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Centre for  
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Dialogue

*Mediation for peace*

# From clause to effect: including women's rights and gender in peace agreements

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and Antonia Potter Prentice

Women at the Peace Table **Asia Pacific**

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# Contents

Foreword .....	5
Acknowledgements .....	7
List of abbreviations .....	8
Introduction .....	10
Methodology .....	13
1. Agreements and themes explored in the report .....	15
2. Recommendations .....	20
General recommendations	20
<i>a) On language</i>	20
<i>b) On substance</i>	21
Thematic recommendations	22
<i>c) On power sharing</i>	22
<i>d) On resource sharing</i>	23
<i>e) On security arrangements</i>	24
<i>f) On access to justice</i>	25
<i>g) On monitoring</i>	25
3. Thematic analysis .....	29
Theme 1: Power-sharing	29
<i>a) Legislative, administrative and constitutional power</i>	29
<i>b) Recognition of women's human rights</i>	39

Theme 2: Resource-sharing	44
<i>a) Land rights</i>	45
<i>b) Access to, and control of, natural resources</i>	50
<i>c) Access to livelihood opportunities including income generation and compensation</i>	51
Theme 3: Security arrangements	56
<i>a) Women's involvement in the security sector and its reform</i>	58
<i>b) Courts</i>	63
<i>c) Mechanisms to prevent and prosecute conflict-related crimes involving SGBV</i>	64
Theme 4: Access to justice	67
<i>a) Truth commissions, tribunals and war crimes</i>	68
<i>b) Customary Law</i>	71
Theme 5: Monitoring	76
<i>a) Monitoring entities or bodies</i>	77
<i>b) Peacekeeping/armed monitors</i>	78
<i>c) The role of civil society</i>	79
Conclusion .....	82
Key resources .....	84
Annex 1: Summary case studies of the peace agreements .....	86
Annex 2: International norms on women, peace and security .....	102

## Foreword

Over a decade has passed since the adoption of UNSC Resolution 1325 in 2000 calling for greater integrated involvement of women in peace and security processes. Since then, with the support of governments, NGOs and a panoply of civil society organisations, more attention has been paid to women's participation – but tangible progress still remains to be seen.

As the Presidential Adviser to the Peace Process in the Philippines, now for the second time, I have been active in, and privy to, the many facets of our conflict resolution processes. Thus I know first-hand how women play a central role in pre-, post-, and ongoing conflict situations. However, I have also witnessed how women's participation and contributions are often under-recognised and thus under-utilised – even here in the Philippines where we are proud of our national gender architecture and the fact that we were the first nation in our region to produce a National Action Plan on UNSCR 1325.

From my first-hand experience, I am convinced that the inclusion of gender sensitivities in peace processes and peace agreements provides a unique

 This report, analysing six Asia Pacific peace agreements using a thorough checklist of technical comparative markers and clauses, is the first of its kind: a useful resource for mediators and practitioners, offering practical guidance that extends beyond our region to other global conflicts.”

chance for post-conflict peace-building to recognise the importance of women's roles in all aspects of peacemaking, not just as an end in itself, but in order to rebuild a more just society for everyone in that society – men and women, girls and boys.

Comprehensive peace agreements are a chance to start anew, to embark on new visions for fractured societies.

Ensuring that women's rights and concerns are part of peace agreements is vital, not just in the Philippines but in other conflicts around the world, where the neglect of gender and women's rights is unfortunately still all too prevalent. A peace agreement of course does not stand by itself – it's just one step on the road to building a just and sustainable peace – but it is a key opportunity to lay the groundwork for the inclusive, peaceful societies of which so many of us dream.

To make the most of the opportunities offered by a peace agreement drafting process, it is useful to have tools that draw on relevant comparisons. This report, analysing six Asia Pacific peace agreements using a thorough checklist of technical comparative markers and clauses, is the first of its kind: a useful resource for mediators and practitioners, offering practical guidance that extends beyond our region to other global conflicts. It offers a framework that can be used to analyse other agreements (past and future) in terms of gender sensitivity. The report shows that without turning every peace process into a gender battleground, there are opportunities, nuances and simple steps that can open up space for use by those implementing and monitoring an agreement and its aftermath in the future.

Here in the Philippines, we are proud to have achieved the new 2012 Framework Agreement on the Bangsamoro between our government and the Moro Islamic Liberation Front, our largest Muslim separatist group. That pride is deepened because of the involvement of several inspiring women on both sides in helping us get to this point. The agreement contains strong articles on women's participation, protection and rights, and we hope the lessons learned from this process, combined with those offered in this report, will help us to do even better in this regard when we reach the final agreement stage pledged for 2016.

It has long been my desire, and that of many of my friends and colleagues working together on all aspects of the Mindanao peace process, to see gender issues become a strategic part of our discussions. With this report, the Centre for Humanitarian Dialogue (a member of the International Contact Group for our peace process) offers us practical support to realise that desire, and I hope that others will take up the challenge and opportunity that it represents.

**Teresita “Ging” Quintos Deles**

Presidential Adviser to the Peace Process, Philippines

## Acknowledgements

The HD Centre is grateful for the support provided by the Australian Agency for International Development to the second phase of the 'Women at the Peace Table – Asia Pacific' from 2011-12. For more information on this project, please visit the HD Centre website at [www.hdcentre.org](http://www.hdcentre.org) (mediation support/gender and mediation).

## List of abbreviations

AFP	Armed Forces of the Philippines
AMM	Aceh Monitoring Mission
ARMM	Autonomous Region in Muslim Mindanao
ASEAN	Association of Southeast Asian Nations
BPA	Beijing Declaration and Platform for Action (1995)
BRA	Bougainville Revolutionary Army
BRR	Agency for the Rehabilitation and Reconstruction of Aceh
CA	Constituent Assembly (of Nepal)
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women (1979)
CHT	Chittagong Hill Tracts
CIS	Correctional Institutional Services (in Bougainville)
CMI	Crisis Management Initiative
CPA	Comprehensive Peace Accord
CTR	Commission for Truth and Reconciliation
DDR	Demobilisation, disarmament, reintegration
GAM	Free Aceh Movement
GoI	Government of Indonesia
GRP	Government of the Republic of the Philippines <sup>1</sup>
HD Centre	Centre for Humanitarian Dialogue
HWF	Hill Women's Federation

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1 While the usual acronym for the Government of the Philippines is GPH, the report uses GRP as this is the acronym used in the relevant peace agreement.

ICCPR	International Covenant on Civil and Political Rights (1966)
IMT	International Monitoring Team in the Philippines
JMC	Joint Monitoring Committee (in Mindanao)
JPUK	Women's Policy Network (in Aceh)
LoGA	Law on the Governing of Aceh
MILF	Moro Islamic Liberation Front
MNLF	Moro National Liberation Front
MoU	Memorandum of Understanding
NAP	National Action Plan
PCJSS or JSS	Parbatya Chattagram Jana Sanghati Samiti (in the CHT)
PMG	Peace Monitoring Group (in Bougainville)
PNG	Papua New Guinea
PNP	Philippines National Police
PPCC	Peace Process Consultative Committee (in Bougainville)
SARET	Special Autonomous Region of East Timor
SGBV	Sexual and gender-based violence
SPCPD	Southern Philippines Council for Peace and Development
SSR	Security sector reform
TJ	Transitional justice
TRCs	Truth and reconciliation commissions
UNDP	United Nations Development Programme
UNIFEM	United Nations Development Fund for Women (replaced in 2010 by UN Women)
UNOMB	United Nations Observer Mission on Bougainville
UNSCR 1325	United Nations Security Council Resolution 1325
UNSCR 1820	United Nations Security Council Resolution 1820

# Introduction

Globally, peace agreements have brought to an end many violent socio-political conflicts. However, as well as an ending, a peace agreement marks a new beginning. A peace agreement can lay out a new architecture for a fairer society – with restructured power relations, inclusive socio-economic policies, reformed security and justice systems, and participatory institutions. This process of ‘conflict transformation’, as it is called, involves replacing unjust structures and policies with processes and institutions that enable a society to deal with grievances or competing interests in a non-violent way.<sup>2</sup> Bringing perspectives and language which reflect the different views, experiences and needs of men and women to the drafting process is crucial, not only for advancing equal rights and entitlements for women, but also for creating a better, more inclusive and more sustainable peace.<sup>3</sup> Evidence-based analysis has demonstrated that, if the contribution, situation and rights of women are not specifically recognised in a peace agreement, they tend also to be overlooked in the post-war society.<sup>4</sup>

The negotiators of peace agreements are increasingly expressing interest in taking gender issues into account. There are several converging reasons for this: the local mobilisation of women’s groups, combined with international

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2 Anderlini, Sanam Naraghi and El-Bushra, Judy, with contributions by Maguire, Sarah, “The Conceptual Framework: Security, Peace, Accountability and Rights,” in *International Alert and Women Waging Peace, Inclusive Security, Sustainable Peace: a Toolkit for Advocacy and Action*, Volume 1, (Washington DC and London: Hunt Alternatives Fund and International Alert, 2004), pp. 5-14. Available at <http://www.inclusivesecurity.org/explore-resources/toolkit-for-advocacy-and-action/> Accessed 28 October 2012.

3 These are often referred to as ‘gender perspectives’ or ‘gendered perspectives’ or as demonstrating ‘gender sensitivity’.

4 See, for example, Chinkin, Christine, *Peace Agreements as a means for promoting gender equality and securing the participation of women*, Background paper for the UN Division for the Advancement of Women meeting of experts in Ottawa, Canada, 10-13 November 2003. Available at <http://www.un.org/womenwatch/daw/egm/peace2003/reports/BPChinkin.PDF> Accessed 10 July, 2012. Also Naraghi Anderlini, Sanam, *Women Building Peace: What they do, why it matters* (Colorado: Lynne Rienner, 2007).



... women have a substantive contribution to make, and ... peace and security are damaged by women's exclusion.”

civil society efforts and feminist analysis; and – stemming from this concerted and strategic civil society effort – the impact of UN Security Council Resolution 1325 (2000) on Women Peace and Security and its ‘sister’ resolutions 1820, 1888, 1889, and 1960 (hereafter referred to as UNSCR 1325 and related resolutions).<sup>5</sup> Other factors include growing feminist scholarship in this area and the current effort by the United Nations Committee on the Elimination of Discrimination against Women (CEDAW) to

draft a general recommendation on women in conflict and post-war situations. Such international guarantees recognise women's rights to a share of power and resources, to physical and psychological security, and to remedies and reparations. These are entitlements already in existence under international law; they should not, therefore, be regarded as simply ‘concerns’ or ‘needs’. These agreements also recognise that women have a substantive contribution to make, and that peace and security are damaged by women's exclusion. This rationale underlies the UN Secretary General's 2010 Seven-point Action Plan on Women's Participation in Peacebuilding.<sup>6</sup>

To create a peace agreement that recognises the inputs, views and needs of both women and men, close and constant attention must be given to how the agreement will affect each of these groups. This is essentially what it means to make an agreement ‘gender-sensitive’. Unfortunately, participants at the peace table – the parties themselves, mediators or facilitators, the international support community and civil society groups – often lack knowledge about what language to use to achieve this. Although this may not be the main point of the process, peace agreement drafters should build into their drafting process and into the text a commitment to women's political, economic, cultural and social equality, as well as their security in the post-conflict setting.

The Centre for Humanitarian Dialogue (the HD Centre) has produced this examination of six peace agreements to fill this gap. It is part of the HD Centre's

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5 Anderlini, Sanam Naraghi and Tirman, John, *What the Women Say: Participation and UNSCR 1325: A Case Study Assessment* (Cambridge MA: International Civil Society Action Network and MIT Center for International Studies, 2010). Available at [http://web.mit.edu/cis/pdf/WomenReport\\_10\\_2010.pdf](http://web.mit.edu/cis/pdf/WomenReport_10_2010.pdf) Accessed 25 October, 2012.

6 United Nations General Assembly Security Council, *Women's participation in peacebuilding: Report of the Secretary-General* (New York: United Nations, 7 September 2010), UN Document No. A/65/354–S/2010/466.



The report looks at how women's rights and gendered perspectives were included (or excluded) in the texts, and recommends alternative wording for provisions where improvements could easily be made.”

is to contribute to an understanding within the peacemaking community of how a gendered perspective might actually translate into text – and hence into opportunities for enhancing women's participation and better quality outcomes for peace processes.<sup>7</sup>

All peace processes are shaped by nuances known only to those intimately involved, which are not easily unearthed – especially years after the fact. The HD Centre consulted several individuals directly involved in the peace talks associated with these agreements; but it was not possible to do this comprehensively. Hence the descriptions of the conflict contexts presented in Annex 1 do not claim to offer a full analysis of each process. Nonetheless, they provide some discussion of the roles of women and the extent to which the different views, experiences and needs of women and men were, or were not, taken into account by the parties and those supporting them.

The texts of the agreements themselves have been collated and are available for reference at [www.hdcentre.org](http://www.hdcentre.org) (go to gender and mediation/Women at the Peace Table Asia Pacific/look for 2012 report).

‘Women at the Peace Table Asia Pacific’ project and applies a gender analysis to six agreements from the Asia Pacific region. It examines how the agreements deal with five recurring concerns in peace processes: power-sharing, resource-sharing, security arrangements, access to justice and monitoring. The report looks at how women's rights and gendered perspectives were included (or excluded) in the texts, and recommends alternative wording for provisions where improvements could easily be made. These alternative wordings are *presented in italics* throughout the relevant section of this report. The report does not aim to be exhaustive or definitive; instead it seeks to provide suggestions and a constructive critique. The intention

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<sup>7</sup> See, for example, Potter, Antonia, *G is for Gendered: Taking the mystery out of gendering peace agreements*, Centre for Humanitarian Dialogue Opinion Piece Series, (Geneva: Centre for Humanitarian Dialogue, 2011).

## Methodology

This report was written by an HD Centre-convened team that included Cate Buchanan, Adam Cooper, Lira Low, Rita Manchanda, Rebecca Peters and Antonia Potter Prentice. Christine Chinkin, Professor of International Law at the London School of Economics also provided substantive drafting and input. In addition two interns made significant contributions: Cody Griggers, through Rotary International, and Jamila-Aisha Sanguila, through the Asia Leaders Dual Campus Programme.

Interviews were held with key stakeholders in the peace agreement drafting processes where available. In a final round of reviews, local organisations and individuals with specific roles in monitoring or analysing peace agreement processes were also asked for their views. These included Miriam Coronel-Ferrer (Member of the Government of the Philippines Negotiating Panel for Talks with the MILF and the Department of Political Science, University of the Philippines), Jasmin Nario Galace (Coordinator, WE Act 1325 and Associate Director, Centre for Peace Education, the Philippines), Shadia Maharban (President, Women's League of Aceh – LINA), Natacha Meden (consultant, member of the Geneva Centre for the Democratic Control of Armed Forces International Security Sector Advisory Team), Carmen Silvestre (Ministry of Foreign Affairs, Portugal), Agnes Titus (UN Women, Bougainville), Francesc Vendrell (Adjunct Professor of International Relations, Johns Hopkins University SAIS Bologna Center, Italy), and Makarim Wibosono (Executive Director of the ASEAN Foundation).

Peer reviews and feedback were provided by Sanam Naraghi Anderlini (International Civil Society Action Network), Mohammed Abu-Nimer (Peacebuilding and Development Institute, American University), Leslie Dwyer (School for Conflict Analysis and Resolution, George Mason University), Prajuna KC (Alliance for Social Dialogue, Nepal), Lone Jessen and Solveig Knudsen (Mediation Support Unit, UN Department of Political Affairs), Kathleen Kuehnast (United States Institute of Peace), Kimberly Leary (Program on Negotiation at Harvard

Law School), Joyce Neu (Facilitating Peace), Irene Santiago (Mindanao Commission on Women), Jolynn Shoemaker (Women in International Security, Center for Strategic and International Studies), and Tobie Whitman (Institute for Inclusive Security). The report was also reviewed by staff of the Australian Agency for International Development coordinated by Rosemary Cassidy as well as Priscilla Hayner and Teresa Whitfield of the HD Centre.

We are grateful for the information and advice received from the reviewers and stakeholders; however, any errors or omissions in the report are the responsibility of the authors.

# 1. Agreements and themes explored in the report

This report reflects on six agreements from the Asia-Pacific region over the last 20 years. However, the analysis is of global relevance since the themes, types of clauses and language of these agreements are found in most peace processes elsewhere. The six agreements examined in this report are as follows:

- **Mindanao (1996)** – *Final Peace Agreement between the Government of the Republic of the Philippines and the Moro National Liberation Front.* This agreement represented a milestone for the Bangsamoro people, a Muslim minority in Mindanao. The Moro National Liberation Front (MNLF) arose from elements of the local population feeling disenfranchised from their ancestral lands and victimised by discriminatory development policies, political marginalisation, militarisation of the region, and erosion of their Islamic values by the Christian state. The peace agreement resulted in the official creation of an Autonomous Region of Muslim Mindanao (ARMM).
- **Chittagong Hill Tracts (1997)** – *Peace Accord between the Government of Bangladesh and the Parbatya Chattagram Jana Sanghati Samiti or United People's Party of the Chittagong Hill Tracts (PCJSS, also known as JSS).* This agreement brought to an end 22 years of violent ethnic conflict between the largely Buddhist indigenous people of the Chittagong Hill Tracts (CHT) and the Bengali Muslim settlers backed by the Government of Bangladesh. The indigenous people, accounting for a little more than 1% of the population but with claims to 10% of the land area on the basis of their original territorial tribal homeland, had been systematically dispossessed and displaced by development projects that made 40% of them refugees. The Accord recognised the CHT as a “tribal inhabited area”, and promised the hill people regional autonomy and control over resources.

- **East Timor (1999)** – *Agreement between the Republic of Indonesia and the Portuguese Republic on the Question of East Timor*. The Agreement reflected the Indonesian and Portuguese positions on the desired end state for East Timor as a former colony of each. It laid out a constitutional framework for the creation, within Indonesia, of a Special Autonomous Region of East Timor (SARET) – subject to approval by the Timorese population. While Timorese people participated in the drafting through consultation, they were not signatories to the Agreement. Eventually when the referendum was held, the Timorese voted against special autonomy in favour of becoming an independent nation, creating Timor-Leste. As a result, the scheme outlined in the Agreement was never implemented.
- **Bougainville (2001)** – *Peace Agreement between the Government of the Independent State of Papua New Guinea and leaders representing the people of Bougainville*. After a decade of civil war and violent clashes over resources, the Agreement resulted in the establishment of an autonomous regional government within Papua New Guinea (PNG). It also set the terms of a weapons disposal programme and outlined the conditions for a referendum on the question of Bougainville’s independence, to be held at an as yet unspecified date between 2015 and 2020. Thus the Agreement should not be viewed as a final outcome but, rather, as the blueprint for a much longer phase of peacebuilding and reconciliation that continues today.
- **Aceh (2005)** – *Memorandum of Understanding between the Government of the Republic of Indonesia and the Free Aceh Movement*. After the 2004 tsunami left Aceh in almost total ruin, the urgent need to rebuild led the Government of Indonesia (GoI) and the Free Aceh Movement (GAM) to sign the MoU, which was brokered over seven months in Helsinki by former Finnish President Martti Ahtisaari, building on facilitation over many years by the HD Centre. The agreement garnered international acclaim for putting an end to 30 years of violent tensions which had been impervious to previous attempts at reconciliation.
- **Nepal (2006)** – *Comprehensive Peace Accord between the Government of Nepal and the Unified Communist Party of Nepal (Maoist)*. The Comprehensive Peace Accord (CPA) ended ten years of war, bringing the Maoists into democratic politics and ending the feudal order presided over by the monarchy. All state powers and property previously vested in the monarchy were taken over by the government. The “new Nepal” promised federal restructuring of the unitary state and an end to discrimination on the basis of class, ethnicity, caste, region and gender.

The agreements all concern intra-state as opposed to inter-state conflict. Although the proposals contained in one agreement, Timor-Leste, were never implemented, the text still provides a useful example for analysis, especially as the UN was heavily involved in this agreement. The agreements cover colonial and post-colonial conflicts, ethno-nationalist and revolutionary class struggles. Half the agreements were concluded after UNSCR 1325, but there is little evidence of the resolution's impact on the texts agreed.<sup>8</sup> All the states involved in these agreements had ratified CEDAW; however the analysis suggests this had little influence on the content of the agreements.

Apart from the CHT Accord, all the agreements had some involvement by the international community: international mediation or facilitation (in Aceh and Nepal); the participation of the UN and its agencies (in Timor-Leste and Nepal); or the involvement of an international grouping of states (in Bougainville and Mindanao). In one agreement a woman was supporting the negotiating team as an adviser (Aceh), but women did not directly negotiate any of the agreements. The agreements were signed by a combined total of 34 eminent individuals, including just one woman: Ruby Mirinka, described in the signature section of the Bougainville Agreement as “representative of Bougainville women”, although she had not had a role in negotiations.

## Themes explored in the report

The analysis of the peace agreements is based on five themes:

- **Power-sharing** – covering legislative, administrative and constitutional power; and explicit recognition of women's human rights.
- **Resource-sharing** – covering land rights; access to, and control of, natural resources; and access to livelihood opportunities including income generation and compensation.
- **Security arrangements** – covering security sector reform; courts; and mechanisms to handle, prevent and prosecute conflict-related crimes involving sexual and gender-based violence (SGBV).

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8 For a comprehensive analysis of the impact of UNSCR 1325 on peace agreements, see Bell, Christine and O'Rourke, Catherine, “Peace Agreements or Pieces of Paper? The Impact of UNSC Resolution 1325 on Peace Processes and their Agreements,” *International and Comparative Law Quarterly* Volume 59, Issue 4 (2010), pp. 941-980. For a policy-focused version see Bell, Christine and O'Rourke, Catherine, *UN Security Council Resolution 1325 and peace negotiations and agreements*, Centre for Humanitarian Dialogue Opinion Piece Series (Geneva: Centre for Humanitarian Dialogue, 2011).

- **Access to justice** – covering truth commissions, tribunals and war crimes; and justice under customary law.
- **Monitoring** – covering monitoring entities or bodies; peacekeeping or armed monitors; and the role of civil society.

These five headings were chosen on the basis that they are standard, or frequently occurring, elements in peace agreements, and have broad applicability. The role of women's rights or gender in some of these thematic areas has not yet received extensive research attention, in contrast to topics such as conflict-related SGBV or disarmament, demobilisation, and re-integration (DDR).<sup>9</sup> Access to justice is receiving increasing attention,<sup>10</sup> and economic resource-sharing and monitoring are also emerging as important new areas of work within the UNSCR 1325 and CEDAW monitoring processes.<sup>11</sup>

Such a thematically structured analysis carries the risk of reinforcing a top-down, linear or 'one size fits all' approach to peace agreements and peace processes, which are in reality organic, complex and often characterised by highly differentiated phases. In an attempt to avoid that approach, this report makes suggestions for what could have been done differently in these texts, while

“ . . . this report makes suggestions for what could have been done differently in these texts, while recognising that circumstances may not allow every suggestion to be taken up in future cases.”

9 There are substantial analyses and guidelines on the role of women's rights and gender in areas such as peacebuilding and the reconstruction phase, for example in Anderlini, Sanam Naraghi and Conaway, Camille Pampell, "Disarmament, Demobilisation, Reintegration," in International Alert and Women Waging Peace, *Inclusive Security, Sustainable Peace: a Toolkit for Advocacy and Action*, Volume 3, pp. 1-10 (Washington DC and London: Hunt Alternatives Fund and International Alert, 2004). While further work still needs to be done on how best to treat those topics in peace agreement drafting, this report targets other themes which have, to date, received less attention in terms of gendered perspectives.

10 See, for example, *UN Women, Progress of the World's Women 2011-12: in pursuit of justice* (New York: United Nations, 2010) and *UN Women, A Window of Opportunity: making transitional justice work for women* (New York: United Nations, 2010).

11 For example, the CEDAW Committee's Asia Pacific Consultations in April 2012 on Women and Armed Conflict emphasised these concerns as a new area of focus. In addition, UNSCR 1889 (2009), steered by Vietnam, specifically focuses on the economic rights of women in post-conflict situations. Access to justice in the context of SGBV is increasingly emphasised in discussions about transitional justice. See, for example, the Summary Report of the Committee on the Elimination of Discrimination Against Women's Day of General Discussion on "Women in conflict and post-conflict situations" (New York: UN Office of the High Commissioner for Human Rights, 18 July, 2011). Available at <http://www2.ohchr.org/english/bodies/cedaw/docs/Discussion2011/SummaryReportCEDAWWomenInConflict.pdf> Accessed 10 July, 2012.

recognising that circumstances may not allow every suggestion to be taken up in future cases. The analysis demonstrates how international guarantees of women's rights are relevant and applicable across all the themes, and reminds peacemakers of two key facts:

- Women's participation and the use of a gendered perspective improves the equality, quality, inclusivity and sustainability of the peace;<sup>12</sup>
- Ensuring women's security (and their access to relevant remedies) is not merely about their 'concerns' or 'needs' but their entitlements under international law.

This report recognises the importance of context and process in the production of peace agreements, and a limited analysis is provided in Annex 1 of each conflict situation. However, the focus of this report is on the language of the peace agreements themselves.

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12 UN General Assembly Security Council, 2010.

## 2. Recommendations

### General recommendations

Some general points on language and relevant substance emerged from the analysis, including:

#### a) On language

- Consistent use of male pronouns should be replaced by inclusive terminology, such as in English ‘s/he’.
- Gender-neutral language can be one way to disguise exclusion, so it is preferable to use specifically inclusive terminology (‘men and women of Aceh’ rather than ‘people of Aceh’, for example). There is a difference between clauses directly aimed at or about women (for example, addressing female victims of sexual and gender-based violence) and provisions which appear gender-neutral, but whose consequences are actually gendered (for example, clauses affecting ‘combatants’, who may be men or women).
- Where women’s rights are affected by a clause, determinative language such as ‘will’ or ‘must’ is preferable over ‘should’, ‘may’ or ‘where appropriate’ as it gives the clause more strength.
- Consider carefully the pros and cons of specificity versus ambiguity. Specificity can be useful because it provides concrete, measurable targets; but it can also limit progress (for example, in cases where minimum standards such as numerical quotas become the ceiling rather than the floor). Ambiguity can leave

“Consider carefully the pros and cons of specificity versus ambiguity.”

space for interpretation, which can be useful or risky, depending on who has the power to interpret it.

## b) On substance

- In recommendations on the composition of commissions and other key bodies, this report uses the gender parity principle: that a minimum of 40% from each sex should comprise the membership of any given body. While a principled stance would put the percentage at 50%, and the ‘industry standard’ is to use 30%, the parity principle is a compromise between the ideal and what is practical in the short to medium term. Any quota should be clearly framed as a minimum to avoid it being interpreted as a maximum: for example, ‘at least three seats on the Commission’ rather than simply ‘three seats on the Commission’. In places where sufficient numbers qualified women are not yet available, the principle should remain in force, and support programmes put in place to accelerate women’s education and capacity building to be able to take up such positions, or to provide them with support when in place.
- Blanket amnesties for crimes during conflict are problematic, because they can deny women justice for past violence and protection from future abuse.<sup>13</sup> Amnesties for international crimes (war crimes, crimes against humanity, and genocide) are considered unacceptable by the United Nations, and in most cases are a violation of a state’s international obligations.<sup>14</sup>
- None of the agreements examined mentions post-war gun control laws or policies, which are important in reducing violence against women. Although this was not a theme for analysis in this report, it stands as a general recommendation that peace agreements should contain provisions on the control of small arms and light weapons, and women’s participation in initiatives to manage and regulate arms.<sup>15</sup>

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13 See e.g. Anderlini, Sanam Naraghi, Conaway, Camille Pampell and Kays, Lisa, “Transitional Justice and Reconciliation,” in *Inclusive Security, Sustainable Peace: A Toolkit For Advocacy and Action*, Volume 4, (Washington DC and London: Hunt Alternatives Fund and International Alert, 2004), pp. 1-15.

14 United Nations Security Council, *The rule of law and transitional justice in conflict and post-conflict societies: Report of the Secretary-General*, Document S/2004/616, (23 August 2004). Available at <http://www.unrol.org/files/2004%20report.pdf> Accessed 30 October 2012.

15 Barr, Corey and Masters, Sarah, “Making programmes more effective,” in *Why Women? Effective engagement for small arms control* (London: IANSA Women’s Network, October 2011), pp.19-20. Note that the Philippines National Action Plan on UNSCR 1325 does address the topic of small arms control.

- Another element to consider is a mechanism to ensure or track funding for women’s participation in implementation or monitoring, along the lines of gender budgeting.<sup>16</sup> None of the agreements examined contained such mechanisms, which are useful for ensuring follow-through and accountability.<sup>17</sup> In the Philippines, women’s rights groups have advocated for funding for peacebuilding to be administered in a way which takes gender into account (and thus ensures that women control some of those funds) but so far only an estimated 10% of peacebuilding funds have gone to organisations focused on women’s rights.<sup>18</sup>
- When drafting text on the security of those in vulnerable and risky situations (for example, displaced women on the move) it is important to provide for confidence-building measures which will make those groups feel safer. Security is about freedom from the fear of violence as well as freedom from actual violence.<sup>19</sup> Common confidence-building measures include transparency and information mechanisms and joint activities between members of groups who were on opposite sides of the conflict.

“Security is about freedom from the fear of violence as well as freedom from actual violence.”

## Thematic recommendations

### c) On power sharing

- Specify minimum quotas for women on key bodies. The leadership of one woman, or a small number of women, is not a guarantee that gender

16 “A gender budget is not a separate budget for women. It is an approach which can be used to highlight the gap between policy statements and the resources committed to their implementation, ensuring that public money is spent in more gender equitable ways.” Definition from the Women’s Budget Group *What is gender budget analysis?* Available at [http://www.wbg.org/GBA\\_What.htm](http://www.wbg.org/GBA_What.htm) Accessed 5 October, 2012.

17 See, for example, the analysis and recommendations in Cabrera-Balleza, Mavic and Popovic, Nicola, *Costing and Financing 1325: Examining the Resources Needed to Implement UN Security Council Resolution 1325 at the National Level as well as the Gains, Gaps and Glitches on Financing the Women, Peace and Security Agenda* (New York: Cordaid and Global Network of Women Peacebuilders, 2010).

18 Margallo, Sonia, “Addressing Gender in Conflict and Post Conflict Philippines,” *Social Development Papers: Conflict Prevention and Reconstruction*, Number 20, (Washington DC: World Bank, 2005), p.31.

19 Human Security Centre, *Human Security Report 2005: War and Peace in the 21st Century* (New York/Oxford: Oxford University Press, 2005), pp. 47-48.

concerns will be taken into account when power is shared. A ‘critical mass’ of women’s representation at all legislative, administrative and constitutional levels is required to make a difference – at least 30–35% of the total number of representatives, according to CEDAW.<sup>20</sup> For more on quotas, see Box 2 on “From Rarity to Parity – Are Quotas the Answer?”

- Where quotas are specified for other identity groups such as indigenous groups, quotas for women within these should also be specified.
- Provide for training on gender awareness and sensitivity for all members of key bodies.
- Refer to women separately, not as part of other ‘minority’ or ‘marginalised’ groups. For example, avoid phrases such as ‘church, youth, minority groups and women’ or ‘women and children’s rights’.
- Consider establishing an agency with the power and resources to monitor and implement gender equality and mainstreaming throughout a peace process.
- Use the phrase ‘women and men’ rather than ‘people’.
- In preambles or relevant parts of the agreement, assert compliance with international human rights law and norms, in particular CEDAW, UNSCR 1325 and related resolutions, and the Beijing Platform for Action.
- Ensure that women are conceptualised in the text as productive contributors to the new society, and not only as people whose problems need resolving.

“ A ‘critical mass’ of women’s representation at all legislative, administrative and constitutional levels is required to make a difference.”

#### **d) On resource sharing**

- Specify women’s entitlements within categories such as ex-combatants, survivors and internally displaced people.

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20 The CEDAW Committee’s General Recommendation No. 23 (16th session, 1997) noted: “The critical issue, emphasized in the Beijing Platform for Action, is the gap between the de jure and de facto, or the right as against the reality of women’s participation in politics and public life generally. Research demonstrates that if women’s participation reaches 30 to 35 per cent (generally termed a ‘critical mass’), there is a real impact on political style and the content of decisions, and political life is revitalized.” <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm> Accessed 3 October, 2012.

- Recognise that livelihood opportunities may be different for male and female ex-combatants, and ensure a range of options are offered in implementation.
- Include specifically designed benefits and assistance for surviving families of ex-combatants (often headed by single women and/or widows), including policies to ensure their access to employment, microfinance, investment opportunities, and control of the means of production.
- Establish national and regional mechanisms for gender mainstreaming in all sectors of economic development, and commit to gender-responsive budgeting.<sup>21</sup>
- Analyse existing laws and any planned surveys, mapping projects or land proposals to establish how they affect men and women differently.
- Require land or property commissions to have at least 40% representation of each sex, and to train members to understand the different impacts on men and women of land and property rights decisions
- Ensure at least 40% representation of each sex at international donor and reconstruction conferences.

## **e) On security arrangements**

- Recognise both male and female ex-combatants, and make specific provisions relevant to their various needs. This includes ensuring a wide definition of combatant to incorporate the roles women and girls undertake as part of fighting forces.
- Bodies set up to monitor (DDR) or security sector reform (SSR) programmes should have at least 40% representation of each sex. Such bodies should work in a manner that is gender inclusive (training should be provided if necessary).
- Include women in the design of DDR and SSR programmes.
- Stipulate representation of women at all levels in the judiciary, armed forces and police.
- Require training for security sector personnel in relation to the prevention and prosecution of sexual and gender-based violence (SGBV) in line with UNSCRs 1325, 1820 and related resolutions.
- Prioritise the prevention and prosecution of future SGBV crimes a priority, in line with international law.

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21 See footnote 16 for a description of gender budgeting.

## f) On access to justice

- Agreements should be in line with international humanitarian, human rights and criminal law, specifically referencing the agreements, including UNSCR 1325 and related resolutions.<sup>22</sup> Regional and national human rights protections could also be mentioned.
- Avoid broad amnesties and be aware of the effect of any proposed amnesty on women's access to justice and security.
- Bodies dealing with justice issues should include at least 40% representation from each sex.
- Where customary law may limit women's rights, mention existing commitments under national and international law that safeguard and support those rights.
- Where the formal system of justice is prioritised over the customary one, ensure that any customary practices that empower women are incorporated into the new model.
- In Islamic contexts, seek the advice of Islamic legal experts, including feminist and female experts, on context, interpretation and appropriate wordings.

“ In Islamic contexts, seek the advice of Islamic legal experts, including feminist and female experts, on context, interpretation and appropriate wordings.”

## g) On monitoring

- Specify gender parity in representation on any monitoring or implementation bodies.
- Make training on gender issues and in particular SGBV mandatory for members of any bodies.
- Include local women's organisations in monitoring teams, or support them to set up their own teams.

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22 In terms of women's rights the principal United Nations agreements are the Universal Declaration of Human Rights, International Covenant on Civil and Political Rights (ICCPR); International Covenant on Economic, Social, and Cultural Rights (ICESCR); Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and its Optional Protocol; Declaration on the Elimination of Violence Against Women; UN Security Council Resolutions 1325, 1820, 1888, 1889 and 1960; Beijing Declaration and Platform for Action (BPA).

- When referring to civil society as a group to be included or consulted, make specific reference to women's groups.

In addition to these recommendations, Box 1 offers general suggestions for mediators and their teams on how to approach the issues of women's rights and gender in peace agreement negotiations and drafting.

## Box 1: Suggestions for mediators

These suggestions offer some practical pointers for mediators and those supporting them in negotiation and drafting processes.<sup>1</sup> Mediators, advisers and support teams, as well as their respective institutions, may have different interpretations of their roles in supporting the negotiations and the extent to which interests, concerns or values which are not priorities for the conflict parties can be brought in. Thus, the following pointers offer options for those in mediating roles to consider, whether or not they feel that the issues expressed in UNSCR 1325 can be addressed openly at any given stage of a process:

### Mediation team composition and tasks

- If the mediator is male, appoint a senior woman in the mediation team.
- Ensure a gender balance in the mediation team.
- Include female experts on substantive topics, in addition to gender experts (who may be male or female).
- Review existing relevant national law alongside international law and norms for gender-specific language and ideas that can be incorporated into an agreement, and look for opportunities to discuss this at the negotiating table. Draw on the resources of the UN Peacebuilding Support Office,<sup>2</sup> including the Secretary-General's 2010 Report on Women's Participation in Peacebuilding.
- Ensure conflict mapping integrates a gender perspective. This includes understanding the gains women may have accrued during conflict (roles in fighting forces, increased leadership in the community or home, increased economic, or other forms, of control) and not only their losses (death of family members, suffering violence or deprivation).
- Incorporate international standards such as CEDAW and UNSCR 1325 and related resolutions when drafting the rules of procedure for the talks, as well as the text of the agreement.
- Make training on gender available to anyone in your own team or others who may not yet understand the concepts, international norms and significance of the issues. Different groups (for example, armed groups or representatives of the government, civil society or international supporters of the process) may need the training to be presented in different ways.<sup>3</sup>
- Ensure support groups such as 'groups of friends' or 'international contact groups' understand, and help support compliance with, the norms on this issue.
- Allocate specific funding for these activities and/or seek dedicated contributions from donors for this aspect of the process.

1 These are largely drawn from HD Centre publications including: *Peacemaking in Asia and the Pacific: Women's participation, perspectives and priorities* (Geneva: Centre for Humanitarian Dialogue, 2011) and Potter Prentice, Antonia, "Gender and Mediation", a chapter in the forthcoming *A Handbook for AU Practitioners, Volume 1* (Addis Ababa: African Union, forthcoming) as well as from suggestions by Christine Chinkin during her review and input into this report in June 2012.

2 The UN Peacebuilding Support Office (PBSO) was established in 2005 to sustain peace in conflict-affected countries by garnering international support for nationally owned and led peacebuilding efforts. The PBSO has women's participation in peace processes high on its agenda. For further information see, <http://www.un.org/en/peacebuilding/pbso/policy.shtml> Accessed 31 October 2012.

3 The HD Centre, the Institute for Inclusive Security, swisspeace and UN Women are examples of international organisations able to provide substantive training.

### **In dealing with the parties**

- Consider which conflict actors might be open to raising this issue, how to help them do it and how to deal with any concerns they might have.
- Assess the likelihood of quotas being accepted in key peacebuilding and state-building bodies (constitutional drafting committees, electoral commissions, truth and reconciliation commissions, judicial commissions, reparations commissions as well as parliaments/assemblies); and suggest quotas (or support a more appropriate actor to do so) across all such bodies. While a good practice recommendation is the parity principal (40% minimum of each sex), quotas of 30% are the current norm. Bear in mind the quota should act as a minimum not a cap.
- Identify comparative situations (similar conflict type, cultures, religions, levels of development of civil society and language) and identify relevant civil society or policy experts from those situations who could share experience with the mediation team, with conflict parties and/or with other actors who may be better placed to influence the conflict parties.
- Examine the logistics of the process to identify practical obstacles to the involvement of women (for example, safe transport; childcare; breastfeeding facilities; appropriate sleeping, washing and toilet arrangements; translation and interpretation; and appropriate timing for sessions) and address any obstacles in advance.

### **Consulting and engaging with women**

- Find out what women of different backgrounds in the affected situation actually think and want through consultations, focus groups and community-based discussions. Ask women's groups for their views on the whole process, including their perception of their own security needs (in terms of participating in the peace process as well as its outcome).
- Identify a local champion who has a reputation for neutrality (ideally a well-known person, either man or woman) who can be a visible leader in activities such as consultations, convening civil society, and helping to produce papers on technical issues.
- Ensure that accreditation processes (for attending or observing talks) are open to women and they know how to access them.
- Arrange for female representatives to attend international donor conferences, as well as helping them, and their male counterparts, prepare for such events. International conferences are an important opportunity to include women and their perspectives in discussions on priorities in peacebuilding and reconstruction; the challenge is to make this genuine engagement, with women being supported to participate as equals, rather than simply ensuring they are present.
- Look for ways to get women or their views to the negotiating table through quotas, offering incentives, and providing logistical/funding support.
- Identify opportunities to engage male participants in discussions about the value of women's participation and/or perspectives.

### **Media and communications**

- Use IT, social media and traditional methods of communication creatively to reach women's groups to alert them to the process, its importance, and the ways they can become involved.
- Show leadership and model good behaviour by ensuring respect for women in public meetings, using gender-sensitive language, and not allowing inappropriate language or behaviour from others.
- Include reference to women's rights when briefing the media about the progress of the process. Suggest that journalists covering the process seek out the views of female delegates and observers.

### 3. Thematic analysis

This section briefly describes each theme, indicates how it was treated in the peace agreements, and provides examples of how the text could have been written in a gender-sensitive way. The ‘better practice’ examples are in bold for ease of reference.

#### **Theme 1: Power-sharing**

Power-sharing is commonly used in conflict resolution both as a temporary and a more lasting solution. It attempts to ensure that representatives of all significant groups in the community have a role and responsibility in political decision-making – not only in the executive but also the legislature and the other key institutions of state such as the judiciary, civil service, police and the army.<sup>23</sup> Given the persistent exclusion of women from power in most cultures, power-sharing between men and women should be part of peace efforts. All levels of government (central/national, regional/provincial and city/local) should be included. This may require capacity-building, taking action to redress past imbalances and the creation of new institutions to promote gender equality.

Power-sharing can be expressed in peace agreements through provisions on topics such as elections, legislatures, administrative or policy committees, constitutions and human rights. In terms of representation, this report recommends the parity principle, which aims for 40% minimum of each sex in any decision-making body.

#### **a) Legislative, administrative and constitutional power**

**The Mindanao Peace Agreement** mentions women once, in Article 25 relating to the composition of the legislature for the new Autonomous Region in Muslim Mindanao (ARRM):

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23 See, for example, Papagianni, Katia, *Power-sharing as a conflict resolution tool* (Geneva: Centre for Humanitarian Dialogue, 2011).

24. The Legislative Assembly shall be composed of members elected by popular vote, with three (3) members elected from each of the Congressional Districts.
25. There shall be sectoral representatives in the Legislative Assembly whose number shall not exceed fifteen percent (15%) of the total number of elected Members of the Legislative Assembly coming from the labor, disabled, industrial, indigenous cultural communities, youth, women, non-government organizations, agricultural, and such other sectors as may be provided by Regional Law to be appointed by the Head of the Autonomous Government from among the nominees of the different sectoral groups;

“ . . . women are one of many in a broad contingent of “sectoral groups” – an insufficient categorisation for one half of the population.”

Here, women are one of many in a broad contingent of “sectoral groups” – an insufficient categorisation for one half of the population, and one which denies women their due support in political participation. A more inclusive formulation would have required women to be integral to the make-up of the legislature:

24. The Legislative Assembly shall be composed of members elected by popular vote, with three (3) members elected from each of the Congressional Districts. *The candidates put forward by political parties and the membership of the Assembly shall comprise at least 40% representation of each sex.*

Women could then be removed from the list of “sectoral groups” in Article 25.

Percentages of women in the Regional Legislative Assembly rose from 4% to 26% from 1990 to 2012.<sup>24</sup> In 2009, 13 years after the agreement, the first female Speaker was elected to the Legislative Assembly from the ARMM – she was noted peace advocate Rejie Sahali-Generale.<sup>25</sup> While the upwards trend of the numbers is positive, this could have been speeded up and reached parity had the initial figures been set as baselines rather than caps on participation, and had there been quota specifically to promote women.

24 Email correspondence between the authors and the offices of Irene Santiago and Rejie Sahali-Generale, November 2012.

25 Unson, John, “ARMM Assembly elects first woman Speaker,” *The Philippine Star*, 10 May, (2009). Available at <http://www.philstar.com/article.aspx?articleid=464575> Accessed 8 July, 2012. The next elections are due in May 2013 and currently seven of the 27 members (26%) of the Legislative Assembly are women.

The Agreement missed many other opportunities to include women in the leadership of the ARMM. For example, Article 4 establishes a Southern Philippines Council for Peace and Development (SPCPD), tasked with formulating long-term development plans for the ARMM, including administration of funds from the national government. The SPCPD is composed of “one (1) Chairman, one (1) Vice Chairman and three (3) Deputies, one each representing the Muslims, the Christians, and the Indigenous Peoples.” Requiring at least two of these five positions to have been filled by women, and providing training to all five of them on women’s rights and how to include a gender perspective in their work could have made this important Council gender-inclusive.

In some parts of the Agreement, which was written in English, the inclusive ‘s/he’ pronoun form is used, indicating that the drafters of the Agreement anticipated a role for women (for example, in Articles 34 and 35 on candidates for election). However, at the higher levels of power and authority, the male pronoun is exclusively used, for example, in reference to the Chairman of the SPCPD, the Chief Executive of the Legislative Assembly, the Head of the Autonomous Government, and the President of the Philippines. Using the inclusive pronoun throughout would have been preferable – and not unrealistic in the Philippines, where women occupy positions at the highest levels across government.

**The Chittagong Hill Tracts (CHT) Peace Accord** devotes extensive attention to local administrative bodies. Three existing Local Government Councils (Rangamati, Bandarban and Khagrachari) were replaced by new Hill District Councils, which control the transfer or lease of lands, forests, hills and bodies of water. They are also responsible for local police, youth welfare, tribal law, tourism, environmental preservation and the licensing of local businesses. A Regional Council was established to supervise and co-ordinate the three Hill Districts.

The CHT is an ethnically diverse region with 13 indigenous tribal groups as well as ‘non-tribal’ residents and settlers. Accordingly, in the District and Regional Councils, the Chair and two-thirds of the members must be indigenous.<sup>26</sup> The Accord also imposes a quota for women: three seats in each District Council as well as in the Regional Council. Of the three women, two are to be elected from the indigenous population, and one from the non-tribal population. The quota gives women 10% of places in the 30-member District Councils, and 14% of the 22-member Regional Council. This mirrors the situation in Bangladesh’s

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26 The definition of ‘tribal’ is based on old Local Government Council laws, for example, in Rangamati it means “any member of the Cakma, Marma, Tanchang, Tripura, Lusai, Pankhu or Kheyon tribe residing permanently in the Rangamati Hill District” (Rangamati Hill District Local Government Parishad Act, 1989).



Members of Bangladesh Women's Association stage a street rally in Dhaka on November 23, 1997, demanding early signing of a peace accord for the insurgency in southeastern Chittagong Hill Tracts.

© Reuters/Rafiqur Rahman

National Assembly, which has a quota of 50 reserved seats for women in a 345-strong house (14%).<sup>27</sup> Bangladesh's local governments (such as *Union Parishad*) have 33% reservations for women.

The national Ministry on Chittagong Hill Tracts Affairs must be headed by an indigenous person. Ethnic and tribal diversity is also required in the 12-member Advisory Council assisting the Ministry; however, no seats are reserved for women. Earmarking seats for women on this Advisory Council would have guaranteed a channel for CHT women to voice their concerns at the national level.

Another missed opportunity was representation in the national Parliament, where indigenous women's groups in the CHT feel they have no voice.<sup>28</sup> Given the established use of quotas in Bangladesh, the Accord could have recommended a quota of parliamentary seats from the CHT provinces for women in general, and for indigenous peoples including women.

Bangladesh has women in several top positions in government and politics, including (as of December 2012) the Prime Minister, the Opposition leader, the Foreign Minister, the Home Minister and the Convenor of the CHT Accord Implementation Committee (none of these women are of indigenous origin). This

27 In 2011, the 15th Amendment to the Constitution raised the quota from 45 to 50 seats.

28 Chanchana Chakma, Chanchana "Women Invisible in CHT Accord," in Mohaiemen, Naeem (Ed.), *Between Ashes and Hope: Chittagong Hill Tracts in the Blind Spot of Bangladesh Nationalism* (Dhaka: Drishtipat Writers' Collective, 2010), p.182.

has not translated into gender-sensitive policies for implementing the CHT Peace Accord, showing that the presence of women in high positions is not enough.

**The East Timor Peace Agreement** does not contain power-sharing or specific roles for women. Article 25 proposes a legislative assembly – the Regional Council of People’s Representatives of the Special Autonomous Region of East Timor (SARET) – and stipulates that eligibility for membership should not be subject to “racial, ethnic, religious, nationality or other requirement”. Discrimination based on gender could similarly have been prohibited; and/or a gender quota could have been created:

25. Members of the Regional Council of the People’s Representatives of the SARET shall be persons who fulfil the eligibility requirements for membership *and should comprise a minimum of 40% representation from each sex*. Apart from this stipulation, no racial, ethnic, religious, nationality, *sex, gender*, or other requirement unrelated to the exercised of the functions of a member of the Council shall be imposed.

Other potential opportunities for including text relating to gender parity would have been in the list of candidates for Governor of the Regional Council (Article 28); membership of the Land Commission (Articles 24, 42, 41), the Governor’s Advisory Board (Article 26), the Judicial Commission (Article 41) and the judiciary itself (Article 42); the selection of senior officials (Article 30); and the recruitment of police (Article 34).

The parties to the East Timor Peace Agreement were the nations of Portugal and Indonesia, and the agreement predated UNSCR 1325. At the time of drafting the Agreement both countries involved had already ratified CEDAW, but neither CEDAW nor the Beijing Platform for Action (BPA) are mentioned in the Agreement.

In 2002, three years after the Agreement, Timorese women developed a Women’s Charter of Rights. In 2006 they campaigned for a 30% women’s quota in the parliament, and secured a law requiring that 25% of candidates be female.<sup>29</sup> As a result, Timor-Leste now ranks 16<sup>th</sup> in the world in terms of women’s participation in parliament.<sup>30</sup>

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29 According to the Quota Project Global Database for Women, operated by International IDEA, the Inter-Parliamentary Union and Stockholm University available at <http://www.quotaproject.org/uid/countryview.cfm?CountryCode=TL> Accessed 25 October, 2012.

30 Timor-Leste’s parliament was 38.5% female, ranking 16th on the International Parliamentary Union’s “Women in National Parliaments” World Classification page: <http://www.ipu.org/wmm-e/classif.htm> (data up to 30 September 2012). Accessed 25 October, 2012.

**The Bougainville Peace Agreement** contains one mention of women, as one of several “special interests” that “may” be represented in the new legislature:

28. The Bougainville Constitution will provide that the institutions of the autonomous Bougainville Government will include a legislature which shall be a mainly elected body, but may also include members appointed or elected to represent special interests, such as women, youth, churches.

Since women make up half the population, they should not be considered a special interest. An alternative wording could have made this clause strongly supportive of women:

28. The Bougainville Constitution will provide that the institutions of the autonomous Bougainville Government will include a legislature, *which shall be mainly chosen by open election, but will also include members appointed or elected specifically to represent the women of Bougainville.*

The Agreement does not specify the size of the legislature, but it could have proposed a goal of gender parity (40% representation of each sex) among the legislators or among the candidates nominated by political parties.

Articles 14–20 set up a Constitutional Commission to write the new charter for autonomous Bougainville, as well as a Constituent Assembly to allow popular input into the drafting process. The Commission was to be “broadly representative of the people of Bougainville” (Article 16), with a mandate to “consult widely with the people of Bougainville” (Article 17). Likewise, the Constituent Assembly would be representative of “the people of Bougainville” (Article 18). Replacing “people of Bougainville” with “women and men of Bougainville” would have communicated support for gender balance in the all-important constitutional drafting process.

The Agreement also provides for the creation of other institutions for public administration (Article 33). These provisions could have been drafted in a manner that guaranteed the participation of women:

33. The Bougainville Constitution may establish other institutions that may be required for the autonomous Bougainville Government to carry out its powers and functions effectively, including institutions responsible for public administration provided for elsewhere in this Agreement (such as bodies to administer separate public service, police, teaching service and correctional institutional services bodies) and local government bodies. *The membership of these institutions shall comprise at least 40% representation of each sex.*

The Agreement could also have recommended an agency to focus on women's rights, as an additional – and probably uncontroversial – way of adding a gender dimension into public administration.

The Constitutional Commission and Constituent Assembly which were eventually established did include some women among its members. The new Constitution produced by these bodies in 2004 stipulated that three seats in the legislature be reserved for women, out of a maximum total of 44.



A specific call for the participation of women in the newly formed political parties would have encouraged local political structures to be more representative of Acehese society.”

**The Aceh Memorandum of Understanding (MoU)** sets out the principles and a timeframe for the drafting of the Law on the Governing of Aceh (LoGA).<sup>31</sup> However, no specific bodies or entities were tasked with drafting the law, and no mention is made of women's participation in, or input into, that process.

The MoU emphasises diverse political participation in the post-war environment. A key element is the Indonesian Government's agreement to recognise and facilitate the establishment of Aceh-based political parties that meet (undefined) “national criteria”. Article 1.2.6 guarantees “full participation of all Acehese people in local and national elections” in accordance with the Indonesian Constitution. This could have been more explicitly encouraging to women, both as voters and as electoral candidates:

1.2.6. Full participation of all Acehese *men and women as voters* in local and national elections will be guaranteed in accordance with the Constitution of the Republic of Indonesia. *All qualified Acehese women and men may stand as candidates for election.*

A specific call for the participation of women in the newly formed political parties would have encouraged local political structures to be more representative of Acehese society, and given the women of Aceh a greater role in the self-determination of their province. For example, gender parity could have been required in candidate lists.

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31 The Law was finally promulgated on 1 August 2006 but was widely criticised for undermining or diluting some of the key provisions in the agreement relating to the implementation of autonomy. See International Crisis Group, “Aceh: Post-conflict complications,” *Asia Report No.139* (Jakarta/Brussels: International Crisis Group, 4 October, 2007).

## Box 2: From Rarity to Parity – Are Quotas the Answer?

Of the measures commonly recommended to strengthen women's participation in power-sharing structures, the use of quotas is perhaps the most controversial. The increasing adoption of "temporary special measures" such as electoral quotas for women – typically 25–40% – is supported by international norms. In 1990 ECOSOC called upon governments, political parties, trade unions and professional and other representative groups to aim for at least 30% women in leadership positions by 1995, and 50% by 2000.<sup>1</sup> This movement gained momentum from the 1995 Beijing Platform for Action which called for the "equal participation of women and men in decision-making" to "more accurately reflect the composition of society." CEDAW had previously laid the groundwork in this area with its provision in Article 4 for temporary special measures to address past inequality. In 1997, the CEDAW Committee noted in a general recommendation (No. 23): "research demonstrates that if women's participation reaches 30-35% (generally termed a 'critical mass') there is a real impact on the political style and content of decisions." UNSCR 1325 also called for increased representation of women at all levels of decision-making.

### A (re)balancing act

Electoral quotas are a way to fast-forward gender parity in politics, remedying female underrepresentation while knocking through 'glass ceilings' and circumventing socio-economic barriers to women seeking and gaining elected positions.<sup>2</sup> Without quotas, most countries experience an incremental change process – usually over several decades – before significant numbers of women occupy seats in parliament or senior decision-making positions.<sup>3</sup> Quotas have led to some impressive gains. For example, Rwanda now has the world's highest percentage of female parliamentarians; it surpassed Sweden in 2003 and has maintained at least 50% since 2008.<sup>4</sup> The top 25 nations in terms of female parliamentarians include two Asian countries, Nepal and Timor-Leste – which both adopted gender quotas for parliamentary elections in the later stages of their peace processes.

### Quality vs. quantity?

Sceptics see quotas as, at best, increasing numbers and, at worst, insulting women by making them tokens; they point out that involving a minimal number of women does not

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1 United Nations Economic and Social Council Resolution E/RES/1990/15 (24 May 1990).

2 For the purposes of this report, the HD Centre defines the parity principle as a minimum of 40% women and 40% men. For more detail on this policy, see the Centre for Humanitarian Dialogue, *Peacemaking in Asia and the Pacific: Women's participation, perspectives, priorities* (Geneva: Centre for Humanitarian Dialogue, 2011).

3 See Jarstad, Anna K., and Nilsson, Desiree, "From Words to Deeds: The Implementation of Power-Sharing Pacts in Peace Accords," in *Conflict Management and Peace Science* (Pennsylvania: Sage Publications, 2008), pp.206–223.

4 International Parliamentary Union's "Women in National Parliaments" World Classification page: <http://www.ipu.org/wmn-e/classif.htm> Accessed 25 October, 2012. Data up to 30 September 2012, Timor-Leste and Nepal ranked 16th and 22nd in the world respectively.

guarantee policy changes favourable to women.<sup>5</sup> For example, despite the relatively high levels of women's participation in the Parliaments of Nepal and Timor-Leste, there are no women serving in the Upper House of either country, and female parliamentarians express frustration about their ability to participate fully and meaningfully.<sup>6</sup> However, as one observer notes, quotas are still an important enabling condition for meaningful change to occur.<sup>7</sup> There is no one-size-fits-all approach which would work in all circumstances, however, as each country needs to find the solution that best fits its own specific situation.

Quotas can also have the unintended paradoxical effect of capping women's participation rather than encouraging it. This has been seen, for example, in Bougainville, where there appears to be a widespread perception that female candidates should not contest any seats apart from the three reserved for women.<sup>8</sup> To guard against this danger, quotas should be explicitly defined as a minimum level of participation.

### **Making women count**

Given the growing call for measures to increase women's participation in politics and governance, here are some practical ideas for making quotas more effective:

- Disseminate examples of good practice in the implementation of quotas for women's participation in local, national and international public office. These quotas may be time limited or open-ended. Costa Rica, South Africa and Rwanda are commonly cited as examples of success.
- Ensure that political parties put women in top positions on the ballot listings, so they have a fair chance of being elected.<sup>9</sup>
- Establish enforcement mechanisms to ensure that parties violating quota provisions are held to account.<sup>10</sup>
- Ensure that quota percentages serve as minimum levels, not caps.
- Provide ongoing training for parliamentarians of both sexes on how to incorporate gender concerns into budgets and decision-making processes.

Put in place strategies (such as timeframes and reviews) to ensure that women in parliaments and bureaucracies, including in the security sector, progress to more senior positions.

5 Chen, Li-Ju, "Do Gender Quotas Influence Women's Representation and Policies?" *European Journal of Comparative Economics*, 7/1, (Castellanza: Universita Carlo Cattaneo, 2010), p.14. Available at: <http://eaces.liuc.it/18242979201001/182429792010070102.pdf>. Accessed 8 October, 2012.

6 Delaney, Alexandra, "Nepal's women have a voice in politics but no one is listening," *The Guardian* (UK), 27 May, (2011). Available at: <http://www.guardian.co.uk/global-development/poverty-matters/2011/may/27/nepal-women-in-politics> Accessed 28 July, 2012. Marx, Susan, *Can Timor-Leste's Gender Quota System Ensure Women's Participation in Politics* (article on the Asia Foundation website, 7 March, 2012) available at: <http://www.asiafoundation.org/in-asia/2012/03/07/can-timor-lestes-gender-quota-system-ensure-womens-participation-in-politics/> Accessed 28 July, 2012.

7 Phillips, Anne, *The Politics of Presence* (Oxford: Oxford University Press, 1995).

8 Norm, Kelly, *Electoral Democracy in Post-Conflict Melanesia: The 2010 Bougainville and Solomon Islands Elections* (Canberra: Centre for Democratic Institutions, Australian National University, 2010), p.24.

9 Schwindt-Bayer, Leslie, "Making Quotas Work: The Effect of Gender Quota Laws on the Election of Women," *Legislative Studies Quarterly* Volume 34, Number 1, (Chichester, UK: John Wiley & Sons, 2009), pp.5–28.

10 Schwindt-Bayer, Leslie (2009), pp.12-13.

Since 2005, strong advocacy work on the ground has resulted in advances for women. These include the creation of new *qanuns* (by-laws under customary Islamic law) mandating a 30% quota for women in the provincial and district electoral commissions, and also among parliamentary candidates.<sup>32</sup> However, women still face an uphill struggle: in the 2009 parliamentary elections, only four out of 69 seats went to women, and few women were appointed to other provincial, district and sub-district level bureaucracies.<sup>33</sup> In the 2012 gubernatorial elections, no women contested the Governor or Deputy Governor positions, and for the positions of District Heads and Mayors, there were only seven female candidates out of a total of 260.<sup>34</sup>

**The Nepal Comprehensive Peace Agreement (CPA)** commits the parties to a long list of democratic values (Article 3.4) and gender equity could have been included in this list:

- 3.4. To pursue a political system that fully complies with the universally accepted fundamental human rights – *including equal rights for women*, competitive multiparty democratic system, sovereignty inherent in the people and the supremacy of the people, constitutional check and balance, rule of law, social justice and equality, independent judiciary, periodic elections, monitoring by civil society, complete press freedom, people’s right to information, transparency and accountability in the activities of political parties, people’s participation and the concepts of impartial, competent, and fair administration.

The CPA proposed the creation of “an Interim Legislature - Parliament” and required elections for the Constituent Assembly to be conducted “in a free and fair manner” (Article 3.2). It does not comment on the composition of the legislature. However, thanks to intensive lobbying – supported by women’s groups, high profile women’s rights defenders and UN agencies – a quota was established

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32 UN Women South and Southeast Asia Region, “Women’s Legal Rights and Access to Justice,” article on UN Women website available at: [http://www.unwomen-eseasia.org/Governance/Women\\_Legal\\_Rights.html](http://www.unwomen-eseasia.org/Governance/Women_Legal_Rights.html) Accessed 25 October, 2012.

33 Srimulyani, Eka, “Inspired by history: Women in Aceh now have more opportunities to play public and political roles, but they still face many obstacles,” *Inside Indonesia*, Edition 103, Jan-Mar (2011). Available at: <http://www.insideindonesia.org/feature-editions/inspired-by-history> Accessed 22 July, 2012.

34 Aini, Nurul. “Partisipasi perempuan dalam arena politik,” (Aceh: KIP (Independent Election Commission), 2012). Available online in Bahasa Indonesia at <http://kip-acehprov.go.id/opini/kategori-pelajar-mahasiswa/121-pemenang-ketiga-partisipasi-perempuan-dalam-arena-politik.html> Accessed 25 October, 2012.

of one third of seats in the Assembly for women. Unfortunately the quota was not accompanied by any post-election support or sustained capacity-building for women with limited previous experience in public life (see the case study, Annex 1).

## b) Recognition of women's human rights

**The Mindanao Peace Agreement** does not mention individual human rights. However, the preamble upholds the MNLFF's assertion of "the right of the Moro people to freely determine their political status and freely pursue their religious, social, economic and cultural development". This could have been improved by acknowledging the role women had historically played in peacebuilding, while also setting the tone for a more inclusive agreement:

Whereas, the parties recognise the critical role played by Bangsamoro women and their organisations over many years in pursuing and facilitating peace in their communities and across Mindanao;

The preamble could also have mentioned the Philippine Government's obligations under international law, for example:

Whereas, the parties affirm their commitment to the international human rights obligations assumed by the Republic of the Philippines, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the United Nations Convention on the Elimination of All Forms of Discrimination Against Women;

**The Chittagong Hill Tracts Peace Accord** does not mention women's rights. Human rights feature in the preamble, which sets out to "uphold the political, social, cultural, educational and economic rights of all the people of Chittagong Hill Tracts region" and "preserve and respect the rights of all the citizens of Bangladesh and their development". References to the Universal Declaration of Human Rights, Declaration on the Rights of Indigenous Peoples and CEDAW would have strengthened this and provided entry points for civil society advocacy.

**The East Timor Peace Agreement** recognises international human rights and fundamental freedoms:

46. The Central Government and the Government of the SARET shall promote, protect and respect human rights and fundamental freedoms without

discrimination of any kind, as set forth, inter alia, in the Universal Declaration of Human Rights, the 1993 Vienna Declaration on Human Rights and the Indonesia People's Consultative Assembly No. XVII/MPR/1998 Concerning Human Rights.

The specific rights and freedoms are listed in 17 sub-articles, including 46(y) on women's rights:

- y. the right of women to full and equal participation in political, civil, economic, social and cultural life.

It is evident that the drafters were aware of international human rights standards, although they chose to mention two declarations rather than the legally binding International Covenant on Civil and Political Rights (ICCPR). The Universal Declaration recognises the equal rights of men and women and the Vienna Declaration contains many guarantees and protections of women's rights. However, the text would have been stronger if it had mentioned ICCPR in the main article and CEDAW in the sub-article:

- y. the right of women to full and equal participation in political, economic, social and cultural life *without discrimination of any kind, as provided for in the Convention on the Elimination of All Forms of Discrimination Against Women to which both Indonesia and Portugal are signatories.*

Another positive inclusion is the reference to the UN Convention on the Rights of the Child, which promotes equal rights for girls and boys:

- z. the rights of the child, without discrimination of any kind, as set forth in the UN Convention on the Rights of the Child.

**The Bougainville Peace Agreement** shows significant awareness of international human rights obligations. Compliance with international commitments is an obligation of the new government (Articles 54, 55), and in fact is among the objectives of autonomy (Article 4):

- 4d. provide for a democratic and accountable system of government for Bougainville that meets internationally accepted standards of good governance, including protection of human rights;
- 4e. ensure respect for the international obligations of Papua New Guinea, as well as the interests of Bougainville when Papua New Guinea enters into new international obligations;

A specific commitment to women's human rights could have been inserted, for example in Article 55:

55. For the sake of clarity, the parties agree that the international obligations which apply to Bougainville include treaties and other written international agreements to which the National Government is or becomes a party. *These include obligations under the Convention on the Elimination of All Forms of Discrimination Against Women, the Beijing Platform for Action and United Nations Security Council Resolution 1325.*

Article 21 provides another opportunity to affirm support for these international norms:

21. Subject to other provisions of this Agreement, the arrangements used to establish the Bougainville Constitution and the structures and procedures for the autonomous Bougainville Government established under it will meet internationally accepted standards of good governance, *including the Convention on the Elimination of All Forms of Discrimination Against Women and UN Security Council Resolution 1325.*

Later on, “good governance” is based on “benchmarks includ[ing] democracy and opportunities for participation by Bougainvilleans” (Article 313). Replacing the gender-neutral “Bougainvilleans” with “*Bougainvillean men and women*” would have been more clearly inclusive.

Section 8 is titled “Human Rights” and its 11 articles outline mechanisms for domestic enforcement of human rights. The government of Bougainville is given the power “to provide additional guarantees of human rights” above and beyond the national constitution of Papua New Guinea (Article 123). This would have been an ideal opportunity to insert a commitment to women’s rights.

**The Aceh MoU** contains a brief section on human rights. A few extra words could have provided specific assurances on the rights of women:

- 2.1. [The Government of Indonesia] will adhere to the United Nations International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, *as well as to the Convention on the Elimination of All forms of Discrimination Against Women, the Beijing Platform for Action and United Nations Security Council Resolution 1325.*
- 2.2. A Human Rights Court will be established for Aceh.

Women's rights campaigners have had some success in filling the gaps left by the MoU. For example, a Women's Empowerment Agency has been created, and a draft *qanun* on Women's Empowerment and the Protection of Women's Rights has been developed. According to UN Women, the government and legislature in Aceh are increasingly asking gender advocates to participate in policy discussions and consultations.<sup>35</sup>

“ . . . conflation of women and children downplays the importance of both.”

**The Nepal CPA** refers to women and gender several times. For example, Article 7.1.1 mentions gender:

7.1.1. Both sides reiterate their commitment to the respect and protection of human rights and the international humanitarian laws and agree that no individual shall be discriminated on the basis of colour, gender, language, religion, age, race, nationality or social origin, property, disability, birth and other status and thought or belief.

However, the CPA largely conceptualises women as people whose problems need resolving, rather than as productive contributors to the new society. The preamble pledges “forward-looking restructuring of the state by resolving the prevailing problems related to class, ethnicity, regional and gender differences.” Article 3.5 lists women among the minorities whose problems need to be addressed:

3.5. In order to end discriminations based on class, ethnicity, language, gender, culture, religion and region and to address the problems of women, Dalit, indigenous people, ethnic minorities (Janajatis), Terai communities (Madheshis), oppressed, neglected and minority communities and the backward areas by deconstructing the current centralised and unitary structure, the state shall be restructured in an inclusive, democratic and forward looking manner.

Article 7.6.1 deals with the “rights of women and children”:

7.6.1. Both sides fully agree to special protection of the rights of women and children, to immediately stop all types of violence against women and

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35 UN Women South and Southeast Asia Region, “Women's Legal Rights and Access to Justice,” article on UN Women website available at: [http://www.unwomen-eseasia.org/Governance/Women\\_Legal\\_Rights.html](http://www.unwomen-eseasia.org/Governance/Women_Legal_Rights.html) Accessed 25 October, 2012.

children, including child labour as well as sexual exploitation and abuse, and not to conscript or use children who are aged 18 or below in the armed forces. Children thus affected shall be rescued immediately and appropriate assistance as may be needed shall be provided for their rehabilitation.

This article is problematic for a number of reasons. Its conflation of women and children downplays the importance of both. It sees women primarily as victims and its focus is on the protection of women and girls rather than promoting gender equality more broadly. Even if the drafters wish to emphasise the protection aspect, a better approach would be to split it into two clauses, one relating to women and one to children:

- 7.6.1. Both sides fully agree to the special protection of the rights of women and to immediately stop all types of violence against them, *prevent its further occurrence and prosecute its perpetration in the past, according to Nepal's commitments under the Convention on the Elimination of All Forms of Discrimination Against Women, the Beijing Platform for Action and United Nations Security Council Resolution 1325.*
- 7.6.2. Both sides fully agree to special protection of the rights of children, to immediately stop all types of *abuse against them, prevent its further occurrence and prosecute its perpetration in line with international law and the Convention on the Rights of the Child; this includes stopping child labour, child sexual exploitation and abuse, and the conscription or use of children below the age of 18 in the armed forces.* Children thus affected shall be rescued immediately and appropriate assistance shall be provided for their rehabilitation *in accordance with their individual needs.*

The CPA guarantees some human rights using gender-neutral terms such as 'people' or 'citizens'. For example:

- 3.9. Policies that shall be undertaken to establish the rights of all the citizens to education, health, shelter, employment and food security.

Article 7 recognises international human rights standards, but should have included the ICCPR and CEDAW:

7. While remaining committed to the Universal Declaration of Human Rights (1948), *the International Covenant on Civil and Political Rights (1966), the Convention on the Elimination of All Forms of Discrimination Against*



Women activists of pro-democracy political parties protest against Nepal's King Gyanendra in Kathmandu, December 12, 2005. The banner reads, "Establish democracy now!"

© AP Photo

*Women (1979)*, International Humanitarian Laws and the fundamental principles and values of human rights, both the sides agree as follows:

This section contains a commitment to “create an atmosphere where the Nepali people can enjoy their civil, political, economic, social and cultural rights” (Article 7.1.2), as well as provisions on “the individual’s right to livelihood through employment of their choice or acceptance” (Article 7.5.1), “the right to food security of all the people” (Article 7.5.2), “the citizens’ right to health” (Article 7.5.3) and “the right to education to all” (Article 7.5.4). All these articles ideally could have come under an umbrella clause stating “the importance of gender and the particular needs of women” in realising the particular rights being referenced.

## **Theme 2: Resource-sharing**

Resource-sharing, which is sometimes known as wealth-sharing, goes hand-in-hand with power-sharing. It is especially important where specific sources of

national wealth are among the root causes of the conflict, and in situations where uneven distribution of natural resources corresponds to ethnic, religious or linguistic divisions in society.<sup>36</sup> Sharing may apply to oil, gas, minerals, forests, water, land ownership and access, as well as livelihood opportunities. Women often lack access to such resources; except in some indigenous and tribal societies with a tradition of common ownership of land.<sup>37</sup> It is important to protect, revive and expand the enjoyment of women's equal rights where they exist already, as well as securing them where this was not traditionally the case. As a practical matter, conflict can severely deplete a country's male population (for example, Rwanda's post-genocide population was 70% female<sup>38</sup>), so reconstruction and productivity depends heavily on women.

Peace agreements often make provision for property or employment to be given to ex-combatants, refugees or internally displaced people. However, such benefits are rarely granted specifically to women, either directly within those categories or indirectly as family members.

## a) Land rights

**The Mindanao Agreement** does not mention land ownership rights – a notable omission considering that land disputes between the region's Moro inhabitants, Christian settlers and indigenous Lumad peoples are a historical root of the conflict and continue to be the source of resentment and distrust. The lack of any provision on land rights has been cited as one of the 1996 Agreement's worst defects.<sup>39</sup>

In the Chittagong Hill Tracts conflict, one of the key drivers was the perceived dispossession of the indigenous peoples of their land – whether by

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36 See, for example, Haysom, Nicholas and Kane, Sean, *Negotiating natural resources for peace: Ownership, control and wealth-sharing* (Geneva: Centre for Humanitarian Dialogue, 2009).

37 The Chittagong Hill Tracts provide an example: as long as there was common ownership of property, women had some control over livelihood and freedom of movement was assured. In the context of *jhum* (slash and burn) cultivation, once the man had identified the field for cultivation, it was the woman who decided on the division of labour within the collective clearing the field, and women had multiple economic roles in the house and community. Indeed *jhum* cultivation and terrace cultivation are recognised as gender-friendly systems. See Fernandes, Walter, Pereira, Melville and Khatso, Vizalenu, *Customary Laws in North East India: Impact on Women* (New Delhi: National Commission for Women, no date).

38 "Rwanda's Women – Leading the Way," article on *World Savvy Monitor* website, May, (2009). Available at: [http://worldsavvy.org/monitor/index.php?option=com\\_content&view=article&id=573&Itemid=1020](http://worldsavvy.org/monitor/index.php?option=com_content&view=article&id=573&Itemid=1020) Accessed 13 October, 2012.

39 See Rodil, R. B., *A Story of Mindanao and Sulu in Question and Answer* (Davao City: MINCODE, 2003).

government policies encouraging the influx of Bengali settlers, or through internal displacement due to the subsequent armed conflict.<sup>40</sup> Disputes over the land have a sinister gender dimension, with sexual violence of indigenous women used as a tactic of war.<sup>41</sup>

The topic of land rights is prominent in the CHT Accord. The government promised to conduct a survey to verify ownership of CHT lands “as soon as possible” (Section D, Article 2) but this has not yet been done, leading to continuing clashes. At issue are two competing land regimes: the customary common land ownership of indigenous peoples which is usually not formally documented, versus individual ownership of land for which title deeds are in the possession of Bengali settlers. The government’s position is that the Bengalis have been settled in *khas* or government-owned lands, while the indigenous people regard these as their ancestral land, owned by the community. Traditionally, communal ownership of land has been favourable to women, giving them livelihood options and economic status. In contrast, private ownership of land disadvantages indigenous women economically as, under customary law, women are not entitled to inherit private property.<sup>42</sup> This gender dimension is overlooked by the government’s “gender neutral” policy.

Ideally Section D, Article 2 would have been rewritten to offer greater protection of land rights for both men and women from indigenous tribes:

2. After signing and implementation of the agreement between the government and the Jana Sanghati Samwiti, and after rehabilitation of the tribal refugees and internally displaced tribal people, the government, in

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40 Naher, Ainoon and Tripura, Prashanta, “Violence Against Indigenous Women,” in Mohaiemen, Naeem (Ed.), *Between Ashes and Hope: Chittagong Hill Tracts in the Blind Spot of Bangladesh Nationalism* (Dhaka: Drishtipat Writers’ Collective, 2010), pp.194-198; Sadeka Halim, “Insecurity of indigenous women,” in Mohaiemen, Naeem, (Ed.), *Between Ashes and Hope: Chittagong Hill Tracts in the Blind Spot of Bangladesh Nationalism* (Dhaka: Drishtipat Writers’ Collective, 2010), pg.187; Mohsin, Amana, “Security of Indigenous Women,” in *Bangladeshe adivasi narir nirapotta*, FOWASIA Dialogue series (Dhaka: Forum of Women in Security and International Affairs, 2002).

41 Minority Rights Group International, *State of the World’s Minorities and Indigenous Peoples 2012 – Bangladesh*, (Bangladesh: MRGI, 2012). Available at: <http://www.unhcr.org/refworld/docid/4fedb4072d.html> Accessed 8 October, 2012.

42 See Roy, Devasish, *Land and Forest Rights in the Chittagong Hill Tracts* (Kathmandu: International Centre for Integrated Mountain Development, 2002) Available at: [http://books.icimod.org/uploads/tmp/icimod-land\\_and\\_forest\\_rights\\_in\\_the\\_chittagong\\_hill\\_tracts\\_bangladesh\\_.pdf](http://books.icimod.org/uploads/tmp/icimod-land_and_forest_rights_in_the_chittagong_hill_tracts_bangladesh_.pdf) Accessed 10 August, 2012; Sadeka Halim “Insecurity of indigenous women,” in Mohaiemen, Naeem, (Ed.), *Between Ashes and Hope: Chittagong Hill Tracts in the Blind Spot of Bangladesh Nationalism* (Dhaka: Drishtipat Writers’ Collective, 2010), pg.187; Sadeka Halim, Susmita Chakma, Rajib Chakma, *Gender and human rights violations in CHT: Post accord situation* (Dhaka: Forum of Women in Security and International Affairs, 2005).

consultation with the Regional Council to be formed as per this agreement, shall start cadastral survey in CHT as soon as possible *using a transparent and equitable process which takes into account the rights of indigenous and non-tribal women and men.*

Article 3 promises land rights for landless “tribal families”, without defining what constitutes a family. Widows of former combatants or other single-headed households could have been specifically included:

3. The government, to ensure the land rights of the tribal families, which are landless or possess less than two acres of land, shall provide two acres of land to each such family, *including female-headed households*, provided that lands are available in the locality. If requisite lands are not available then grove land shall be provided.

Section D also provides for the creation of a Land Commission to cancel the ownership of land illegally occupied (Article 4). The Commission is to “settle disputes according to existing rules, customs and practices of the Chittagong Hill Tracts” (Article 6b). Customary practice is for women to be excluded from tribal leadership roles, and this may explain why no provision was made for the representation of women on the Land Commission. However, a peace agreement presents an opportunity to realign customary law with international norms of gender inclusivity, for example:

- 6(b). The Commission shall settle disputes according to the existing rules, customs and practices of Chittagong Hill Tracts, *acknowledging the livelihood needs of both men and women and striving to ensure fairness for both, in accordance with CEDAW and other international human rights agreements to which Bangladesh is a signatory.*

**The East Timor Peace Agreement** proposed the establishment of a commission to deal with land claims (Article 24); women’s representation or rights were not mentioned. While matrilineal systems of customary law on land and inheritance existed in Timor-Leste, the majority of such systems were patrilineal.<sup>43</sup> The clause could have been stronger:

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43 For a useful summary of customary law in East Timor see Hohe, Tanje and Nixon, Rod, *Reconciling Justice: Traditional Law and State Judiciary in East Timor: Final Report* (Washington DC: United States Institute for Peace, 2003).

24. The SARET shall have the authority to establish a Land Claims Commission, *whose membership shall comprise at least 40% representation of each sex, all of whom will be trained to understand how issues associated with land claims may affect men and women differently, including patrilineal and matrilineal land systems.*

**The Bougainville Peace Agreement** barely touches on the topics of land or minerals, even though disputes between foreign mining companies and traditional owners of the land were one of the main drivers of the conflict and the push for autonomy.<sup>44</sup> The Agreement does not mention customary laws on land or resource-sharing – a significant omission since the vast majority of land tenure in Bougainville (11 of the 13 districts) is under matrilineal customary law.<sup>45</sup> The only landowner mentioned is the new autonomous government, which takes over land previously owned by the national government of Papua New Guinea.

The Agreement commits the national government to considering the property rights of Bougainvilleans in relation to privatisation. Although the term “Bougainvilleans” is gender-neutral, the phrase “the men and women of Bougainville” would have increased women’s chances of being recognised as rightful owners of land and not having their rights superseded by local male chiefs or the national government:

122. The National Government will use its best endeavours to ensure that potential purchasers are made aware of the capacity of the autonomous Bougainville Government to develop laws and policies that might impact on the operation of proposed privatised enterprises, and of the sensitive nature of unresolved issues regarding the economic and property rights of *the men and women of Bougainville* and their ability to participate in economic activity in Bougainville.

Customary land ownership does feature prominently in the Constitution, which was drafted four years later. The Constitution refers frequently to the gender-

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44 O’Callaghan, Mary Louise, *The Origins of the Conflict* (London: Conciliation Resources, 2002). Available at: [http://www.c-r.org/sites/c-r.org/files/accord%2012\\_3The%20origins%20of%20the%20conflict\\_2002\\_ENG.pdf](http://www.c-r.org/sites/c-r.org/files/accord%2012_3The%20origins%20of%20the%20conflict_2002_ENG.pdf) Accessed 21 July, 2012.

45 For more on women and land inheritance, see Roselyne, Kenneth, “Land for Agriculture – Silent Women: Men’s Voices,” in Regan, Anthony and Griffin, Helga (Eds.), *Bougainville before the Conflict* (Canberra: Pandanus Books, 2002), pp.374–387; also Boege, Volker and Garasu, Lorraine, “Bougainville: A Source of Inspiration for Conflict Resolution,” in Brigg, Morgan and Bleiker, Roland (Eds.), *Mediating Across Difference: Oceanic and Asian Approaches to Conflict Resolution* (Honolulu: University of Hawai’i Press, 2011), pp.163–182. See also UNIFEM, *Case Study: Bougainville, Papua New Guinea* (New York: UNIFEM, 2007). Available at: [http://www.peace-women.org/portal\\_resources\\_resource.php?id=571](http://www.peace-women.org/portal_resources_resource.php?id=571) Accessed 25 October, 2012.

neutral “owners of customary land” and once – in s44(1)(e) – to the role of women: “The Autonomous Bougainville Government shall . . . provide for the protection of the customary powers of heads of matrilineal and patrilineal societies and of customary owners in relation to customary land.”

**The Aceh MoU** offers compensation and land allocation after the conflict, without explicitly guaranteeing rights for women. Section 3.2.4 provides funds for the rehabilitation of property destroyed or damaged in the conflict. Section 3.2.5 allocates farming land and funds to former combatants, pardoned political prisoners and civilians affected by the conflict. Legitimate claims on land by widows and daughters are often contested by other family members, and village leaders are often unwilling to support them. Shari’ah courts, customary law and local patriarchal structures are also traditionally unfavourable to women’s claims on land.<sup>46</sup> Thus adding a specific mention of women would be a way of ensuring their inclusion in any reparations scheme:

- 3.2.4. Gol [the Government of Indonesia] will allocate funds for the rehabilitation of public and private property destroyed or damaged as a consequence of the conflict to be administered by the authorities of Aceh. *All property owners, including the widows, widowers or families of owners killed in the conflict, will be eligible for this funding.*
- 3.2.5. Gol will allocate suitable farming land as well as funds to the authorities of Aceh for the purpose of facilitating the reintegration to society of the former combatants and the compensation for political prisoners and affected civilians. The authorities of Aceh will use the land and funds as follows:
  - a) All former combatants will receive an allocation of suitable farming land, employment or, in the case of incapacity to work, adequate social security from the authorities of Aceh.
  - b) All pardoned political prisoners will receive an allocation of suitable farming land, employment or, in the case of incapacity to work, adequate social security from the authorities of Aceh.
  - c) All civilians who have suffered a demonstrable loss due to the conflict will receive an allocation of suitable farming land, employment or, in the case of incapacity to work, adequate social security from the authorities of Aceh.

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46 For more on women’s rights to land in Aceh, see Fitzpatrick, David, *Women’s Right to Land and Housing in Tsunami-Affected Aceh, Indonesia* (Singapore: Oxfam and National University of Singapore, 2008). Available at [http://www.ari.nus.edu.sg/docs/downloads/aceh-wp/aceh-wps08\\_003.pdf](http://www.ari.nus.edu.sg/docs/downloads/aceh-wp/aceh-wps08_003.pdf) Accessed 25 October, 2012.

- d) *Women as well as men are eligible for these benefits, as are the widows, widowers or families of those killed in the conflict who would have been eligible.*

**The Nepal CPA** had been expected to reflect a concern for land reform, which had been an important motivator in the mobilisation of the Maoist movement. The Maoists had specifically supported property rights for women, recognising that the weak property rights of Nepalese women were discriminatory and holding back the country's development. However, the CPA sees land reform through the lens of class rather than gender. Section 3.10 mentions "backward communities" but not women. This clause could have been drafted to correct the historical discrimination against women:

- 3.10. Policies shall be pursued to provide land and socio-economic security to *marginalised* communities like the landless squatters, bonded labourers, tillers, bonded domestics, bonded cattle-tenders and such other groups, *paying particular attention to the needs and rights of women in these groups and lifting restrictions on their ownership and inheritance of land.*

## **b) Access to, and control of, natural resources**

**The Mindanao Peace Agreement** deals with natural resources in Article 143. Women in Mindanao are in a weak position in relation to natural resources ownership and management, and the Agreement could have empowered them to share the benefits of the natural resources of the then new ARMM:

143. The residents in the area of the autonomy, *whether male or female*, shall have preferential rights over the exploration, development and utilization of natural resources in the area of autonomy respecting existing rights on the exploitation, exploration, development and utilization of natural resources.

**The Chittagong Hill Tracts Peace Accord** came about largely because of the hill peoples' loss of control over natural resources, especially in relation to state-led development of big dams and the leasing of community forests for rubber

“ The Maoists had specifically supported property rights for women, recognising that the weak property rights of Nepalese women were discriminatory and holding back the country's development.”

plantations. The Accord empowers the District Councils (Section B, Articles 19 and 26) and Regional Council (Section C, Articles 9 and 10) to formulate and implement development projects. The incorporation of a clause requiring ‘*public consultation with women and men*’ would have been desirable.

**The East Timor Peace Agreement** provided for co-operative or joint undertakings between the SARET and Indonesian governments in the exploitation of natural resources (Article 8). The Agreement could have stipulated that men and women have equal access to information about, ownership of, and benefits from, any such assets. There is no mention of the oil and gas in the Timor Sea (the “Timor Gap”), which is now the major source of wealth for the independent nation of Timor-Leste. If the Timor Agreement had come into effect, control of such “strategic” resources would have remained with the Indonesian Government.

**The Bougainville Peace Agreement**, as noted earlier, fails to uphold women as the customary owners of the land. It does not mention natural resources, except in relation to the division of power between the national government and the autonomous government over fisheries (Articles 85-88). (The Constitution later recognised customary rights in relation to “the sea and [the] natural, mineral and oil resources” (s23), but without mentioning women.)

**The Aceh MoU** gives the new Autonomous Government the rights to 70% of Aceh’s resource assets (Section 1.3). No mention is made of how such assets would be managed at the level of the individual property owner; thus it is unclear how the women or men of Aceh would benefit.

### **c) Access to livelihood opportunities including income generation and compensation**

**The Mindanao Peace Agreement’s** Article 130 mentions gender in relation to economic opportunity:

130. The Regional Autonomous Government . . . advocates equal opportunities for all the inhabitants of the area of autonomy regardless of ethnic origin, culture, sex, creed and religion.

Though a step in the right direction, this clause could have used a stronger verb than “advocate” and made it clear that employment and other livelihood prospects are included in the “opportunities”:

The Regional Autonomous Government... *is committed to equal opportunities for all the inhabitants of the area of autonomy to participate in the region's economy and secure a livelihood through fair employment or commerce, regardless of ethnic origin, culture, sex, creed and religion.*

The Agreement contains 32 articles relating to education (Articles 94-125), but does not refer to the inclusion of women and girls. Its main concern is cultural and religious identity, for example:

95. The Regional Autonomous Government educational system shall, among others, perpetuate Filipino and Islamic ideals and aspirations, Islamic values and orientations of the Bangsamoro people. It shall develop the total spiritual, intellectual, social, cultural, scientific and physical aspects of the Bangsamoro people to make them God fearing, productive, patriotic citizens, conscious of their Filipino and Islamic values and Islamic cultural heritage under the aegis of a just and equitable society.

The nod towards an “equitable society” is promising; however it is preferable to use “equal” to rule out the possibility of differing interpretations of what is “equitable”. The end of the Article would also have been improved by a guarantee that women and girls would not be denied the opportunity to receive an education:

*. . . under the aegis of a just and equal society that respects and promotes the potential of both girls and boys, and which is open to all regardless of ethnic origin, cultural background, sex, creed or religion.*

Article 20(a) on demobilisation disarmament and reintegration (DDR) provides for alternative livelihoods for the families of former MNLF combatants. This could have been drafted in a way that ensured gender parity:

- 20(a) . . . There shall be a special socio-economic, cultural and educational program to cater to MNLF forces not absorbed into the [Armed Forces of the Philippines, Philippine National Police and Special Regional Security Forces] to prepare them and their families for productive endeavours, provide for educational, technical skills and livelihood training and give them priority for hiring in development projects. *These benefits shall apply to both female and male ex combatants, and to the widows/widowers or families of those killed in the conflict who would have been eligible.*



Women protest the army presence in Mindanao during a demonstration outside the presidential palace complex in Manila on February 11, 2004.

© Reuters/Cheryl Ravelo

**The Chittagong Hill Tracts Peace Agreement** provides for scholarships and educational facilities for indigenous people (Section D, Article 10). Another sentence would have confirmed the inclusion of women and girls:

10. Quota reservation and scholarships: Until development equals that of other regions of the country the government shall continue reservation of quota system in government services and educational institutions for the tribals. For this purpose, the government shall grant more scholarships for the tribal students in the educational institutions. The government shall provide necessary scholarships for research works and higher education

abroad. *These benefits shall be provided to both female and male students, and the schools in tribal areas shall aim for equal numbers of female and male students.*

Article 16 deals with economic and employment support for former PCJSS/JSS combatants and their families but, as mentioned in relation to land disbursement, it is not clear whether this includes female ex-combatants, the widows of those killed in fighting, or other female-headed households. A suggested amendment is:

16. After the return of all JSS members to normal life general amnesty shall be given to them and to the permanent residents, *whether female or male*, who were involved in the activities of the Jana Sanghati Samiti.
- a) In order to provide rehabilitation to all returnee JSS members a lump sum of Taka 50,000/- [USD610] shall be given to each family, *including female-headed households.*

Amendments could similarly be made to the provisions on employment (Article 16e) and on soft loans for cottage industries (Article 16f):

- e) *Men and women* of the PCJSS who were employed in various government jobs shall be absorbed in their respective posts and the eligible members of their family shall be given jobs as per their qualifications, *regardless of gender.*
- f) Bank loans of soft terms shall be given to the *men and women* of the PCJSS for cottage industry and horticulture and other such self-employment generating activities.

**The East Timor Peace Agreement** commits the Indonesian Government to assisting the development of the SARET (Article 6) without mentioning any priorities in terms of investment or outcomes. The insertion of standard language such as “ensuring that the different needs of men and women, girls and boys are appropriately assessed and addressed” could have been possible. This would also apply to Article 9, which allows foreign donors to channel assistance through the Indonesian Government.

**The Bougainville Peace Agreement** sets forth the terms of an annual “restoration and development grant” to the Bougainville Government (Articles 160–161). Given the importance of infrastructure development and post-conflict reconstruc-

tion on the lives of all citizens, the Agreement could have said:

161. An agreed Bougainville-controlled mechanism, including both Bougainville and National Government representation, will be established to coordinate the restoration and development program in Bougainville.

*The membership of the committee co-ordinating this program will comprise at least 40% representation of each sex.*

The Agreement also contains provision for a DDR programme which, despite being funded by international donors, shows no awareness of UNSCR 1325. The exclusion of women from compensation and livelihood schemes left female-headed households struggling to make ends meet.<sup>47</sup>

In this regard, the Agreement embodies a common problem with peace agreements in general – a narrow focus on dealing with combatants and stopping the violence, without integrating the factors required to lay the groundwork for building peace.

A more inclusive wording would have been:

- 329.13. The National Government will seek the assistance of foreign development co-operation partners in developing and implementing a programme to assist in the reintegration and rehabilitation of *male and female ex-combatants, as well as the widows/widowers and families of those killed in combat.*

**The Aceh MoU** prioritised a post-tsunami reconstruction and recovery commission. There was no assurance that women would be included and the single female representative on the GAM negotiating team expressed concern that women



... a common problem with peace agreements in general – a narrow focus on dealing with combatants and stopping the violence, without integrating the factors required to lay the groundwork for building peace.”

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47 The Bougainville Ex-Combatants Trust Account was sharply criticised by the United Nations Development Fund for Women (UNIFEM), not only for excluding women but also for cheating and corruption. For example, 15,000 men claimed assistance as ex-combatants, even though the highest estimate of the total number of combatants was 5000. See UNIFEM (2007), p. 12.

would be sidelined.<sup>48</sup> A better version of the clause to establish the commission would have called for the inclusion of women in reconstruction, both at the community level (where women exercise most power) and in the large infrastructure projects which receive a much larger share of the funding:

- 1.3.9. GAM will nominate representatives, *at least 40% of each sex*, to participate fully at all levels in the commission established to conduct the post-tsunami reconstruction *at regional and community level*.

Section 3.2.5(c) provides for “all civilians who have suffered a demonstrable loss due to the conflict” to be given “suitable land”; as well as “employment, or in the case of incapacity to work, adequate social security”. While the gender-neutral language is promising, the phrase “all men and women who have suffered” would have confirmed that Aceh’s women were included in the scheme.

**The Nepal CPA** contains broad commitments on development and livelihoods, which could have been drafted in a more inclusive form:

- 3.12. A common development concept shall be adopted for the socio-economic transformation of the country and for making the country advanced, *gender equal* and economically prosperous in a just manner within a short span of time.
- 3.13. Policies shall be followed for ensuring the professional rights of workers and increasing investment for the promotion of industries, trade, export etc. in order to significantly enhance employment and income generating opportunities. *Particular effort shall be made to include women in the expansion of employment and income generating opportunities and to ensure their professional rights are promoted and protected.*

## Theme 3: Security arrangements

The concept of human security defines security as going beyond the formal structures and objectives of national armies, police and criminal justice. Taking

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48 For more on this, see reference 11 in the Centre for Humanitarian Dialogue report, *Peacemaking in Asia and the Pacific: Women’s participation, perspectives and priorities*, (Geneva: Centre for Humanitarian Dialogue, 2011). The reference relates to a reflection made by Shadia Marhaban at the Experts Meeting: Women at the Peace Table – Asia Pacific held in Kathmandu, Nepal on 27-30 September 2010 and organised by the Centre for Humanitarian Dialogue. A summary of this meeting is available at: <http://www.hdcentre.org/files/Nepal%20summary%20final.pdf> Accessed 15 October, 2012.

as a starting point the security of people rather than of states, human security is a condition characterised by “freedom from pervasive threats to people’s rights, their safety or even their lives.”<sup>49</sup> Pervasive threats may come from many sources – including poverty, illness, violence and powerlessness; a

gender-inclusive vision of human security recognises and addresses the different vulnerability of women and men to these threats. Importantly, gender-inclusive security does not only see women as victims of insecurity, but also draws on their strengths and skills to build a more secure society.<sup>50</sup> Thus women’s roles in post-war societies should extend beyond areas traditionally considered as ‘women’s issues’ (such as welfare, protection and children), to include security arrangements; the reconfiguration of the police, military and other services; the elimination of impunity and criminalisation of violence against women; and the inclusion of explicit commitments in ceasefires and peace agreements to punish those who commit SGBV.

The challenge of recognising and dealing with past abuses or failings on these points has dominated much of the policy landscape.<sup>51</sup> This was (and remains) necessary. However, UNSCR 1325 and 1820 have placed new emphasis on prevention. New analysis and guidelines have emerged to broaden concepts of security to systematically address sexual and gender-based crimes, both during conflict and in its aftermath.<sup>52</sup> Increasingly, there is a policy focus on the legacy of continuing militarisation after conflict, which ought to include attention to gendered dimensions.<sup>53</sup> However, a broad-based gendered approach to post-



Peace agreements would ideally facilitate a post-war security architecture based on transparency, accountability and gender equality.”

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49 Axworthy, Lloyd, *Human Security: Safety for People in a Changing World*, Concept Paper (Ottawa: Department of Foreign Affairs and Trade, Canada, April 1999), p.1. Available at: <http://www.summit-americas.org/canada/humansecurity-english.htm> Accessed 25 October 2012.

50 For more on inclusive security see Anderlini, Sanam Naraghi and El-Bushra, Judy (2004).

51 See, for example, Ebnöther, Anja H. and Fluri, Philippe, *After Intervention: Public Security Management in Post-Conflict Societies* (Geneva: Centre for the Democratic Control of Armed Forces, 2005).

52 See, for example, Spees, Pam, *Gender Justice and Accountability in Peace Support Operations: Closing the Gaps* (London: International Alert, February 2004). Available at: [http://www.childtrafficking.com/Docs/international\\_alert\\_2004\\_gender\\_justice\\_accountability\\_peace\\_operations\\_3.pdf](http://www.childtrafficking.com/Docs/international_alert_2004_gender_justice_accountability_peace_operations_3.pdf) Accessed 20 July, 2012. See also United Nations, *Guidance for Mediators: Addressing Conflict Related Sexual Violence in Ceasefire and Peace Agreements* (New York: UN Department of Political Affairs, 2012). Available at: [http://www.un.org/wcm/content/site/undpa/main/issues/sexual\\_violence](http://www.un.org/wcm/content/site/undpa/main/issues/sexual_violence) Accessed 21 July, 2012.

53 For example, the CEDAW Committee Asia Pacific Consultations in April 2012 (part of a global consultation) and the UN Women Experts Group on Women Peace and Security Regional Conference in Kathmandu from Oct–Nov 2012 focused on these aspects.

war security arrangements and security sector reform (SSR) has yet to be consistently practiced by entities active in conflict resolution.<sup>54</sup> This report aims to identify ‘windows’ or ‘hooks’ within peace agreements which could provide the impetus, and method of accountability needed, for such an approach.

Peace agreements would ideally facilitate a post-war security architecture based on transparency, accountability and gender equality in areas such as recruitment to the security services as well as increasing awareness of, and commitment to, the rights of women in training and daily operations. An approach to policing that addresses the specific needs of women and girls would include the prevention of, and methods for protection against, SGBV. This is an element which should be included in any security sector training protocol. None of the agreements reviewed for this report contain any reference to SGBV, although it was an overriding concern in those conflict zones.<sup>55</sup>

One idea worth examining is to make deployment of national troops to UN peacekeeping forces contingent on having a clean record in relation to SGBV, to provide an incentive for gender-sensitive behaviour and models of good practice. For a country like Nepal, the eighth largest contributor of troops to UN peacekeeping operations,<sup>56</sup> such a requirement could have a beneficial impact on the conduct of security services as a whole.

## a) Women’s involvement in the security sector and its reform

All six peace agreements provide for new or reformed security machinery, but none of them mention the participation of women in such arrangements.

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54 See, for example, Bastick, Megan and Valasek, Kristin, *Gender and Security Sector Reform Toolkit* (Geneva: Centre for the Democratic Control of Armed Forces, OSCE/ODIHR, UN-INSTRAW, 2008).

55 One of the chief concerns of indigenous women in the CHT is their vulnerability to rape and sexual violence carried out by members of the national security forces. See for example: Ahmed, Hana Shams, *Multiple forms of discrimination experienced by indigenous women from the Chittagong Hill Tracts (CHT) within the nationalist framework*, paper presented at a consultation with the United Nations Special Rapporteur on Violence against Women, Asia Pacific Forum on Women, Law and Development and Women’s Aid Organization, Kuala Lumpur, January 2011. Available at: <http://hanashams.wordpress.com/2011/04/04/multiple-forms-of-discrimination-experienced-by-indigenous-women-from-chittagong-hill-tracts-cht-within-the-nationalist-framework/> Accessed 21 July, 2012. Impunity for rapes committed by soldiers is also a source of continuing suffering in Aceh. See Dwyer, Leslie, “Don’t Disturb The Peace: Post-Conflict Politics In Aceh, Indonesia,” *Global Studies Review*, Volume 8, Number 2 Summer (2012). Available at: <http://www.globality-gmu.net/archives/3171> Accessed 25 October 2012. Also Clarke, Ross, Wandita, Galuh and Samsidar, *Considering Victims: The Aceh Peace Process from a Transitional Justice Perspective*, (New York: International Center for Transitional Justice, January 2008).

56 UN Peacekeeping Operations, “Monthly Summary of Contributions (Police, UN Military Experts on Mission and Troops) as of 30 June 2012.” Figures available at: [http://www.un.org/en/peacekeeping/contributors/2012/june12\\_1.pdf](http://www.un.org/en/peacekeeping/contributors/2012/june12_1.pdf) Accessed 10 August, 2012.

## DDR

**The Mindanao Peace Agreement's** Article 20 outlines the DDR programme but does not recognise the existence of female combatants in the MNLF, which misses the many roles women play to support fighting forces.<sup>57</sup> It also does not mention including women in DDR. Article 20(d) lists the principles to apply in determining the rank of MNLF fighters reintegrated in the Armed Forces of the Philippines (AFP); ideally these principles would have included gender equality:

20(d) . . . The ranks and grades of MNLF forces joining AFP shall be subject to the decision of the President in his *or her* capacity as Commander-in-Chief of the AFP along the principles of universality, nondiscrimination, equity, *gender equality* and preferential treatment for the poor and underprivileged.

The Mindanao Agreement was signed four years before UNSCR 1325, but since 2010, the Philippines has had a fully developed National Action Plan (NAP) on UNSCR 1325 and 1820.

**The Bougainville Peace Agreement** includes a disarmament programme (Section E, Weapons Disposal). Women were not involved in the design of the programme, and were seemingly dissatisfied with the way it operated, emphasising monetary rewards instead of community safety.<sup>58</sup>

**The Aceh MoU** reintegration section (3.2) deals with livelihoods for former GAM combatants, including reintegration into the national security sector. An alternate version of this provision could have ensured that female ex-combatants also had this livelihood opportunity, while referencing Indonesia's international commitments to women's rights:

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57 The MNLF is the only Moro or Muslim armed group with women in its leadership. Among the more prominent female leaders in the MNLF Central Committee are Bainon Karon, Chairperson of the National Women's Committee, and Eleonora 'Roida' Tan-Misuari, Nurullaji Misuari's wife. No female leaders sit on the MNLF peace negotiating panel. Two women are advisers to the panel. There is a women's auxiliary component of the MNLF's army, the Bangsamoro Army or BMA.

58 UNIFEM (2007), p12. See also Alpers, Philip and Twyford, Conor, *Small Arms in the Pacific*, Occasional Paper No. 8 (Geneva: Small Arms Survey, 2003) p. 87: "With so much energy being directed at weapons disposal, potential existed for communitywide resentment to develop as other needs were not met, or were met more slowly than expected. Many people involved in the peace and disarmament process felt it was important to try to build a district-specific peace dividend, or one that covered the whole population, rather than focus on individual ex-combatants or combatant groups." Available at: <http://www.smallarmssurvey.org/fileadmin/docs/B-Occasional-papers/SAS-OP08-Pacific.pdf> Accessed 25 October, 2012.

3.2.7. GAM combatants, *both female and male*, will have the right to seek employment in the organic police and organic military forces in Aceh without discrimination and in conformity with national standards. *These standards include gender equality; in accordance with international commitments such as United Nations Security Council Resolution 1325 on the role of women in peace and security, and the Convention on the Elimination of All Forms of Discrimination against Women.*

**The Nepal CPA** did not deal with the demobilisation or reintegration of the Maoist fighters. Instead, this contentious issue was entrusted to a Special Committee (Article 4.4), whose eight members were all male – even though UNSCR 1325 had been adopted six years earlier and almost 20% of the verified 19,602 Maoist combatants were female.<sup>59</sup> The eligibility rules devised by this Committee did not encourage or facilitate the integration of female Maoist fighters into the Nepali Army. For example, at least half of the women combatants had children and many were married, both of which denied them eligibility.<sup>60</sup> In the end, of 1,460 combatants selected for integration, 109 (7.5%) were women (105 as regular soldiers, and four at officer level).<sup>61</sup> The rest almost all opted for voluntary retirement with a cash payment, and a very small number for rehabilitation.

A fairer set of rules might have resulted if the Committee had been required to be gender-inclusive:

4.4. The Interim Cabinet shall constitute a Special Committee to carry out monitoring, adjustment and rehabilitation of the Maoist combatants, *both male and female. The membership of this Committee shall comprise at least 40% representation of each sex.*

Since it was politically impossible to reach decisions on demobilisation and reintegration at the time when the CPA was signed, the agreement instead focused on cantonments to which the Maoist fighters would be confined. This provision could also have been made gender-inclusive:

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59 The figure is 3,846 women out of 19,602 fighters in total. Bishnu, Pathak, "UNMIN's withdrawal formally winds up," *Azibo Press*, 27 January, (2011). Available at: <http://www.azibopress.org/?p=855> Accessed 8 August, 2012.

60 International Crisis Group, "Nepal's Peace Process: The Endgame Nears," *Asia Briefing No.131* (Kathmandu/Brussels: ICG, December 2011). Available at: <http://www.crisisgroup.org/en/regions/asia/south-asia/nepal/B131-nepals-peace-process-the-endgame-nears.aspx> Accessed 24 July, 2012.

61 Email correspondence between the authors and UN DPA Liaison Office, Kathmandu, Nepal, 12 November 2012.

- 4.3. Once the Maoist combatants are confined to the cantonments, the Government of Nepal shall take care of their ration as well as other arrangements necessary, *noting that the arrangements and needs for male and female combatants may be different.*

Article 4.7 refers to democratic reform of the Nepali Army. The intention to address women's involvement in the security services could have been signalled with the addition of a few more words:

- 4.7. . . . The Interim Council of Ministers shall prepare and implement the detailed action plan for the democratisation of the Nepali Army on the basis of political consensus and the suggestions of the committee concerned of the Interim Legislature [sic]. This includes, among other things, right-sizing, democratic restructuring reflecting the national and inclusive character and imparting training to the Nepali Army on the values of democracy and human rights, *including gender equality and women's rights, reflecting Nepal's commitments in international law.*

## Police

**The Chittagong Hill Tracts Peace Accord** prioritises indigenous candidates in recruiting rank-and-file police (Article 24). This would also have been an opportunity to recruit women, for example:

24. a) . . . Notwithstanding anything contained in any Act for the time being in force, all members of the rank of Sub-Inspector and below of Hill District Police shall be appointed by the Council in manner laid down by regulations, and the Council may transfer and take disciplinary action against them as per procedure laid down by regulations; provided that in the manner of such appointment tribals shall be given priority. *At least 40% of new police officers appointed shall be female, and at least 40% male.*

**The East Timor Peace Agreement** shows concern for fairness in the recruitment of police (Article 34). It could have been made fair to women as well:

34. Members of the Police Force of the SARET shall be recruited, without discrimination on racial, ethnic, or religious grounds. *At least 40% of new recruits shall be female, and at least 40% male.*

Article 60 sets up a Transitional Council for the proposed move from Indonesian rule to autonomy and a working group to address security, but there is no mention of gender. An alternative version could read:

60(dd). There shall be a broadly representative Transitional Council, composed of no more than 25 persons of East Timorese identity, whose members shall be appointed by the United Nations Secretary-General in consultation with relevant individuals and groups within the SARET and with the Government of Indonesia. *The membership of the Transitional Council shall comprise at least 40% representation of each sex.*

. . .

60(g). The Secretary-General of the United Nations, the Governments of Indonesia and the Transitional Council shall establish a working group *with at least 40% representation of each sex* that will address transitional security arrangements, *encompassing the security needs of men and women as defined by them.*



East Timorese soldier during a farewell ceremony at a military camp in Dili, May 11, 2007.

© Reuters/Beawiharta

**The Bougainville Peace Agreement** stipulates that recruitment to public services, police and correctional services will be “based on individual merit”, which gives hope that there could be roles for women in the security sector. This could have been made clearer:

188. Bougainville law will provide for recruitment and terms and conditions of employment for the Bougainville Public Service, Police and CIS to be based on individual merit *and equal rights for women and men*.

Article 238 proposes a training plan for police, which should have included prevention and prosecution of sexual and gender-based violence.

## b) Courts

**The Mindanao Agreement** requires that at least one judge on the country’s Supreme Court and two on the Court of Appeal come from the ARMM (Article 69). The agreement could also have required the inclusion of women among the candidates for such positions:

69. It shall be a policy of the National Government that at least one (1) justice in the Supreme Court and at least two (2) in the Court of Appeals shall come from the Autonomous Region. For this purpose, the Head of the Autonomous Government may submit the names of his *or her* recommendees, *with at least 40% representation of each sex*, to the Judicial and Bar Council for consideration. This is without prejudice to the appointment of qualified inhabitants of the Autonomous Region to other positions in the judiciary in accordance with their merits and qualifications.

**The East Timor Peace Agreement** describes a new court system, with judges to be appointed by a new independent Judicial Commission (Articles 36–45). This new system could have been improved:

42. Judges of the Courts of First Instance of the Court of Appeal shall be selected by the Judicial Commission, *with at least 40% representation of each sex*.

**The Bougainville Agreement** devotes more than 20 articles to the judicial system, creating new courts for the autonomous region as well as authorising the continued local operation of the PNG National Courts. Judicial appointments are “open to qualified persons from throughout Papua New Guinea” (Article 292) – a gender-neutral formulation which could have been made gender-inclusive:

292. Appointments to the National Judiciary will be open to qualified *men and women* from throughout Papua New Guinea.

### **c) Mechanisms to prevent and prosecute conflict-related crimes involving SGBV**

None of the agreements requires training for police or security services in gender awareness or the prevention of sexual or gender-based violence (SGBV). None of the agreements acknowledge (or contemplate prosecuting) SGBV committed during the conflict; and neither do they recognise the need to prevent such crimes in the post-war society. Future agreements should refer to – and use the same words as – UNSCRs 1820, 1888, 1889 and 1960, which address these issues.

**The Mindanao Agreement’s** Articles 19 and 20 refer to training for the former MNLF combatants reintegrated into the Philippines National Police (PNP) and Armed Forces of the Philippines (AFP). These clauses could have included a gender dimension:

19(b) . . . The police training programs to be undergone by the joining MNLF elements shall be as prescribed by existing laws and regulations, and shall be conducted by the PNP. *This training shall include gender sensitivity, the prevention and prosecution of sexual and gender-based violence, and assistance to victims of such violence.*

20(e). The government shall take affirmative measures to continually improve the capabilities of those MNLF forces joining the AFP to enhance their opportunities for professional advancement in the military service. It shall undertake initiatives to provide professional training and military schooling in foreign countries to former MNLF members absorbed into the AFP in consonance with the education and training programmes with the AFP. *This training shall include the prevention and prosecution of sexual and gender-based violence, and assistance to victims of such violence.*

**The Chittagong Hill Tracts Peace Accord** contains no measures to address or prevent SGBV. Meanwhile one of the chief concerns of indigenous women is their vulnerability to rape and sexual violence carried out by members of the national security services.<sup>62</sup> The Accord provides for the continued presence of

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62 Ahmed, Hana Shams (2011).

national security services in the CHT, although it seeks to limit their deployment to specific permanent cantonments (Section D, Article 17). A clear commitment to human rights and the prevention of SGBV could have been added:

17. . . . In case of deterioration of the law and order situation, natural calamity and such other works, the army can be deployed under the civil administration like all other parts of the country as per relevant laws and rules, *including adherence to international human rights standards for the prevention of sexual and gender-based violence such as the Beijing Platform for Action*. In this case, the Regional Council may, according to the necessity or time, request the proper authority for the purpose of getting assistance.

The Accord guarantees “security for the return of JSS members and their family members to normal life” (Section D, Article 13) but how this security will be provided is not specified. A rewrite of this clause could specifically mention women and emphasise their particular security needs:

13. . . . the government shall ensure security for return *to normal community life of the men and women of the JSS and their family members, including widows and children of deceased former combatants. The particular security needs of women and children will be recognised as guaranteed by international conventions, including the Beijing Platform for Action.*

The CHT Accord was signed in 1997, three years before UNSCR 1325 and many years before UNSCRs 1820, 1888, 1889 and 1960. A peace agreement being drafted now should also mention those resolutions.

**The East Timor Peace Agreement** states that Indonesia would maintain an armed presence in East Timor once the Special Autonomous Region of East Timor was created (Articles 3 and 4). There is no reference to female participation in those armed services, training on relevant topics (such as gender sensitivity, codes of conduct or SGBV) or the potential impact on local populations (men and women) of the presence of such services. SGBV is not mentioned, although other serious offences – treason, terrorism, narcotics and international crimes – are stipulated to remain under the prosecutorial responsibility of the Government of Indonesia (Article 15).

**The Bougainville Agreement** commits the police to enforcing the law “with full regard for human rights” (Article 213), and calls for police training (Article 238). These clauses could have benefited from two important additions:

213. The Bougainville Police will be responsible for preserving peace and good order and maintaining and, as necessary, enforcing both National and Bougainville laws in an impartial and objective manner, and with full regard for human rights, *including women's rights in accordance with international commitments such as UN Security Council Resolution 1325 on the role of women in peace and security, and the Convention on the Elimination of All Forms of Discrimination against Women.*
238. The National Government and the autonomous Bougainville Government will develop a recruitment and training plan for building Bougainville Police capacity. *This training will include the prevention and prosecution of sexual and gender-based violence, and assistance to victims of such violence.*

Article 243 affirms that the Correctional Service will contain and rehabilitate prisoners “in accordance with law and Papua New Guinea’s international obligations, including humane treatment of prisoners and respect for human rights.” To ensure the rights of female prisoners, this could have said:

243. The Bougainville CIS will be responsible for containing and rehabilitating offenders on behalf of the National Government and the autonomous Bougainville Government in accordance with law and Papua New Guinea’s international obligations, including humane treatment of prisoners, respect for human rights, *and the prevention of sexual and gender-based violence.*

**The Aceh MoU** provides hope that the conduct of the Indonesian national security services will be brought into line with international human rights standards, to avoid a future repeat of past atrocities.<sup>63</sup> Article 4.12 requiring human rights training for the police force could have gone further to secure the rights and protection of women:

- 4.12. Members of the Aceh organic police *service* will receive special training in Aceh and overseas with emphasis on respect for human rights, *including women's rights as well as measures to prevent and protect against sexual and gender-based violence.*

**The Nepal CPA** refers to the investigation of other conflict-related crimes, but not SGBV. Crimes against women could have been recognised:

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63 Hadi, Faisal, “Human rights and justice in Aceh: the long and winding road,” Paper for Conciliation Resources (2008). Available at <http://www.c-r.org/accord-article/human-rights-and-justice-aceh-long-and-winding-road> Accessed 25 October 2012.

7.1.3. Both sides express their commitment that impartial investigation shall be carried out and lawful action would be taken against individuals responsible for obstructions in the exercise of the rights contained in the agreement and guarantee not to encourage impunity, *especially in crimes related to sexual or gender-based violence*. Apart from this, they shall also guarantee the right to relief of the *victims and families of victims of conflict, torture, disappearance and sexual or gender-based violence*.

Article 7.1.4 deals with prevention of specific crimes in the future. This could have been drafted to protect women more effectively:

7.1.4. Both sides shall refrain from inflicting torture, kidnapping, *committing crimes of sexual and gender-based violence*, and coercing the ordinary people to any work, and shall take necessary actions to discourage such acts.

Women's safety could also have been included in the general commitments not to engage in violence:

5.2.6. Both sides pledge to abandon all types of wars, attacks, counter-attacks, violence and counter-violence in the country with a commitment to ensure democracy, peace, *equality* and forward-looking transformation of the Nepali society. The two sides also agree to cooperate with each other for bringing about peace and maintaining law and order. *In particular they agree to prevent and punish sexual and gender-based violence*.

## **Theme 4: Access to justice**

Designing ways for societies to obtain justice for crimes committed during conflict has become an important part of the liberal democratic peace model. 'Transitional justice' (TJ) refers to the process of helping societies to heal and move forward after periods of oppressive rule or violent conflict by accounting for, and addressing, the crimes committed during those periods. TJ institutionalises commitment and to (re)establish the rule of law. Mechanisms can include international courts, national tribunals, truth and reconciliation commissions (TRCs), truth-telling exercises, litigation, reparations, and memorialisation. Traditional dispute settlement and reconciliation mechanisms have been favoured recently, although these may raise concerns about justice for women (see Box 3 on "Women's religious identities and peacemaking roles"). Two of the agreements

reviewed – in Mindanao and Aceh – establish Islamic law as coexisting alongside secular courts and other customary mechanisms.

Defining and addressing the gendered aspects of TJ has been one of the most important achievements of the last 20 years in the international peace and justice community. Crimes against women, in particular those relating to sexual and gender-based violence, have finally been defined in international law. These offences have been pursued in international and hybrid criminal tribunals such as the International Criminal Tribunals for the Former Yugoslavia and Rwanda, and in the ongoing work of the International Criminal Court. Other gendered aspects of TJ include women’s status in personal laws (on marriage and inheritance); amnesties, especially with regard to SGBV; women’s participation in relevant bodies and mechanisms; women’s ability to voice their concerns and views; and the psychological and support requirements of traumatised victims and witnesses in court cases.<sup>64</sup> Ensuring justice for conflict-related violations of women’s rights sends a strong message about equal access to justice and application of the rule of law in general.

## a) Truth commissions, tribunals and war crimes

**The Bougainville Agreement** does not recognise war crimes. Post-war justice is mentioned in Article 331, granting a blanket amnesty for all “crisis-related activities”:

331. The parties confirm that grants of amnesty and pardon (as agreed in the Lincoln Agreement) for all persons involved in crisis-related activities or convicted of offences arising out of crisis-related activities should be expedited, and will co-operate to ensure that they are.

Such a sweeping amnesty could serve to whitewash war crimes, including SGBV. (Women’s rights leader Helen Hakena noted that over 1,000 women were victims of conflict-related rape.<sup>65</sup>) This could have been addressed with a clause such as:

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64 See, for example, UN Women, *A window of opportunity: Making transitional justice work for women* (New York: United Nations, 2010). Available at <http://www.unwomen.org/wp-content/uploads/2012/10/06B-Making-Transitional-Justice-Work-for-Women.pdf> Accessed 25 October 2012. This report (at p.15) contains examples of gender-responsive provisions in the Liberian Truth and Reconciliation Act, most of which could also be incorporated into a peace agreement.

65 Richards, Chris, *Interview with Helen Hakena, Leitana Nehan Women’s Development Agency* (New York: Peacewomen, October 2002). Available at [http://www.peacewomen.org/portal\\_resources\\_resource.php?id=930](http://www.peacewomen.org/portal_resources_resource.php?id=930) Accessed 2 August, 2012.

The amnesty will not apply to war crimes, including acts of sexual violence committed as part of the conflict.

UNSCR 1820 specifically states that sexual violence crimes must be excluded from amnesty provisions and that the perpetrators of such acts must be prosecuted.

Article 337 notes that injustice and impunity cannot simply be overlooked:

337. The parties acknowledge the suffering, pain and loss, which has been caused to so many by the Bougainville conflict. Where tensions and differences between individuals and groups remain unresolved, not only is suffering intensified, but also peace itself can be threatened by risks of renewed conflict.

This clause recognises that conflict can re-ignite if tensions are left unresolved. Yet that is precisely what the effect of such a broad amnesty could be: leaving victims feeling that crimes committed against them remain unresolved. The acknowledgment of “suffering, pain and loss” could seem empty to victims of war crimes, including female victims of SGBV, in the absence of an avenue for justice. At the least, this apology could have been improved by acknowledging the suffering of both women and men:

337. The parties acknowledge the suffering, pain and loss, which has been caused to so many *women and men* by the Bougainville conflict . . .

**The Aceh MoU** establishes a Commission for Truth and Reconciliation (Section 2.3), but gender issues are not mentioned as an element in its mandate. The participation of women could have been promoted as follows:

2.3 A Commission for Truth and Reconciliation, *comprising a membership of at least 40% of each sex*, will be established for Aceh by the Indonesian Commission of Truth and Reconciliation with the task of formulating and determining reconciliation measures. *The Commission will consider past crimes and violations, including acts of sexual and gender-based violence committed by both parties to the conflict, in accordance with both Indonesian criminal law as well as international protocols on criminal law and human rights law.*

In 2006, the Indonesian Commission of Truth and Reconciliation (CTR) was declared invalid by the nation’s Constitutional Court, raising doubts about

whether the Aceh CTR will ever be created. Nevertheless the wording is helpful to consider for future agreements elsewhere.

The MoU does not mention war crimes, though Section 1.4.5 promises that “civilian crimes committed by military personnel in Aceh will be tried in civil courts”. It is not clear whether SGBV would be recognised as a crime and prosecuted accordingly. This could be addressed by a clause such as:

1.4.5 All civilian crimes committed by military personnel in Aceh will be tried in civil courts in Aceh. *Sexual or gender-based violence committed by either side in the conflict will be recognised as a crime.*

Section 2.2 provides for the establishment of a Human Rights Court, but does not specify its mandate or how it would be established. The parties could have defined the Court’s purpose as a war crimes tribunal; ensured it was a diverse and gender-balanced institution; and provided some guiding principles including awareness of SGBV and recognition of the rights of female victims and survivors. Such an alternative clause might read:



An Acehese student releases doves during a peace rally in Jakarta, August 12, 2005. Indonesia granted amnesty to the Free Aceh Movement after signing a peace agreement on August 15, 2005.

© Reuters/Crack Palinggi

- 2.2 A Human Rights Court will be established for Aceh *to provide an official channel for victims and survivors to seek redress for human rights abuses and war crimes, including sexual and gender-based violence. The Court will operate in line with the International Covenant on Civil and Political Rights, UN Security Council Resolution 1325, the Convention on the Elimination of All Forms of Discrimination Against Women, and other global human rights conventions to which Indonesia is a signatory. The make-up of the Court should be representative of Indonesian and Acehnese society, with at least 40% representation of each sex.*

**The Nepal CPA** created two new commissions, both of which could have been required to be gender-inclusive:

- 5.2.4. Both sides agree to constitute a National Peace and Rehabilitation Commission and carry out works through it for the normalization of the difficult situation that arose as a result of the armed conflict, maintain peace in the society and run relief and rehabilitation activities for the victims of conflict and those displaced. *The membership of this Commission shall comprise at least 40% representation of each sex.*
- 5.2.5. Both sides agree to set up with mutual consent a High-level Truth and Reconciliation Commission in order to probe into those involved in serious violation of human rights and crime against humanity in course of the armed conflict for creating an atmosphere for reconciliation in the society. *The membership of this Commission shall comprise at least 40% representation of each sex.*

The design of these Commissions was left up to the Interim Council of Ministers (Article 8.4), which similarly could have been required to include women.

## **b) Customary Law**

**The Mindanao Peace Agreement** does not explicitly mention customary law. However, Article 152 recognises the jurisdiction of the Shari'ah Courts in the ARMM:

152. The Regional Legislative Assembly of the area of autonomy shall establish Shari'ah Courts in accordance with the existing laws.

In addition, there are several strongly worded calls to uphold "Islamic values" and "Muslim culture, mores, customs and traditions," alongside "Filipino values." These calls reflect a tendency to homogenise the different Muslim tribes (which

have diverse customary laws alongside Islamic laws) and a certain blindness to the interests of non-Muslims in the region who have their own customary laws. Thus, a false dichotomy is created between Islamic people and values and so-called Filipino people and values. All these labels may be problematic for women. For example, traditional inheritance and land tenure systems in the Muslim communities of Mindanao – as in many systems defined by tradition, culture or religion – tend to be patriarchal in nature. In most parts of Mindanao women require the consent of their husbands to acquire property and only receive half of a man’s share of any inheritance.

A measure of protection is provided by the qualifier “in accordance with the existing laws”. To provide assurance of women’s rights, these laws could have been linked to the Philippines’ existing international obligations:

152. The Regional Legislative Assembly of the area of autonomy shall establish Shari’ah Courts in accordance with the existing *national and international laws to which the Philippines is signatory, including the Convention on the Elimination of All forms of Discrimination Against Women*.

Phrases like “in accordance with /subject to/under existing laws” occur throughout the document; so it might have been possible to make similar amendments to bolster gender equity in other parts of the Agreement.

**The Chittagong Hill Tracts Peace Accord** recognises customary structures of power. For example, hereditary “Circle Chiefs” were included in the new Land Commission, which was to “settle disputes according to existing rules, customs and practices” (there is further discussion of land rights in the later Resource-sharing section). The government and elected representatives are also required to “be active to preserve the distinctiveness of the tribal culture and heritage”.

This is an example of a context where customary law may be at odds with women’s rights. The Accord lists “tribal law and social justice” among the responsibilities allocated to the Hill District Councils (Section B, Article 34c) and the Regional Council (Section C, Article 9e). Tribal law may offer little protection for women if such a system is inherently patriarchal in nature, as is the case among some of the indigenous tribes of the CHT.<sup>66</sup> Such traditional dispute settlement mechanisms tend to trivialise sexual violence, grant easy bail and accept monetary payment to the family as an outcome. To guard against this, the Accord could have included a clause such as:

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66 See various contributions to Mohaiemen, Naeem (Ed.), *Between Ashes and Hope: Chittagong Hill Tracts in the Blind Spot of Bangladesh Nationalism* (Dhaka: Drishtipat Writers’ Collective, 2010).

*Sexual and gender-based violence will not be dealt with as a matter of tribal law. Such crimes need to be investigated under national law, which should be in line with international law.*

**The East Timor Peace Agreement** allows the judiciary, with the consent of all parties to a civil suit, to apply customary law (Article 38). There is no reference to any potential conflict between women's (or other) rights and customary law. A better rendering could have been:

38. In any civil suit, with the consent of all the parties to such a suit, the judiciary can apply any customary law applicable between such parties and recognized as such by the judiciary of the SARET, *where such customary laws do not contravene international human rights norms.*

**The Bougainville Agreement** foresees the possibility of using customary law as part of the criminal justice system. This hybrid system of law is an interesting proposition.<sup>67</sup> However, whenever customary law is proposed, the framers of the agreement should take care to avoid enshrining traditional practices that could be detrimental to women. Conversely, in instances where formal law is privileged over customary law, it is important not to suppress aspects which have traditionally enhanced women's access to, or enjoyment of, their rights.

Article 128 provides for a commission on this topic, while Article 129 sets the terms of reference. These could have included explicit mention of women's rights as part of international human rights commitments:

129. The terms of reference for the commission will direct it to have full regard for:
- a. the aspirations of *the women and men of Bougainville* for the integration of custom and introduced law;
  - b. the national human rights regime;
  - c. the justice system in Bougainville and Papua New Guinea as a whole; and
  - d. the international human rights system and other relevant aspects of international law, *including the Convention on the Elimination of All Forms of Discrimination Against Women, the Beijing Platform for Action to end violence against women, and other global human rights conventions to which Papua New Guinea is a signatory.*

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67 For an account of the integration of customary peacemaking practice in the Bougainville process, see Boege and Garasu (2011).

### Box 3: Women's religious identities and peacemaking roles

Peace agreements may offer a significant opportunity to examine faith-based and interfaith relations between conflict parties and within society as a whole. Patriarchal values still tend to dominate faith-based and interfaith peacebuilding initiatives, reflecting the societies in which they are based. The challenges of patriarchal interpretations of tradition and culture weigh against the advance of feminist religious scholarship – and also against the desire of many ordinary women to remain faithful to their religion, while also playing their part in peacemaking. How can religious perspectives on peacemaking contribute to gender justice?

While religion is often touted as an impediment to women's rights in peacemaking, acknowledgement of the other's religious identity can be a starting point for moving toward goal-oriented discussions.<sup>1</sup> The peace process can build on the common principles underpinning almost all faiths: a spiritual commitment to love others as oneself; to be connected to the community in a positive, meaningful way; and practicing mutual respect.

Religion, however, can sometimes be an obstacle to women in peace efforts. Competing versions of Christianity, Islam or other religions often coexist within societies, and both male and female leaders may promote interpretations that demand the exclusion of women from public life, leadership and decision-making. These interpretations may come to dominate organised public efforts for peace. For example, the Aceh peace process resulted in some women's rights being curtailed by the imposition of Shari'ah law.<sup>2</sup>

Both men and women have many aspects to their identities. Gender and religion are often two of the most important, but their relative priority shifts according to the situation. At various points in a conflict women may be engaged not only based on their gender but also on their religious (or other) affiliations. Many Muslim women see Islam as providing a language and structure for social justice; especially when contrasted with a secular state perceived as corrupt or illegitimate.<sup>3</sup>

Islam is a dominant religion in many parts of the Asia Pacific region and historically it has blended with cultural practices. The question of how to reconcile human rights, including women's rights, with scholarly interpretations of the Qur'an is the topic of vigorous academic discussion.<sup>4</sup> International agreements such as CEDAW or the Beijing Platform

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1 Religions for Peace International, *The Role of Religion in Advancing the Empowerment of the Poor: Final Report from the high level consultation of Religious Leaders* (New York: Religions for Peace, March 2008). Available at: <http://religionsforpeace.org/initiatives/human-development/legal-empowerment.html> Accessed 20 July, 2012.

2 Schulze, Kirsten E, "Mission not so impossible: The AMM and the transition from conflict to peace in Aceh, 2005-2006," *Working paper No. 131* (Singapore: The S. Rajaratnam School of International Studies, 2007). Available at: [http://dr.ntu.edu.sg/bitstream/handle/10220/4388/RSIS-WORKPAPER\\_108.pdf?sequence=1](http://dr.ntu.edu.sg/bitstream/handle/10220/4388/RSIS-WORKPAPER_108.pdf?sequence=1) Accessed 20 July, 2012.

3 Conversation between Rebecca Peters and Leslie Dwyer, George Mason University, Washington DC, 22 August, 2012.

4 Shah A., Niaz, "Women's Human Rights in the Koran: An Interpretive Approach," *Human Rights Quarterly*, Volume 28, Number 4, (2006), pp.868-903. Available at: [http://academics.eckerd.edu/moodle\\_support/ecUser/EPFiles.php/moodle\\_20101/649/Shah\\_\\_Women\\_\\_s\\_Human\\_Rights\\_in\\_the\\_Koran\\_An\\_Interpretive\\_Approach.pdf](http://academics.eckerd.edu/moodle_support/ecUser/EPFiles.php/moodle_20101/649/Shah__Women__s_Human_Rights_in_the_Koran_An_Interpretive_Approach.pdf) Accessed 25 October, 2012.

for Action, which were designed and promoted by the West, emphasise the individualisation of legal rights versus a more collective rights paradigm. Yet majority-Muslim countries in Asia and elsewhere are able to incorporate these norms into their systems of law and government.

All over the region, women are working to reconcile their faith with their efforts to build peace and empower other women. Some initial pointers on how to achieve a more gender-balanced approach to religious perspectives on peacemaking (including in the drafting of peace agreements) include:

- Initiate a dialogue on women's rights with religious and community leaders.
- Recognise different interpretations of religions; do not assume the predominant account, or the most conservative version is the one that must be accommodated in the peace agreement.
- Muslim conflict parties can look to other progressive Muslim nations for examples that serve to promote gender equality, counter gender violence and challenge fundamentalist stereotypes, while still respecting and understanding Islamic faith.
- Support the inclusion in peace-building work of Muslim scholars and women's rights activists who are committed to gender-inclusive and feminist interpretations of Islamic texts and traditions.
- Including mention of existing international human rights obligations in the peace agreement.

**The Aceh MoU's** section 1.1 outlines the principles that would underlie the Law on the Governing of Aceh and the framework for establishing the rule of law. Perhaps the most controversial of these provisions is 1.1.6, which effectively restores Aceh's traditional adherence to a local form of Islamic customary law, Qanun Aceh.

The return to customary law was a key concession granted to the GAM, but its application has drawn a vocal outcry from some women's groups, who say the law has been used to institutionalise harsh punishments and limit the active participation of women in public life.<sup>68</sup>

Affirming a system of customary law which can operate in a manner unfavourable to women seems at odds with later sections of the MoU such as 1.4, which states that Aceh's legal code will be drafted "on the basis of the universal principles of human rights as provided for in the United Nations International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights." The position of women in the MoU could have been strengthened by expanding that article:

1.4.2. The legislature of Aceh will redraft the legal code for Aceh on the basis of the universal principles of human rights as provided for in *Indonesia's international legal obligations, including* the United Nations International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, *the Convention on the Elimination of All Forms of Discrimination Against Women and the Beijing Platform for Action.*

## **Theme 5: Monitoring**

Peace agreements may be monitored in a number of ways. A formal procedure may be prescribed in official documents and undertaken by civilian experts or peacekeeping forces; or informal monitoring may be organised, for example, by civil society groups from inside or outside the conflict-affected country or

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68 Kamaruzzaman, Suraiya, "Women and Syariah in Aceh", *Inside Indonesia*, Edition 79, Jul–Sep (2004). Available at <http://www.insideindonesia.org/feature-editions/women-and-syariah-in-aceh> Accessed 25 October, 2012. Also Meghdadi, Dina, "The aftermath: Looking at women's roles in post-conflict transformation and formal peace processes," *Glendon Papers* 5 (Toronto: York University, 2009). Some women's groups have commented that they cannot air such concerns publicly, as criticising the law is seen as tantamount to disrespecting Islam. See Crisis Management Initiative, *The Aceh Peace Process: Involvement of Women* (Helsinki: CMI, 2006), p.20; see also Michelle, Ann, "The role of Islamic law (Sharia) in post-Tsunami reconstruction," in Clarke, Matthew, Fanany, Ismet and Kenny, Sue (Eds.), *Post-disaster reconstruction: Lessons from Aceh* (UK: Earthscan, 2010), pp.44-45.

region. Monitoring which is formalised within an agreement has the most chance of influencing implementation, to ensure that any gender-sensitive provisions are actually put into practice. The monitoring phase of the process may also present opportunities to remedy gender gaps from the earlier phases of negotiation. For example, as a result of intensive networking, organising and advocacy in Aceh and Nepal, women have participated more actively in the implementation of peace agreements despite their virtual exclusion from earlier processes of peace negotiation.

### **a) Monitoring entities or bodies**

Newly created bodies are typically given wide powers to implement the peace agreement, without being subject to review or obliged to comply with equality principles. Thus, it is important for women to participate from the beginning in any joint military commissions, ceasefire missions or other bodies implementing and monitoring peace agreements, as well as in processes to nominate and appoint members of such bodies. The peace agreement should spell out the criteria for membership and allocate responsibility to specific decision-makers. This responsibility includes, among other things, ensuring a gender balance in participation, gender sensitivity in the substance and processes of decision and policy making, and accountability for any failure to deliver.

It is not yet a norm in peace agreement drafting to specify that monitoring includes individual women or representatives from women's organisations or civil society in general. However, examples exist of female representation in monitoring processes. The Philippines has an All-Women Corps in the Civilian Protection Component of the International Monitoring Team (IMT) which, in October 2010, began overseeing the implementation of the 1997 general ceasefire agreement between the Government and the Moro Islamic Liberation Front (MILF).<sup>69</sup> Similarly, in the Naga peace process in northeast India, a 22-member Action Committee which was comprised of civil society groups (including women's groups) was engaged in monitoring the 1997 Ceasefire Agreement.

The analysis presented in this report is based on the premise that more inclusive monitoring would have a positive influence on the transparency of implementation, and thus potentially on the broad outcomes of the peace processes themselves.

**The Mindanao Peace Agreement's** Article 13 establishes a Joint Monitoring Committee (JMC), with members from the Government and the MNLF assisted

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69 Arnado, Mary Ann, *Women's involvement in conflict early warning systems: Moving from rhetoric to reality in Mindanao*, Centre for Humanitarian Dialogue Opinion Piece Series (Geneva: Centre for Humanitarian Dialogue, 2012).

by the Organisation of Islamic Conference (OIC). The monitoring process would have been stronger if a quota for women's participation had been specified:

13. A Joint Monitoring Committee composed of members coming from the GRP and the MNLF, with the help of the OIC, shall continue to meet to review and identify agreements that can be immediately implemented, and monitor the implementation of this Agreement during Phase 1. *The membership of the Committee shall comprise at least 40% representation of each sex.*

**The Bougainville Agreement** calls for the continued involvement of the international Peace Monitoring Group (PMG) to provide technical assistance and support to the DDR process (Article 329(12)). This provision could have been made gender-inclusive by adding a sentence:

*The membership of the PMG will comprise at least 40% representation of each sex, and all members will receive gender sensitivity training.*

**The Nepal CPA** asks the UN to play a key role in monitoring the peace process (Articles 9.1–9.3). The primary domestic monitoring mechanism is the National Human Rights Commission (Article 9.4). Additional clauses could have committed these monitoring bodies to ensuring “gender parity in staffing and that gender is mainstreamed into the work of the organisation.”

## **b) Peacekeeping/armed monitors**

**The Bougainville Agreement** extends the mandate of the UN Observer Mission on Bougainville (UNOMB) to monitor, verify and enforce the weapons disposal process designed by the Peace Process Consultative Committee (PPCC) (Article 330). This unarmed mission was intended to have a sustained presence in Bougainville (“not later than the end of 2002”). The agreement could have attempted to secure women's participation, for example:

330. The parties agree that
  - a) *the PMG countries and the United Nations Security Council will be requested to agree to continue the PMG and the UNOMB in Bougainville and assist in implementing the PPCC Resolution on Weapons Disposal until the decision is made concerning the final fate of weapons at stage 3 of the agreed weapons disposal plan and the autonomous Bougainville Government is established;*

b) *The UNOMB will be requested to include at least three representatives of Bougainville women's organisations in its monitoring team.*

Where external bodies are given peacekeeping or monitoring roles (as in Bougainville), they must be explicitly prohibited from committing sexual exploitation and abuse, for example:

*in accordance with international law and the commitments of UNSCR 1325, and related resolutions 1820, 1888, 1889 and 1960, the monitoring body pledges to ensure its members commit no sexual exploitation or abuse of the local population through the provision of training and other specific actions to prevent and prosecute such crimes.*

**The Aceh MoU** proposed the establishment of an Aceh Monitoring Mission (AMM), made up of representatives of Member States from the European Union and the Association of Southeast Asian Nations (ASEAN). Article 5.2 gives the AMM a broad mandate, including oversight of DDR as well as transitional justice mechanisms such as an amnesty and compliance with international human rights protocols. A gender-inclusive MoU would have improved the chances of such global norms translating into reality.<sup>70</sup> An additional sub-clause could have been:

5.2(i) *Ensure that the above tasks are undertaken in the light of the responsibilities of the various involved states (Indonesia, Member States of the European Union and the Association of Southeast Asian Nations) who are signatory to international women's rights guarantees such as CEDAW, UNSCR 1325, and the Beijing Platform for Action.*

### c) **The role of civil society**

The involvement of civil society in monitoring a peace agreement can increase transparency, accountability and public confidence. However, none of the agreements examined in this report provided a specific role for women's groups or other civil society organisations.

In the **Bougainville Agreement**, the section on disarmament, Article 329 (14), calls for the involvement of the "wider community" in reconciling with ex-combatants:

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See Potter, Antonia, *G is for Gendered: Taking the mystery out of gendering peace agreements*, Centre for Humanitarian Dialogue Opinion Piece Series, (Geneva: Centre for Humanitarian Dialogue, 2011), p.16.

14. Recognising that weapons disposal and reconciliation are both mutually reinforcing and necessary to lasting peace by peaceful means, the parties undertake to co-operate in promoting reconciliation among ex-combatants and in the wider community, and the restoration of civil authority in Bougainville.

The use of the term “wider community” suggests that women were envisaged as playing a role in reconciliation. Article 339 also seeks to recruit the community in the longer-term reconciliation process:

339. Reconciliation has many aspects, including customary, religious, spiritual, personal, psychological, and economic. It includes concerns for history, memory and justice. These qualities have been evident in the many reconciliation efforts made in Bougainville, within and between families and communities. For the peace to be self-sustaining, reconciliation efforts must continue.

Again, women are not mentioned specifically, however, the use of “families” does seem to give them an implicit role in reconciliation. Stronger wording could have been:

339. Reconciliation has many aspects, including customary, religious, spiritual, personal, psychological, and economic, *and may mean different things to men and women given their different experiences of conflict*. It includes concerns for history, memory and justice. These qualities have been evident in the many reconciliation efforts made in Bougainville, within and between families and communities. For the peace to be self-sustaining, reconciliation efforts must continue, *paying attention to the different needs women and men may have and the different contributions they may bring to such efforts*.

**The Chittagong Hills Tract Peace Accord** does not mention external monitoring or any civil society involvement – although informal civil society groups have been monitoring implementation. It would have been preferable for the Accord to establish a civil society monitoring body with guaranteed seats for women, indigenous people and non-tribal residents, using wording such as:

*A civil society monitoring body shall be established with at least 40% representation of each sex, and an appropriate balance of indigenous people and non-tribal residents reflecting the composition of the area's population.*

In the **East Timor Peace Agreement**, monitoring of the Agreement was to be the responsibility of the United Nations (Article 56). Article 60(ff) required the UN, Indonesia, Portugal and the Timorese Transitional Council to “engage in consultations to ensure the effective implementation of this Agreement”. That clause could have specified the inclusion of civil society:

60(ff). The Secretary-General of the United Nations, the Governments of Indonesia and Portugal and the Transitional Council shall engage in consultations to ensure the effective implementation of this Agreement, and the smooth and peaceful process of transition in the SARET. *These consultations shall include women’s groups, community-based organisations, and other sectors of civil society.*

**The Aceh MoU** contains no mention of civil society, and one of the main criticisms of the agreement has been the complete exclusion of civil society from the drafting process.

**The Nepal CPA** does not envisage any role for civil society in terms of monitoring, although Nepal has an active civil society, which has to some extent taken this role upon itself.

## Conclusion

Two distinct challenges emerge from the analysis and suggestions offered in this report.

The first is that the design and dynamics of peace processes can work against the inclusion of women's rights and gendered perspectives in the text of peace agreements, regardless of the existing international norms. Pressure and tensions are high; time is often too short. The parties to the process, while not necessarily opposed to women's rights, may feel that other topics are more important or less contentious, or that this is simply not the moment to deal with gender issues. It may be argued that gender inequality is a "cultural norm", and addressing it is beyond what can reasonably be asked of parties to a peace agreement – but this rationale does not tend to be applied to other topics, which could also be deemed "cultural norms" such as traditional or customary dispute resolution or justice mechanisms, or processes for land (re)distribution. Such an attitude fails to recognise that, if women's rights are not dealt with during the drafting of the peace agreement, the likelihood is drastically reduced of them ever being meaningfully addressed. So far, success in increasing the involvement of women and consideration of gender issues in peacemaking has largely flowed from external advocacy and pressure by civil society, usually women's rights groups (as was the case in the creation of UNSCR 1325 in the first place), and not from the leaders, key parties or key advisers involved in peace processes.



Peace process experts who have a gendered perspective have an invaluable role to play in identifying opportunities and gaps, as well as suggesting language that will be workable but will not disturb the delicate balance of other issues covered by the peace agreement.”



Essentially it is not the task of creating gendered text that is difficult; the challenge is to seize the opportunities which are there, and to ensure the capacity exists to do this.”

will not disturb the delicate balance of other issues covered by the peace agreement. This report has highlighted these kinds of suggestions, showing that they are generally simple, and refer to a common and almost universally accepted set of norms. Essentially it is not the task of creating gendered text that is difficult; the challenge is to seize the opportunities which are there, and to ensure the capacity exists to do this.

A peace agreement – whether implemented or not – only represents one part of the complex process of making peace. It has a particular significance because, as a written agreement, it can be referred to, and consulted, by participants in the negotiations and the wider population. There is no doubt that process and text are deeply intertwined. This report has offered textual analysis and suggestions, paving the way for further work from a process perspective on how gender can be introduced into the complex dynamics of peace talks. Notwithstanding the need to take ‘process’ into account, it is abundantly clear that the text of agreements matters *per se*. Without a shared peace agreement text, critical issues get left out; people disproportionately affected by the conflict are not adequately heard, recompensed and supported; and it is hard for donors and other supportive external actors to direct their support strategically. If the peace agreement is not gendered, women (who may be significantly marginalised already) will certainly lose out; and if women lose out, then so do men, the community and the peace process as a whole. The simple suggestions offered in this report provide a measure of insurance against such a loss.

The second challenge is that, even if the conflict parties recognise the value of a gendered perspective and are willing to include it, they may not have the expertise necessary to incorporate it into the peace agreement. For example, the equality rhetoric of Nepal’s Maoists during the conflict did not translate into significant power-sharing during peacetime – perhaps due to poor capacity and weak political will in both the drafting and implementation processes. Peace process experts who have a gendered perspective have an invaluable role to play in identifying opportunities and gaps, as well as suggesting language that will be workable but

## Key resources

Anderlini, Sanam Naraghi, *Women building peace: what they do, why it matters* (Colorado: Lynne Rienner, 2007).

Anderlini, Sanam Naraghi and Tirman, John, *What the Women Say: Participation and UNSCR 1325: A Case Study Assessment* (Cambridge MA: International Civil Society Action Network and MIT Center for International Studies, 2010).

Bell, Christine and O'Rourke, Catherine, "Peace Agreements or Pieces of Paper? The Impact Of UNSC Resolution 1325 On Peace Processes and their Agreements," *International and Comparative Law Quarterly* (2010), Volume 59, Issue 4, pp.941-980.

Shorter version: see Bell, Christine and O'Rourke, Catherine, *UN Security Council 1325 and Peace Negotiations and Agreements*, Centre for Humanitarian Dialogue Opinion Piece Series, (Geneva: Centre for Humanitarian Dialogue, 2011).

Centre for Humanitarian Dialogue, *Peacemaking in Asia and the Pacific: Women's participation, perspectives, priorities*, (Geneva: Centre for Humanitarian Dialogue, 2011). Available in English, Thai, Bahasa and Tagalog.

Centre for Humanitarian Dialogue, *Strengthening Mediation Practice – a collection of materials to support mediation of armed conflicts*, including three publications in English and French from the Mediation Practice Series: *Negotiating Ceasefires*, *Engaging with armed groups*, *Can mediation transform societies?*; and several reports from the Mindanao Think Tank.

Chinkin, Christine, *Peace agreements as a means for promoting gender equality and securing the participation of women*, Background paper for the UN Division for the Advancement of Women meeting of experts in Ottawa, Canada on the same topic, 10–13 November 2003.

- Haysom, Nicholas and Kane, Sean, *Negotiating natural resources for peace: Ownership, control and wealth-sharing* (Geneva: Centre for Humanitarian Dialogue, 2009).
- Papagianni, Katia, *Power-sharing as a conflict resolution tool* (Geneva: Centre for Humanitarian Dialogue, 2007).
- Potter, Antonia, *G is for Gendered: Taking the mystery out of engendering peace agreements*, Centre for Humanitarian Dialogue Opinion Piece Series (Geneva: Centre for Humanitarian Dialogue, 2011).
- Potter Prentice, Antonia, "Gender and Mediation," in *A Handbook for AU Practitioners, Volume 1* (Addis Ababa: African Union, forthcoming).
- Various resources available from the Institute for Inclusive Security for example *Sustainable Peace: a toolkit for Advocacy and Action*, (Washington DC and London: Hunt Alternatives Fund and International Alert, 2004).
- United Nations, *Guidance for mediators: Addressing conflict related sexual violence in ceasefire and peace agreements* (New York: UN Department of Political Affairs, 2012).
- UN General Assembly Security Council, *Women's participation in peacebuilding: Report of the Secretary-General, A/65/354–S/2010/466* (New York: United Nations, 7 September, 2010) which includes *Tracking progress – seven-point Action Plan*".

## Annex 1: Summary case studies of the peace agreements

These brief case studies set the scene for each agreement examined in this report, with an emphasis on the gender dimension of the process. They have been prepared on the basis of the information available. While this information is not exhaustive, an attempt has been made to establish the role of women as well as men in negotiating and drafting the agreements, and to understand if efforts were made to take into account the different roles, experiences and views of men and women with regards to the conflict and its resolution.

### Final Peace Agreement between the Government of the Republic of the Philippines and the Moro National Liberation Front, 1996

The 1996 Final Peace Agreement between the Government of the Republic of the Philippines (GRP) and the Moro National Liberation Front (MNLF) in Mindanao represented a major milestone in a process that stretched over two decades, involving multiple agreements, changing governments and shifting goalposts on both sides.

The seeds of the conflict were planted centuries ago. Waves of colonialism (both Spanish and American) and government settlement programmes introduced Christian settlers to what had historically been Muslim sultanates. The region's inhabitants claimed traditional ownership of the land and a distinct identity separate from the rest of the country – the Moros, often referred to as the Bangsamoro.<sup>71</sup> A Moro resistance movement developed as people felt they were being disenfranchised from their ancestral lands and facing discriminatory

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71 See Majul, Cesar, *Muslims in the Philippines* (Quezon City: University of the Philippines Press, 1999); Gowing, Peter, *Mandate in Moroland: The American Government of Muslim Filipinos 1899–1920* (Quezon City: New Day Publishers, 1983); Bertrand, Jacques, "Peace and Conflict in the Southern Philippines: Why the 1996 Peace Agreement is Fragile", *Pacific Affairs*, Volume 73, Issue 1, (Vancouver: University of British Columbia, 2000), p.37-54. More than 100,000 were killed in more than three decades of violent conflict in Mindanao.

development policies, political marginalisation, growing militarisation of the region and erosion of their Islamic values by the Christian state. In the 1970s, the resistance officially organised to form the MNLF. Full-scale armed conflict ensued, with casualties eventually exceeding 100,000; mass displacement numbering in the millions; and many accounts of atrocities committed by both sides, including by paramilitary forces acting on behalf of the state.<sup>72</sup>

In this atmosphere of distrust and resentment, the Government came under growing international pressure to reach a compromise, especially from the Organisation of Islamic Conference (OIC), which threatened an oil embargo. President Ferdinand Marcos called a ceasefire and initiated the first round of talks between the Government and the MNLF. These talks, brokered by Libya's Moammar Qaddafi, culminated in the 1976 Tripoli Agreement, which granted a degree of autonomy to a region comprised of 13 provinces in the southern Philippines.<sup>73</sup> However, with the root causes of the conflict – economic and political disfranchisement and marginalisation – left unaddressed in the Tripoli Agreement, hostilities quickly resumed. Some splinter groups also emerged, including the Moro Islamic Liberation Front (MILF) in the early 1980s. The MILF felt that the MNLF, led by Nurullaji Misuari, was too conciliatory. The MILF advocated for a form of Islam-based self-rule. The more militant and fundamentalist group Abu Sayyaf also emerged at this time, to deteriorate into a criminal group by the late 1990s.

In 1986 the Philippines' first female president, Corazon Aquino, promised a new era of peace, development, human rights and "people power". One of her first tasks was to draft a new constitution through a participatory commission whose 44 members included six women.<sup>74</sup> The result was the official creation of an Autonomous Region in Muslim Mindanao (ARMM).<sup>75</sup> However, the MNLF rejected the ARMM.

Ten years later the parties returned to the negotiating table under a new government led by Fidel Ramos – a leader the MNLF viewed as more in control of the military and, thus, potentially more able to commit to an agreement. By this point, the MNLF was considerably weaker than in prior negotiations, having lost military strength as well as ideological leadership due to the rise of the more hardline MILF. As a result, the MNLF entered the 1996 round of negotiations with a strong incentive to compromise and regain some of the leadership it had lost.

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72 Gowing, Peter, (1983), p.174.

73 Bertrand, Jacques, (2000), p.41.

74 May, R.J. "The Philippines under Aquino: A Perspective from Mindanao," *Journal Institute of Muslim Minority Affairs*, Volume 8, Number 2, (1987), pp.345-355.

75 Jubair, Salah, *A Nation under Endless Tyranny* (Kuala Lumpur: IQ Marin SDN BHD, 1999), p.25.

As the analysis in this report shows, gender considerations hardly appear in the 1996 Final Peace Agreement with the MNLF. Women from both sides had few channels through which to introduce their concerns into these processes, although one woman did advise the Government on the 1996 negotiations.<sup>76</sup> Women were notably absent from the institutions created under the Agreement: the only recognition was a suggestion that a maximum of 15% of the Legislative Assembly be comprised of representatives from “sectoral groups” including women.

In contrast to the limited consideration in the Mindanao Peace Agreement, the Philippines Government proclaimed its commitment to women’s rights at the national level after the Beijing Conference on Women. It pledged to increase its annual contribution to UNIFEM by 700%; mandate that all government offices allocate a portion of their annual budget to women; set up specific and gender-oriented programmes; provide intensive training for rural women and expand their access to credit; and impose tougher penalties for people traffickers.<sup>77</sup>

Implementation of the Agreement remains contentious. According to Irene M. Santiago, Chair Emerita of the Mindanao Commission on Women, this is largely due to a lack of public participation in the process: “Because the people did not participate in any of the discussions leading to the Agreement . . . there was woefully little support.”<sup>78</sup> This failure to engage the population was also a problem in some of the other peace processes detailed in this report. Internal rifts in the MNLF (mainly between the followers of its founder Nurullaji Misuari and the supporters of Muslimin Sema, the MNLF’s current Secretary-General) only add to the confusion.

On 15 October 2012, the Philippines Government signed a Framework Agreement on the Bangsamoro (FAB) with the MILF, which means there are now two peace agreements being implemented in Mindanao. The new agreement creates an expanded autonomous region named ‘Bangsamoro’ to replace the ARMM, with a revised governance structure and laying out the steps to reach a final comprehensive settlement by 2016. On the Government side there were two women in the panel (Miriam Coronel Ferrer and Yasmin Busran Lao), and the process was overseen by a female Presidential Peace Adviser (Teresita Quintos

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76 Biliran, Rico, “Senate bet to push for inclusion of women in government peace panel,” *MindaNews*, 16 March, (2010). Available at: <http://cbcsi.blogspot.com/2010/03/senate-bet-to-push-for-inclusion-of.html> Accessed 7 August, 2012. Nurullaji Misuari’s wife Eleonora Tan-Misuari was believed to have influenced his positions as well.

77 “Beyond Beijing: Taking Root and Gaining Ground,” article on the website of Asian Women’s Resource Exchange, <http://www.aworc.org/bpfa/res/crep/ph00001.html> Accessed 25 October 2012.

78 Mindanao Commission on Women, *Mindanao peace negotiation, public participation and the UN* (Davao City: MCW, 2010). Available at: <http://www.mindanaowomen.org/mcw/?p=1937> Accessed 8 August, 2012.

Deles). While no woman sat on the MILF side, a respected female lawyer, Raissa Jajurie, was appointed as a consultant to the panel and was a regular presence at the talks.

The FAB recognises the rights of women to meaningful political participation and protection from all forms of violence; and the right to equal opportunity and non-discrimination in social and economic activity as well as public service, regardless of class, creed, disability, gender or ethnicity. It does not however, make mention of relevant international norms, nor of the Philippines NAP on UNSCRs 1325 and 1820. The agreement also mentions women among the groups whose needs should come into the special consideration of the new Trust Fund, listing “combatant and non-combatant elements of the MILF, indigenous peoples, women, children, and internally displaced persons.” This formulation masks the fact that women or girls may or do form part of each of the groups listed, rather than being a separate group of their own.

Irene Santiago points out that, behind the scenes, women’s groups in Manila and especially in Mindanao have been active in seeking peace, consulting with peace talks participants;<sup>79</sup> submitting a position paper to both sides and engaging key actors in local government, churches and businesses in order to broaden public participation in the search for a solution to the armed conflict. A multi-sectoral group of women known as the Women’s Peace Table was created to link women with the formal peace negotiations.<sup>80</sup> These and other mechanisms for women’s participation have been boosted by the Government’s National Action Plan on UNSCR 1325.

## Chittagong Hill Tracts Peace Accord, 1997

The Chittagong Hill Tracts (CHT) Peace Accord was signed in 1997, bringing to an end 22 years of violent ethnic conflict between the Government of Bangladesh and the hill tribes, led by their political organisation Parbatya Chattagram Jana Sanghati Samiti (PCJSS, also known as JSS). The agreement recognised the CHT as a “tribal inhabited area”. It promised regional autonomy and control over resources to the hill people who, accounting for a little more than 1% of the

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79 Telephone conversation between co-author Lira Low and Irene M. Santiago, February 15, 2012. See also MacDonald, Alistair and Viñals, Gabriel Munuera, *The EU and Mindanao: Innovative avenues for seeking peace*, Occasional Paper No. 97 (Paris: EU Institute for Security Studies, June, 2012), p.19. Available at [http://www.iss.europa.eu/uploads/media/op97-The\\_EU\\_and\\_Mindanao.pdf](http://www.iss.europa.eu/uploads/media/op97-The_EU_and_Mindanao.pdf) Accessed 30 July, 2012.

80 “Philippines - The Women’s Peace Table: Nothing About Us Without Us”, article on the Peace women website, attributed to *Mindanao Times*, 12 January (2012). Available at [http://www.peacewomen.org/news\\_article.php?id=4533&type=news](http://www.peacewomen.org/news_article.php?id=4533&type=news) Accessed 25 October 2012.

population but are linked to 10% of the land area on the basis of their original territorial tribal homeland, have been systematically dispossessed and displaced by development projects that made 40% of them refugees. The Bengali majority national government had adopted a policy of settling poor Bengali farmers in the 'empty' hills, provoking violence over the differing systems of collective and private land ownership. In the name of a unitary Bengali cultural identity and a dominant Bangladeshi-Muslim nationalism, the largely Buddhist indigenous peoples became marginalised and their autonomy (previously safeguarded under colonial laws) eroded. Resistance turned violent and massive militarisation of the CHT followed, resulting in a 1:6 ratio of soldiers to civilians and allegations of massacres, sexual violence, forcible evictions and arson.<sup>81</sup>

Efforts to bring peace date back to 1977, when the military government offered money to appease local people while, at the same time, pursuing the destabilising policy of Bengali settlements. Talks with the armed insurgents began in the 1980s; the accompanying ceasefire enabled political and civil society action in the hill areas, including the development of the Hill Women's Federation (HWF), which was started in protest against SGBV.<sup>82</sup> In 1988, the President, General Ershad, cancelled the talks and unilaterally created three notionally autonomous Hill District Local Government Councils.

Democracy was restored in 1990 and the Government, led by the Awami League, concluded the Peace Accord with the PCJSS in December 1997. However, the country's polarised politics meant the Accord was not legitimised in Parliament and thus had no constitutional status.

Since that time, implementation has been hindered by the ongoing political feud between Bangladesh's two political parties and by the agreement's lack of constitutional status. The Bangladesh National Party (BNP) had opposed the Accord but, when it came to power in government, the BNP did not abrogate the agreement. Subsequently, when the Awami League returned to power in 2008 with an absolute majority, it failed to keep its promise to amend the constitution to incorporate the Accord. On 30 June 2011, the parliament passed the 15<sup>th</sup> Amendment of the constitution, which made no reference to the provisions of the Accord. Disregarding the insistence of the CHT tribes to be recognised as indigenous peoples, the 15th Amendment made every citizen of Bangladesh a 'Bengali', categorising the tribal peoples indiscriminately as "minor races, ethnic

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81 For more on the background of the conflict, see: Guhathakurta, Meghna, "Women's Narratives from the Chittagong Hill Tracts" in Manchanda, Rita (Ed.), *Women, War and Peace in South Asia: Beyond Victimhood to Agency* (New Delhi: Sage Publications, 2001).

82 Guhathakurta, Meghna, (2001), p.280.

sects and minorities". Despite claiming to support the *UN Declaration on the Rights of Indigenous Peoples*, the Government has repeatedly asserted that Bangladesh has no indigenous peoples.<sup>83</sup>

The creation of the Accord precipitated a split in the PCJSS, with some groups bitterly critical of the compromises made from their original demands.<sup>84</sup> The HWF complained that the agreement showed little recognition of women's contribution or losses, lacked any justice mechanism to address the systematic use of SGBV by the army,<sup>85</sup> and made no gender-sensitive provisions on rights to land.<sup>86</sup> The official negotiations, involving the top levels of government and JSS leadership, had included only two women participants: Prime Minister Sheikh Hasina, who presided over the process, and Begum Khaleda Zia, leader of the Opposition party, who opposed the Accord.<sup>87</sup> One observer noted: "Women's issues take a back seat to the question of full autonomy."<sup>88</sup> When Dhaka University academic Amena Mohsin challenged one of the senior JSS leaders on the failure to incorporate gender perspectives into the Accord, he replied, "I was drafting a peace accord, not doing gender."<sup>89</sup> However, as the textual analysis

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83 See, for example, Staff correspondent, "No indigenous people in Bangladesh! Govt official tells UN", *The Daily Star*, 28 May, (2011). Available at: <http://www.thedailystar.net/newDesign/news-details.php?nid=187527> Accessed 7 July, 2012. Bangladesh abstained from voting on the adoption of the Declaration in the UN General Assembly in 2007 but, in 2009, the Prime Minister publicly stated the Government's support for the Declaration.

84 Guthakurta, Meghna, (2001), p.280.

85 One survey showed that 94% of the alleged cases of rape of ethnic Jumma women between 1991 and 1993 were perpetrated by Bangladeshi security forces, with over 40% of the victims under age 18. See Mohsin, Amena, *The Chittagong Hill Tracts, Bangladesh: On the Difficult Road to Peace* (Colorado: Lynne Rienner, 2003), p.54.

86 For more on the topic of women's activism and societal roles in the CHT, see Guhathakurta, Meghna, *The Chittagong Hill Tracts (CHT) Accord and After: Gendered Dimensions of Peace*, UN Research Institute for Social Development Report Series on Gender Equality (Geneva: UNRISD, 2004). Available at: <http://www.unrisd.org/80256B3C005BCCF9/search/8BC58FA4507EDAEDC1257234005802E5?OpenDocument> Accessed 6 August, 2012.

87 The "two Begums" as they are called, are part of the elite power women of South Asia; the wives, widows and daughters of men who were founders of the independent states of South Asia. Sheikh Hasina is the daughter of the founder of Bangladesh, Mujibur Rahman, who was assassinated. Begum Khaleda Zia is the wife of General Zia ur Rahman, the first military ruler to take over power soon after Mujibur's assassination. He was not involved in the murder and is regarded as a liberation war hero. In terms of attitudes to women's rights, Sheikh Hasina is more receptive as evinced by the large number of women in high office during her term. Her government also recently made registration of Hindu marriages mandatory, a law which protects Hindu women who, under the system of legal pluralism, had no recourse to separation or divorce in an abusive marriage. Due to her political dependence on fundamentalist Islamic parties, Begum Khaleda Zia is more conservative on women's rights.

88 Guthakurta, Meghna (2001), p.284.

89 Mohsin, Amena, *Bangladesh: A Patriarchal state and Jumma women's agency* (Dhaka: New Age, 2012). Available at: <http://www.sacw.net/article2574.html> Accessed 3 August, 2012.

of the Accord demonstrates, 'doing gender' is relevant to many clauses in the CHT Accord, including clauses that appear gender neutral.

In some ways, the Accord made conditions worse for women in the CHT. It sidestepped the topic of the Bengali settlers, which exacerbated tensions over competing claims on land. The splintering of the armed groups into rival factions and the ensuing turf wars reinforced violence, justifying the continuing presence of the military in the hills and making women more vulnerable to abuse.

Nonetheless, if it is more fully implemented, the Accord should provide for elected self-governing bodies which empower local people and reflect the tribal diversity of the hills. As the textual analysis shows, there are special provisions for the participation of women in what should become powerful district and regional councils. Although the women's quota is small, it indicates recognition of the strong history of activism and peacebuilding efforts by women's groups in the CHT. It should also be noted that the preamble is unusual among peace accords for its stated intention to "uphold the political, social, cultural, educational and economic rights of all the people": the mention of economic, social and cultural rights – often raised by women's rights groups – is significant.

## **Agreement between the Republic of Indonesia and the Portuguese Republic on the Question of East Timor, 1999**

The decolonisation of Timor-Leste was a difficult process, following Portugal's abrupt 1974 withdrawal after ruling the country for more than 400 years. Three key political parties emerged with clashing visions of the underdeveloped country's future: the Timorese Democratic Union (UDT) promoted continuing ties with Portugal; the Timorese Social Democratic Association (ASDT) favoured total independence; and the Timorese Popular Democratic Association (APODETI) advocated integration with Indonesia. ASDT evolved into the Revolutionary Front for Independent East Timor, known by its Portuguese acronym FRETILIN. Fearing a FRETILIN attempt to seize power as Portugal withdrew, UDT launched a coup and declared independence in August 1975. The ensuing violent civil war saw UDT fleeing to West Timor, Portugal withdrawing entirely, and FRETILIN claiming victory. Victory and independence were short lived, as Indonesia invaded and annexed the country as its 27<sup>th</sup> province less than two weeks later, to international condemnation. Over the next two decades FRETILIN's armed wing FALINTIL waged a violent struggle with the occupying Indonesian forces. This was a time of terrible violence and privation, and a quarter of the population is believed to have died as a result of bombings, starvation and systematic killing. The UN facilitated many dialogue sessions between Indonesia and Portugal on

the status of Timor-Leste throughout this time. The financial crisis which precipitated the fall of Indonesia's President Suharto in 1998 had an impact on the process; and the Indonesian Government finally agreed that a discussion of limited autonomy was possible. This is the context in which the Agreement analysed in this report was drafted.

This Agreement reflected the different Indonesian and Portuguese positions on the desired end-state for Timor-Leste, and laid out the means for a popular consultation or referendum of the Timorese people on a constitutional framework for autonomy. The referendum was to be supervised by the United Nations between June and October 1999, and during this period Indonesia was to remain responsible for maintaining peace and security in Timor-Leste. The Agreement was signed in May 1999 by Indonesian Foreign Minister Ali Alatas, Portuguese Foreign Minister Jaime Gama (whose delegation included the only woman in the process, Ana Gomes), and UN Secretary-General Kofi Annan. Timorese people participated in the drafting through consultation, but were not signatories to the Agreement.<sup>90</sup>

Women's representation and gender concerns seem not to have been considered during the drafting. Participants and observers asked to comment for this report insisted that it was not a question of being for or against; gender was simply not an issue. As one of the UN advisers recalled: "We were so focused on the prospect of ensuring that the referendum took place, and so certain that if we could just ensure that the Timorese went to the polls the result would be a rejection of Indonesia, that we did not cover any issues other than the referendum question, the date and the security issues."<sup>91</sup> This attitude was shared by all sides. Indonesian officials involved in the drafting said they would not have objected to mentioning women in the agreement, but the suggestion was never made. The rebel National Council of Timorese Resistance (CNRT) had a number of women in its observer delegation, but they identified themselves primarily as 'cadres' rather than as women's representatives.

The result of this lack of attention to women's participation and gender issues was a missed opportunity to ensure female representation in key bodies and institutions, and a failure to address the gender-specific impact of the conflict and the annexation of Timor-Leste on women and girls, had the arrangements in the Agreement ever been implemented. The main Agreement is very short (seven articles), stating the positions of the two Governments and asking

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90 See, for example, Samuels, Kirsti, *Constitution Building Processes and Democratization: A Discussion of Twelve Case Studies* (Stockholm: International IDEA, 2006), pp.19-20.

91 Telephone conversation between Antonia Potter Prentice and anonymous individual, February 15, 2012.

the UN to conduct the popular consultation. The substance of the Agreement is contained in a 10-part Annex laying out a constitutional framework for the Special Autonomous Region of East Timor (SARET), which would have been created if approved in the referendum. These arrangements were never tested against reality because, in the referendum on 30 August 1999, the Timorese chose to reject special autonomy in favour of becoming an independent nation.

The people of Timor-Leste's decision about autonomy within Indonesia was based on the understanding that a rejection of autonomy would be followed by a UN-supported transition to independence. The overwhelming vote for independence met with a brutal wave of repression and murder by Indonesia's military and local militias sponsored by them. The UN was left to administer the devastated nation, helping it to prepare for independence which was declared and internationally recognised in May 2002.

## **Bougainville Peace Agreement, 2001**

The 2001 Bougainville Peace Agreement was the result of a long process punctuated by a series of incremental agreements including an initial ceasefire, a call for autonomy, and a weapons disposal programme. These early stages included significant involvement by the international community, particularly from regional neighbours New Zealand, Australia, Fiji and Vanuatu, which formed a Peace Monitoring Group (PMG) in 1998 to monitor adherence to the initial ceasefire. The UN was also brought on board, establishing a Political Office in Bougainville and later chairing an (all-male) Peace Process Consultative Committee tasked with monitoring and keeping the parties committed to the process. The 2001 Peace Agreement established an autonomous regional government within the country of Papua New Guinea, finalised the terms of disarmament, and outlined the conditions for a referendum on the question of Bougainville's independence. This was to be held 5 to 15 years from the date the Agreement was signed. The Agreement should not, therefore, be viewed as a final outcome, but rather as the blueprint for the much longer phase of peacebuilding and reconciliation that continues today. At 75 pages and 344 articles, this is the longest and most detailed of the six peace agreements discussed in this report. Thus, there was substantial scope for the inclusion of gendered perspectives.

The official peace negotiations were dominated by men from the Bougainville Revolutionary Army (BRA), the Bougainville Resistance Force (BRF) and the Government of Papua New Guinea (PNG). Women were excluded from the formal negotiations – perhaps because they had not participated directly in armed

combat.<sup>92</sup> Behind the scenes, however, women's groups were a highly influential force, holding demonstrations calling for both sides to enter peace negotiations, speaking out from the sidelines of formal negotiations, and using their influence in the domestic sphere to persuade combatants to lay down their arms.<sup>93</sup> In this matrilineal society women command a great deal of respect and authority in their communities, particularly in relation to land and inheritance.<sup>94</sup> Women were able to exert influence and share their opinions – often as wives, sisters or mothers. Using this 'soft' power, women worked to push both sides to the negotiating table through protests and marches, or via shuttle diplomacy between the armed groups and the PNG Defence Force on matters of disarmament and reconciliation.<sup>95</sup>

The role of women as advocates for peace was recognised at one point in the formal negotiations: 50 women were invited to the January 1998 meeting at Lincoln University in Christchurch which resulted in an interim ceasefire. The women drew up their own statement calling for greater inclusion in the peace process: “. . . We, the women, hold custodial rights of our land by clan inheritance. We insist that women leaders must be party to all stages of the political process in determining the future of Bougainville.” The statement was presented alongside – although not included in – the official document at the signing ceremony.<sup>96</sup> The document, called the Lincoln Agreement, gave a formal role to the UN in the ensuing peace process, but no role to women.

From that point on, women were formally excluded from all subsequent stages of the process. The culmination of the process was the Bougainville Peace Agreement, signed in August 2001 by 13 men and one woman, who was invited to the signing but had not been part of the negotiations (Ruby Mirinka, described in the text as “Representative of Bougainville women”). This exclusion meant that

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92 Bhagwan Rolls, Sharon, “Women as mediators in Pacific conflict zones,” ISIS International website, 22 February, 2007. Available at: [http://www.isiswomen.org/index.php?option=com\\_content&task=view&id=436&Itemid=207#endnotes](http://www.isiswomen.org/index.php?option=com_content&task=view&id=436&Itemid=207#endnotes) Accessed 8 July, 2012. See also UNIFEM (2007). For further discussion on the roles of women, see Garasu, Lorraine, “The Role of Women Promoting Peace and Reconciliation,” in Carl, Andy and Garasu, Lorraine (Eds.), *Weaving Consensus – The Papua New Guinea-Bougainville Peace Process*, Accord No. 12 (London: Conciliation Resources, 2002), pp.28–31. Available at: <http://www.c-r.org/our-work/accord/png-bougainville/women-peace-reconciliation.php> Accessed 22 July, 2012.

93 Interview with Agnes Titus, former member of the Bougainville Transitional Government by Rebecca Peters on 16 July, 2012.

94 For more on women and land inheritance, see Roselyne, Kenneth, (2002), pp.374–387; and Boege and Garasu (2011). See also UNIFEM, (2007), p.7.

95 Bhagwan Rolls, Sharon, (2007).

96 Garasu (2002).

gender-specific issues and concerns had little chance of being formalised, so openings for women's participation in the future governance and administration of an autonomous Bougainville were never fully established.

The 2001 Agreement outlines the process for creating a new constitution and the rules for key institutions, and provides a phased implementation plan with time-bound commitments. Yet, despite its detailed nature, the Agreement contains only one mention of women – as a “special interest group” that could be represented in the future legislature. Although UNSCR 1325 had been adopted less than a year earlier, the topic of women's post-conflict security or participation is not reflected in the Agreement at all.

After the Agreement, women's groups continued to drive the peace-building movement – convening a summit on women in the post-war environment and holding reconciliation retreats,<sup>97</sup> supporting the disarmament process by insisting that the men surrender their weapons<sup>98</sup> – yet their access to power-sharing has been limited.<sup>99</sup> In 2004 the Constitution drafting process gave some recognition of women's role and rights and reserved three of the legislature's 33 seats for women. However, illustrating the danger identified in this report regarding quotas, an observer to the 2010 elections commented: “Anecdotal evidence suggests there is an attitude among Bougainvillean voters that women are sufficiently provided for through the reserved seats. Therefore, women should not be contesting other seats.”<sup>100</sup> This indicates that the quota, intended as a minimum, is effectively putting a cap on women's participation in the parliament.

More than a decade after the Agreement, women have no guarantee that they will be consulted about, or have an active role in, decisions about land use. By customary law they are the custodians of the land. However, the failure to enshrine that status in official documents like the Agreement and the Constitution has serious consequences. According to some women's rights activists, male chiefs and clan leaders have exploited the omission to their advantage, ignoring women's matrilineal rights to the land and proceeding to lease and sell without involving, or even informing, women including women chiefs.<sup>101</sup>

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97 Boege and Garasu (2011), p.180.

98 UNIFEM, (2007), p.7.

99 UNIFEM, (2007), p.5.

100 Norm, Kelly, *Electoral Democracy in Post-Conflict Melanesia: The 2010 Bougainville and Solomon Islands Elections* (Canberra: Centre for Democratic Institutions, Australian National University, 2010), p.24.

101 McNicholas, Tina, “Empowering Bougainville's Unsung Heroes,” *Pacific Connection Magazine*, (Auckland: Pacific Cooperation Foundation, August 2009). Available at: <http://archives.pireport.org/archive/2009/August/08-11-ft.htm> Accessed 10 July, 2012.

## Memorandum of Understanding between the Government of the Republic of Indonesia and the Free Aceh Movement, 2005

The Memorandum of Understanding (MoU) between the Government of Indonesia (GOI) and the Free Aceh Movement (GAM) was brokered by former Finnish President Martti Ahtisaari in Helsinki over a period of seven months in 2005, building on years of facilitation work by the HD Centre. The agreement garnered international acclaim for putting an end to 30 years of violent tensions which had defeated previous attempts at reconciliation. The process was driven by the urgent need for both sides to come together to rebuild after the tsunami of 2004 left Aceh in almost total ruin. The peace remains fragile, significant portions of the agreement have not been implemented, and splits within the GAM have exacerbated tensions within the province and with Jakarta.<sup>102</sup>

The urgent need to rebuild post-tsunami meant that the focus of negotiations was on stopping the violence and setting up the conditions for an autonomous Aceh, the key demand of the GAM. Neither side made any effort to create avenues for women's participation. An assessment carried out by the (then) UNIFEM in co-operation with Ahtisaari's Crisis Management Initiative (CMI), described the involvement of women in the Aceh peace process as "limited".<sup>103</sup> This was attributed in large part to barriers that are not unique to Aceh, including "cultural norms" that traditionally excluded women from the public sphere; failure by those who framed, implemented and monitored the agreement to recognise women's rights as human rights; and lack of space for women's groups to contribute to a high-level process while sustaining their original grassroots functions.<sup>104</sup> It has been noted that capacity was there but opportunities were not made available.<sup>105</sup>

The negotiations in Helsinki were dominated by men. While the government negotiating panel was exclusively male, the GAM included one woman, Shadia Marhaban, as an adviser to its negotiating team during the final round

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102 International Crisis Group, "Indonesia: GAM vs. GAM in the Aceh elections," *Asia Briefing No.12*, (Jakarta/Brussels: International Crisis Group, 15 June, 2011). Available at: <http://www.crisisgroup.org/en/regions/asia/south-east-asia/indonesia/B123-indonesia-gam-vs-gam-in-the-aceh-elections.aspx> Accessed 10 July, 2012. See also International Crisis Group, "Averting Election Violence in Aceh," *Asia Briefing No.135* (Jakarta/Brussels: International Crisis Group, 29 February, 2012). Available at: <http://www.crisisgroup.org/en/regions/asia/south-east-asia/indonesia/B135-indonesia-averting-election-violence-in-aceh.aspx> Accessed 10 July, 2012.

103 Crisis Management Initiative, (2006), p.27.

104 Crisis Management Initiative, (2006), p.28.

105 Email to co-author Cate Buchanan from Suraiya Kamaruzzaman, gender adviser to AusAID project in Aceh via Rosemary Cassidy, 7 November, 2012.

of negotiations.<sup>106</sup> However, Shadia Marhaban has noted that her role was to support the GAM's positions in the negotiations, not to introduce women's or gender issues – and, lacking strong links to the various women's networks, she did not have a constituency to push such issues.<sup>107</sup>

The resulting MoU offers broad initiatives and sweeping provisions, which were added, it would appear, to appease various groups and interests (both internal and external) in order to achieve a swift resolution and stimulate the reconstruction process. There is little detail on how most of the provisions were to be implemented. While this MoU is the shortest and least detailed of the agreements examined in this report, it is the only one that provides for the establishment of both a Human Rights Court and a Truth and Reconciliation Commission. However, the sections on these commitments are vague and gender issues are not mentioned at all.

Although women were largely excluded from the negotiating table during the framing of the MoU, they did push to participate afterwards, particularly in the important process of drawing up the Law on the Governing of Aceh (LoGA).<sup>108</sup> Groups such as the Women's Policy Network (JPUK) held discussions among activists to review and consult on early drafts of the Law.<sup>109</sup> Two members of this network, whose participation was supported by UNIFEM, were able to formally join the drafting and review process. However, of 15 issues proposed by women for inclusion in the LoGA, only six covering the social, economic and political spheres were taken into account.<sup>110</sup>

Other efforts to push for women's involvement in the peace process included the Second All Acehness Women's Congress, held in June 2005, which gathered more than 400 representatives to promote greater inclusion of women, as well as to establish formal spaces through which women could participate more in decision-making processes.<sup>111</sup> For two days, the women spoke out about problems they had experienced or observed. The most significant problems were a lack of consultation leading to a lack of input to key decisions about relocation

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106 Marhaban, Shadia. "Aceh: The maintenance and dividends of peace", Women at the Peace Table Asia Pacific blog series by the Centre for Humanitarian Dialogue, (August 2010). Available at: <http://www.hdcentre.org/files/Aceh%20-%20The%20maintenance%20and%20dividends%20of%20peace%20-%202020%20August%202010.pdf> Accessed on 8 October, 2012.

107 Grossmann, Kristina, "Women as Change Agents in the Transformation Process in Aceh, Indonesia," in Fleschenberg, Andrea and Derichs, Claudia (Eds.), *Women and Politics in Asia: A Spring board for Democracy?* (Zurich: LIT Verlag, 2012), p.101.

108 LOGA text available at <http://www.ifrc.org/docs/idrl/968EN.pdf> Accessed 2 August, 2012.

109 Crisis Management Initiative, (2006), p.17.

110 Crisis Management Initiative, (2006), p 18.

111 Crisis Management Initiative, (2006), p.17.

and land ownership; a lack of gender-targeted relief reaching women equitably; and inadequate protection for displaced girls and women in temporary accommodation.<sup>112</sup> Participants created their own blueprint for action with recommendations. This was submitted to the Agency for the Rehabilitation and Reconstruction of Aceh (BRR), the government body co-ordinating reconstruction efforts. Top of the list of recommendations was the re-establishment of Balai Inong, or “women’s houses”. Before the tsunami struck, every village in Aceh had a Balai Inong where women could meet to network, convene and work together on community projects. Participants felt that starting up these women’s houses in villages would be an effective way to ensure that women’s concerns were being heard, while also providing a safe space for women to grieve, share experiences, and develop skills to sustain their livelihoods. With technical assistance from UNIFEM, the Governor and the head of BRR moved the reconstruction of these women’s houses up the agenda and Balai Inong began to be rebuilt. These houses have been used in the traditional way for women to meet and collaborate, but have not had significant impact in terms of women’s involvement in peace agreement implementation or political developments in Aceh.

## Nepal’s Comprehensive Peace Accord, 2006

Nepal’s Comprehensive Peace Accord (CPA) was signed in November 2006 between the Maoists and a seven-party political alliance; India’s leftist parties facilitated the process with the tacit backing of the Indian Government. This process ended ten years of war, brought the Maoists into democratic politics and ended the feudal order presided over by the monarchy. The ‘new Nepal’ promised federal restructuring of the unitary state and an end to discrimination on the basis of class, ethnicity, caste, region and gender. In the slew of agreements that subsequently comprised the architecture of peace, the motifs of inclusiveness, proportionality and participation are prominent. This was a historic high point, bringing together groups traditionally discriminated against, including women and ethnic groups such as Janajatis, Dalits and Madheshis. Unfortunately, the hard-won political consensus – and the promise of socio-economic justice – has so far proved worryingly tenuous.

A commitment to gender equality was central to the Maoists’ ideology before the CPA, and the pro-democracy movement relied on a massive mobilisation of women. Yet, when the time came to negotiate peace, the process between the Government of Nepal and the Communist Party of Nepal was “notably absent

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112 Enarson, Elaine, *Women Building Their Future: Gender Breakthrough in Post-Tsunami Aceh*, (Bangkok: UNIFEM, 2009).

of women".<sup>113</sup> The resulting peace agreement did little to promote or strengthen women's rights. The CPA promised there would be no discrimination on the basis of gender and included a separate paragraph on the rights of women and children. However, it lacked specificity in many areas where gender considerations should have been incorporated.

Some of the gaps were addressed in later agreements, most notably the Interim Constitution adopted in January 2007, two months after the CPA. From a gender perspective, the most important clause in the Interim Constitution was the guarantee that women would make up one third of the Constituent Assembly (CA) and institutions of state.<sup>114</sup> The document also included basic rights not previously granted to women, such as equal rights to inherit property, reproductive rights, and the conferring of citizenship via the mother.<sup>115</sup> Much of this was the result of intense advocacy rather than guarantees made in the CPA. Initially, the Interim Constitution Drafting Committee and other key committees were made up almost exclusively of men, and it was only after lobbying by a multi-party women's alliance, supported by high profile women activists and backed by UN agencies, that women were given places in these committees.<sup>116</sup>

Women exercised influence through a range of channels during the drafting of the Interim Constitution. They were represented on the peace task force, which was composed of representatives of political parties, the Peace Secretariat, local facilitators and international advisers. A "Women's Charter for Equality 2006" had been endorsed by 300 prominent Nepali women, covering "security sector reform, justice, dealing with the past, social equality and inclusion, economic reform, water issues, human security."<sup>117</sup> The UN Mission to Nepal, which was mandated to 'supervise' the management of the armies and oversee the elections, had a Gender Affairs Section that sought to make the process more gender-inclusive. For example, the mission supported changes in electoral laws to ensure women's representation and, through the United Nations Development Programme, facilitated capacity-building training for female candidates for the Constituent Assembly elections.

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113 Baechler, Günther, *A mediator's perspective - Women and the Nepali peace process*, Centre for Humanitarian Dialogue Opinion Piece Series (Geneva: Centre for Humanitarian Dialogue, 2010).

114 Part 7, Paragraph 63, Article 4, Nepali Interim Constitution 2007.

115 Asian Development Bank, *Overview of Gender Equality and Social Inclusion in Nepal* (Manila: Asian Development Bank, 2010). See also "Nepal Profile", article on the website of the EC/UN Partnership on Gender Equality for Peace and Development: [http://www.gendermatters.eu/index.php?option=com\\_content&task=view&id=122&Itemid=110](http://www.gendermatters.eu/index.php?option=com_content&task=view&id=122&Itemid=110) Accessed 24 July, 2012.

116 Manchanda, Rita, *Nepali Women seize the new political dawn: Resisting marginalisation after ten years of war*, Centre for Humanitarian Dialogue Opinion Piece Series (Geneva: Centre for Humanitarian Dialogue, 2010).

117 Baechler, Günther, (2010).

The first elections, held in April 2008, saw more than 33% of seats in the Constituent Assembly (CA) go to women from some of Nepal's most oppressed castes and ethnicities, vaulting Nepal into 14th place in the global index for women in politics.<sup>118</sup>

Despite this substantial presence, the female parliamentarians have had little effect in shaping a more gender-equal Nepal. Having claimed during the war to be pursuing a gender transformative agenda, the major political parties are dominated by deeply patriarchal attitudes and structures. One woman reflected: "Whenever we raise an issue inside the CA, senior leaders walk out of the hall without bothering to listen to us. Even the media ignores the issues that women raise."<sup>119</sup> The gender agenda was not sufficiently unifying across castes or political parties and Nepali women remain a fragmented group. "When there is difference between the parties, the possibility of asserting a cross-party gender-sensitive agenda shrinks," observed veteran politician Sarita Giri.<sup>120</sup>

As for the CPA itself, its limitations reflected the drafters' narrow conception of peace as ". . . just the absence of violence."<sup>121</sup> Greater participation by women ". . . would have led to 'change' at various levels. Issues of impunity, human rights, justice, dealing with the past, as well as the social and economic well-being of the people would have ranked higher on the agenda of the talks."<sup>122</sup> These gaps are explored in the analytical section of this report.

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118 Nepal ranks 22nd in the world, according to the International Parliamentary Union's "Women in National Parliaments" data up to 30 September 2012, World Classification page: <http://www.ipu.org/wmn-e/classif.htm> Accessed 25 October, 2012.

119 Savitra Bhusal from the Communist Party of Nepal – Unified Marxist-Leninist (CPN-UML), quoted in Delaney, Alexandra, "Nepal's women have a voice in politics but no one is listening," *The Guardian* (UK), 27 May, (2011). Available at: <http://www.guardian.co.uk/global-development/poverty-matters/2011/may/27/nepal-women-in-politics> Accessed 28 July, 2012.

120 Sarita Giri is CPN party senior leader, a member of the CA, and a member of the Constitutional Drafting Committee. She was the only female leader to advocate that women should be included in the Special Technical Committee overseeing the integration of the Maoist combatants. For quotation see Manchanda, Rita, (2010), reference 12.

121 Baechler, Günther, (2010), p.3.

122 Baechler, Günther, (2010), p.4.

## Annex 2: International norms on women, peace and security

This section briefly outlines the key international norms on women, peace and security issues for those who are not familiar with them. The six agreements used as case studies in this report were examined in the framework of these norms.

### Convention on the Elimination of All Forms of Discrimination Against Women (1979) (CEDAW)<sup>123</sup>

Often referred to as the international bill of rights for women, CEDAW is a single, comprehensive and internationally binding legal instrument to eliminate discrimination against women. Developed by the UN Commission on the Status of Women, the Convention addresses the advancement of women, describes the meaning of equality and sets forth guidelines for achieving it. It also provides an agenda for action, as those countries that ratify CEDAW agree to take concrete steps to improve the status of women and end discrimination and violence against women. Some of its key provisions include:

- Designating temporary special measures such as quotas as appropriate and non-discriminatory means to level the equality playing field (Article 4).
- Requiring signatories to take all appropriate measures against the trafficking and exploitation of women (Article 6).
- Requiring the equal participation of women in public life nationally and internationally (Articles 7 and 8).
- According women equal rights in relation to nationality, marriage and children (Article 9).

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<sup>123</sup> The website of the Office of the High Commissioner for Human Rights section showing texts of all international human rights conventions can be found at <http://www2.ohchr.org/english/law/cedaw.htm> Accessed 17 July, 2012.

The agreements reviewed in this report involved six national governments – the Philippines, Bangladesh, Indonesia, Portugal, Papua New Guinea and Nepal – all of which had ratified CEDAW at the time their agreements were being drafted. Yet, as noted, this rarely filtered through to the clauses in the agreements.

### **Beijing Declaration and Platform for Action (1995) (BPA)<sup>124</sup>**

This is a comprehensive global policy framework to achieve the goals of gender equality, development and peace, adopted by governments at the 1995 Fourth World Conference on Women in Beijing. Although it is not a legally binding document, states reporting on implementation of CEDAW are requested to mention their implementation of BPA as well (BPA Article 324, and Article 24 of General Assembly Resolution 60/140). BPA identified 12 significant issues and areas for action:

- poverty;
- education and training;
- health;
- violence against women;
- armed conflict;
- economy;
- power and decision-making;
- institutional mechanisms;
- human rights;
- media;
- environment; and
- girls.

This was the first international agreement to contain a specific focus on armed conflict and women (Paragraphs 131-149). Key relevant commitments include:

- Ensure women's full participation at all levels and stages of decision-making relating to conflict prevention and resolution, peacekeeping, peacebuilding and post-conflict recovery (Paragraphs 142a, 144c).

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124 The Beijing Declaration and Platform for Action from the Fourth World Conference on Women is available at: <http://www.un.org/womenwatch/daw/beijing/pdf/BDPfA%20E.pdf> Accessed 17 July, 2012.

- Provide gender sensitivity training to all actors in peacekeeping missions (Paragraph 145g).
- Develop gender-sensitive strategies and planning, involving women affected by the conflict, in all humanitarian crises resulting from conflict (Paragraph 147a).
- Ensure gender balance in all government bodies and committees and in electoral systems (Paragraphs 190a and b).

All the peace agreements reviewed in this report were developed after the BPA.

### **United Nations Security Council Resolution 1325 (2000)<sup>125</sup>**

UNSCR 1325 was adopted in 2000 by the UN Security Council to ensure the participation of women in peace and security decisions, ensure their protection and prevent violence against them, and promote the use of gendered perspectives in peace and security. It is considered to be legally binding, although it lacks strong accountability mechanisms. It calls on state and non-state actors involved in violent conflict (and its resolution) to take action to end gender-based violence and impunity for perpetrators of gender and sexual violence; to include women in decision-making related to peacebuilding; and to integrate gender perspectives in peacekeeping missions. The resolution stresses the importance of training on gender and women's rights among military forces, observers and police, as well as human rights and humanitarian personnel. It particularly calls for peace negotiations to include women at all levels of decision-making, and for all actors involved in negotiating and implementing peace agreements to adopt a gender perspective. This perspective should include, among other elements:

- Consideration of the needs of women and girls during repatriation and resettlement, as well as for rehabilitation, reintegration and post-war reconstruction (Article 8a).
- Measures that support local women's peace initiatives and indigenous processes for conflict resolution, and that involve women in all implementation mechanisms of the peace agreements (Article 8b).
- Measures that ensure the protection of and respect for the human rights of women and girls, particularly as they relate to the constitution, the electoral system, the police and the judiciary (Article 8c).

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125 The full official text of United Nations Security Council Resolution (UNSCR) 1325 is available at: [http://www.un.org/events/res\\_1325e.pdf](http://www.un.org/events/res_1325e.pdf) Accessed 17 July, 2012.

Of the peace agreements reviewed in this report, three were drafted before UNSCR 1325: Mindanao, Chittagong Hill Tracts and East Timor. The agreements on Bougainville, Aceh and Nepal were drafted after 1325 was adopted. All the agreements pre-date UNSCR 1325's 'related' resolutions 1820, 1888, 1889 and 1960.

### **Related UN Security Council Resolutions: 1820, 1888, 1889, 1960<sup>126</sup>**

UN Security Council Resolution 1325 has been amplified by the following resolutions: SCR 1820 (2008), SCR 1888 (2009), SCR 1889 (2009), and SCR 1960 (2010).

- Resolution 1820 recognises that conflict-related sexual violence is a tactic of warfare. It calls for troops to be trained in preventing and responding to sexual violence, exclusion of such crimes from amnesties and prosecution of perpetrators, deployment of more women to peace operations, and enforcement of zero-tolerance policies on sexual exploitation or abuse by peacekeepers.
- Resolution 1888 strengthens the implementation of Resolution 1820 by calling for leadership to address conflict-related sexual violence, deployment of military and gender experts to critical conflict areas, and improved monitoring and reporting on conflict trends and perpetrators.
- Resolution 1889 addresses obstacles to women's participation in peace processes. It calls for development of global indicators to track the implementation of Resolution 1325, and improvement of international and national responses to the needs of women in conflict and post-conflict settings.
- Resolution 1960 calls for an end to sexual violence in armed conflict, particularly against women and girls. It provides measures aimed at ending impunity for perpetrators of sexual violence, including sanctions and reporting measures.

Core 1325 issues have also been reflected in key UN documents such as the UN General Assembly Resolution on "Strengthening the role of mediation in the peaceful settlement of disputes, conflict prevention and resolution,"<sup>127</sup>

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126 Summaries adapted from USIP at [http://www.usip.org/gender\\_peacebuilding/about\\_UNSCR\\_1325#What\\_are\\_the\\_other\\_resolutions\\_related\\_to\\_security\\_and\\_women](http://www.usip.org/gender_peacebuilding/about_UNSCR_1325#What_are_the_other_resolutions_related_to_security_and_women) Accessed 4 October, 2012.

127 United Nations A/RES/65/283 available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N10/529/52/PDF/N1052952.pdf?OpenElement> Accessed 5 October, 2012.

various operational guidance notes produced by the UN Department of Political Affairs,<sup>128</sup> and the UN Guidance for Effective Mediation.<sup>129</sup>

## Regional and National Frameworks

There are also some strong regional frameworks on women, peace and security, particularly in the African Union and European Union.<sup>130</sup> At the national level, the main policy instrument for specifying commitments under UNSCR 1325 and related resolutions is the National Action Plan (NAP) – though countries may also decide to mainstream gender into national peace and security policy without developing an NAP. Currently 37 of the 193 member states of the UN have NAPs.<sup>131</sup>

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128 Available at: <http://peacemaker.unlb.org/index1.php> under "Peacemakers' Toolbox", they include *Operational Guidance Note – Women in Peace Processes and Agreements*, UN Department of Political Affairs (New York: UNDP, June 2006). Additionally, beyond this toolbox, see United Nations, *Guidance for Mediators – Addressing Conflict-Related Sexual Violence in Ceasefire and Peace Agreements*, (New York: UN Department for Political Affairs, 2012). Available at: [http://www.un.org/wcm/content/site/undpa/main/issues/sexual\\_violence](http://www.un.org/wcm/content/site/undpa/main/issues/sexual_violence) Accessed 15 October, 2012.

129 United Nations, *UN Guidance for Effective Mediation* (New York: United Nations, September 2012). Available at [http://www.un.org/wcm/content/site/undpa/main/issues/peacemaking/mediation\\_guidance](http://www.un.org/wcm/content/site/undpa/main/issues/peacemaking/mediation_guidance) Accessed 5 October, 2012.

130 The African Union (AU) and European Union (EU) have moved furthest in responding to UNSCR 1325 by developing their own policy frameworks and the greatest number of National Action Plans on 1325: of the total 37 NAPs at the time of publication, 9 are from Member States of the AU while 15 are from the EU. Neither the Association of Southeast Asian Nations (ASEAN) nor the South Asian Association for Regional Cooperation (SAARC) has such a policy framework; and there are only two NAPs from the Asia-Pacific region (Nepal and the Philippines). The EU Framework is enshrined in the *Comprehensive EU Approach to the Implementation of UNSCR 1325 and 1820 and Implementation of SCR 1325 as reinforced by 1820 in the context of European Security and Defence Policy* (known as Common Security and Defence Policy). The AU's is in the Solemn Declaration on Gender Equality (2004); the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol 2003); the AU Commission Gender Policy; and the African Union Constitutive Act (2001).

131 For a summary and definition of NAPs and which countries have them see <http://www.peacewomen.org/pages/about-1325/national-action-plans-naps> Accessed 5 October, 2012.