping troops acting under the invitation of the host State.

d. States with Geopolitical Interests

The experience of Fiji illustrates how deeply financial arrangements like international monetary loans and trade agreements limit the ability of women to hold governments to account for human rights violations. In the face of Fiji's tumultuous political history, women's rights activists and human rights groups have sought ways to increase the pressure for democratization. After the most recent coup, the military leadership was attempting to negotiate a loan from the EU to reinvigorate the sugar industry, upon which a great deal of its ability to stay in power depended. Women's groups were able to convince the EU to condition its loan upon the Fijian government's compliance with certain benchmarks showing progress towards a more open society, including lifting restrictions on freedom of movement and eventually holding elections.

But instead of complying with the EU's demands, Fiji negotiated a separate agreement with India, and was able to receive the needed loan without the conditions of the EU. Nearly simultaneous to the negotiations for a loan from India, Fiji was negotiating a free trade agreement with New Zealand and Australia despite the fact that New Zealand had held negotiations prior to the coup to try and prevent the collapse of the government. Women's rights advocates condemned the trade agreement and expressed concern over the clear conflict of interest present for New Zealand. Based on this experience it is necessary to consider how women's rights groups might work together strategically, such as those from Fiji and Australia, to write reports and shadow reports to CEDAW demanding accountability from their own country for its role in other countries which adversely affects women's rights.

The fact that trade and over-seas loans are increasingly concluded by conflict-affected States with countries, such as China, India, Indonesia or Pakistan, to name a few for whom advocacy and accountability strategies have not yet developed also presents huge challenges and is an area that calls for special attention from CEDAW.

⁷ Problems of Sexual Abuse by Peacekeepers now Openly Recognised, Broad Strategy in Place to Address it, Security Council Told. Head of Peacekeeping, Adviser to Secretary General Brief, 23.02.06 <http://www.un.org/News/Press/docs/2006/sc8649.doc.htm>

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Non State Actors

Non-State actors are the second major group that can be identified as responsible for human rights violations in conflict, transition and post-conflict settings. CEDAW is clear in its stipulation that States are responsible for the acts by both public (State) and private (non-State) entities, and that a failure to protect women and girls from rights violations caused by non-State actors is a failure to meet the obligations of the treaty.

We urge that States parties be held accountable for inaction and a lack of ‘due diligence’ with respect to acts committed by private, non State actors. While the Geneva Conventions address non-State belligerents in the context of internal armed conflict, IHL is not as encompassing of gender equality across a wide range of rights as CEDAW, and therefore advocates should help strengthen and utilize CEDAW ‘s application in conflict contexts.

a. Non State Armed Groups

Non-State armed groups, such as militias, guerilla forces, war lords (and groups operating under cover of informal State sanction, such as paramilitaries, vigilantes and civil defence groups) remain of primary concern to advocates of women’s rights during conflict.

When wars are prolonged they dislocate normal economic activities of States because resources have to be diverted from social spending to meet increasing military spending. This in turn allows for the emergence and expansion of illicit economies. Underpinned by complex relations of power and dominance this process contributes to serious erosion of governance, democratisation and citizenship. It also exacerbates sexual violence, leads to the sexual division of labor and power, increases the commodification of women and the erosion of women’s incomes. Militarised globalisation is characterised by the expansion of a whole range of war and military services and the privatisation or corporatization of security. There is also a new class of global actors with immense financial and political power. These are the armed industry and mercenaries.

b. Multinational and National Corporations

However, there is a need to expand the scope of rights concerns related to non-State actors beyond armed groups. There is an urgent need to examine players such as multinational and national corporations, as well as the interplay between national, regional, and international actors. There are many examples of exploitation by non-State actors, such as multinational corporations that exploited labor conditions in conflict settings, assisted with the manufacture of arms or other resources required for conflict, or used the guise of “development” to continue enriching themselves and parties fomenting conflict, despite the clear link to conflict and its accompanying violations of women’s rights. There needs to be more clarity on what the legal basis might be for trying to hold these actors to account.

c. UN Agencies and Humanitarian Organisations

We are also concerned about the lack of clear standards and viable accountability mechanisms for addressing the actions of international organizations during and after

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conflict. This is particularly so where UN Agencies, humanitarian aid organizations and other internationally constituted bodies play a role in conflict or reconstruction.

Numerous examples exist of women being exploited by humanitarian workers, including their offering food, security or other resources (both supplies already guaranteed to local populations and additional resources) in exchange for sexual services.

It is an accepted maxim of international human rights law that the rights of those affected by conflict must be protected primarily by governments. However where governments have no capacity or lack political will, to do so, international actors are mandated to protect the rights of those affected by conflict. This requires I/NGOs to decide strategically when and how to intervene in the protection of human rights and international humanitarian law. It also requires an understanding that humanitarianism cannot be isolated from politics and must shed its cloak of neutrality and demand that States and non State actors respect their obligations to protect human rights and humanitarian laws in and out of the battle fields. The responsibility of humanitarian actors not to jeopardise their protection mandates and how they can be held accountable is a critical concern that must be addressed by the CEDAW Committee since humanitarian actors may inadvertently contribute to the violation of the rights of women affected by conflict.

d. International Financial Institutions

Some of the most overlooked type of “actors” involved in conflict however are actually financial arrangements and structures that can fuel and shape conflict while blocking efforts by civil society organizations to advocate for the full protection and fulfillment of human rights.

The complexity of these relationships is reflected in situations where the UN has also become instrumental in enabling IFI engagement in post-conflict reconstruction through Chapter VII resolutions that allow their involvement in economic development post conflict. In addition, in the occupation of Iraq and UN administered peacebuilding operations IFIs have been brought in as advisors, and, in some instances, primary lawmakers.⁸ CEDAW must take note of the fact that international standards and national laws which might govern these actions are not fully developed. CEDAW must consider how these institutions can be made accountable for the protection and fulfillment of women and girls’ rights since this has not yet been elaborated and institutionalized.

The primacy of a neo-liberal approach has meant that other models of development that can protect the key sectors often most affected by conflict – i.e. agriculture, fisheries, the informal sector and the delivery of food security does not get addressed realistically. The emphasis instead, is focused on large-scale infrastructure development with the involvement of multinationals and the corporate sector.

Post-conflict transformation policies, promoted by the IMF and World Bank are often framed within the context of relief, rehabilitation and reconstruction and based on the

⁸ Boon, Kristen E. 2007. “Open for Business”: International Financial Institutions, Post-Conflict Economic Reform, and the Rule of Law.

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economics of the market, structural adjustment, globalization. However structural adjustment policies with their attendant devaluation of currency, decontrol of prices, deregulation of labour and privatisation of state institutions and services have had adverse gendered impact on women. If imposed with no safeguards this policy has serious repercussions on women's socio economic rights and security.

Development and post-conflict reconstruction policies underestimate the interconnections — political, economic, military and social — across borders which characterise many conflicts.

It must be noted that the IMF and World Bank are increasingly involved in multilateral peace building operations. IFI entry into post conflict activities in countries such as Afghanistan, East Timor, Iraq, and Kosovo, has been in part determined by Security Council resolutions. This indicates an important and developing legal relationship between the IFIs and the UN. *“In addition, the World Bank and the IMF have exercised broad de facto legislative powers through policy and technical assistance programs that have pushed their de jure mandates into domestic matters normally reserved to sovereign states. These expanding post-conflict activities illustrate the increasing relevance of IFIs not only to domestic law and legal reform but more broadly to international peace and security.”*⁹

We express concern over the impacts of international financial institutions such as the International Monetary Fund (IMF) and the World Bank in conflict settings. Many women's rights advocactes express frustration at the lack of transparency in funding, budgetary and investment strategies of multi-lateral financial institutions, leaving them unable to affect their governments commitments, and yet negatively impacted by those same commitments.

It has to be acknowledged that international financial infrastructures, including trade and loan agreements, are key factors in funding conflict or supporting repressive regimes. In addition since IFIs are mostly immune to domestic legislation, international accountability mechanisms must be established to ensure checks and balances.

There is an urgent need for further research and analysis as to how such diverse infrastructures and processes (multi and bi-lateral trade and aid) can be linked to the obligations of States parties under CEDAW to protect individual human rights.

30 June 2011

⁹ Boon, Kristen E. 2007. “Open for Business”: International Financial Institutions, Post-Conflict Economic Reform, and the Rule of Law.