ALTERNATIVE APPROACHES TO WOMEN, PEACE, AND SECURITY IN A CHANGING ERA

STUDENT WORKING PAPERS

Penn Law Seminar on International Women’s Human Rights taught by Rangita de Silva de Alwis, Associate Dean of International Programs

Report presented to UN Women and Office of the High Commissioner for Human Rights on April 23, 2018
ALTERNATIVE APPROACHES TO WOMEN, PEACE, AND SECURITY IN A CHANGING ERA
# TABLE OF CONTENTS

**FOREWORD**  
RANGITA DE SILVA DE ALWIS

**INTRODUCTION**  
SHANE FISCHMAN

## PART I: THE DOMESTIC SPHERE:

**“Education is the Only Solution”: The Power of Girls’ Education to Prevent Conflict and Facilitate Peace**  
GENEVIEVE LIM URBAN

**Virginity Testing in Law Enforcement: A Case Study Examining How Indonesia’s Virginity Tests Threaten Women’s Peace and Security**  
DEVIN TROY

**Family Planning: The Closest Thing to a Silver Bullet for Armed Conflict**  
EMILIE RABER

**Continued Impunity and 1325: Why Rape Remains in Liberia Despite Efforts Towards International Norm Compliance**  
LAUREN WYSZOMIERSKI

**Sex Trafficking and Women’s Rights, Peace, and Security: Case Studies on Romania and Nepal**  
KERRI GALLAGHER

**Domestic Violence As an Indicator of State Stability: Lessons from El Salvador and Timor-Leste**  
MARY LESTER

## PART II: CULTURE AND RELIGION

**Cognitive Dissonance: Conceptualizing the Apparent Conflicts between Religious Freedom and Women’s Rights in International Law**  
MEREDITH CHRISTIAN

**Transnational Justice and the Importance of Giving Primacy to Women’s Representation in Security Forces**  
TALYA DJEMAL

**Culture in Practice: International Policy Mechanisms for a Gendered Approach to Cultural Expression in Transitional Justice**  
CLARK EDMOND
HOW THE SIMILARITIES BETWEEN SAUDI ARABIA’S VISION 2030 AND THE UN SDG GOALS PRESENT AN OPPORTUNITY FOR THE WOMEN, PEACE AND SECURITY AGENDA
SHANE FISCHMAN

PART III: DEVELOPMENT, ECONOMICS, AND THE GOVERNMENT

THE ROLE OF WOMEN IN TRANSFORMING NORTH KOREA FROM THE INSIDE AND OUT: AN UNTOLD STORY OF MARKETIZATION AND DEFECTION
CAROLYN CARPENTER

RWANDA: TRAILBLAZERS IN POLITICS, BUT NOT IN DAILY LIVES
MALU MALHOTRA

LEVERAGING NATIONAL ACTION PLANS TO FORTIFY PEACE ACCORDS: A CASE STUDY ON THE MINDANAO PEACE PROCESS
ALLYSON REYNOLDS

THE CONTINUING STATELESSNESS OF ROHINGYA WOMEN
KARIN SHMULEVICH

LAND GRABBING AND THE IMPACT ON WOMEN’S PEACE AND SECURITY
JUSTINE CHIU

LADIES FIRST- INDIA’S ACCOUNTABILITY UNDER UNSCR 1325: THE NEED FOR A NATIONAL ACTION PLAN
ALEESHA JADHAV
FOREWORD
Rangita de Silva de Alwis

On July 24, 2018, the United Nations Special Representative of the Secretary-General on Sexual Violence in Conflict, Ms. Pramila Patten, and the Chair of the Committee on the Elimination of Discrimination against Women (CEDAW Committee), Ms. Dalia Leinarte, signed a Framework of Cooperation between the CEDAW Committee and her Office. The Framework of Cooperation is a first between a Security Council-mandated body and a human rights treaty mechanism.

The Framework of Cooperation reinforces and acknowledges that the rights of women and girls affected by conflict-related sexual violence is a human rights violation deeply rooted in gender discrimination before, during, and after conflict.

This Framework of Cooperation is aimed at creating sustainable peace by ensuring that the pillars of peace and security are closely linked to the CEDAW’s human rights agenda and the development agenda of the Sustainable Development Goal Number Five on gender equality.

This Framework of Cooperation reflects powerfully that the roots of conflict-related sexual violence are not isolated incidents but instead are a continuum of gender discrimination that are addressed by the CEDAW. The Framework of Cooperation obliges States Parties to the CEDAW to prevent discrimination against women as a harbinger of conflict and to address gender-based violence in times of war, as well as peace.

The Student Working Papers developed for the Penn Law Seminar on “International Women’s Human Rights: Advancing Women’s Peace and Security” foreshadow and complement the Framework of Cooperation and have urged States Parties to address the Women Peace and Security Agenda: Security Council Resolutions 1325 (2000), 1820 (2008), 1888 (2009), 1960 (2010), 2106 (2013) and 2331 (2016) as linked to the values of the CEDAW and Goal 5 of the SDGs. The overarching themes of the papers advance the idea that while gender-based violence and discrimination could be early warning signs and indicators of crisis and conflict, addressing gender discrimination in times of peace and conflict will help prevent a conflict and gender-based violence in conflict. In the final analysis, the legal status of women is a determinant of national peace and security.

Rangita de Silva de Alwis
Associate Dean of International Affairs
University of Pennsylvania Law School
Advisor, UN Sustainable Development Goals Fund
UN Women High Level Working Group on Women’s Access to Justice
International security is an elusive issue. It vaguely references the amalgamation of different approaches to peace and security assumed by different organizations, ranging from the UN and NATO in the public sphere, to think tanks and independently contracted organizations in the private sphere. Since its conception in the post-World War I era, international security has waxed and waned, tipping from a balance of power approach on the one hand, to a complete rejection of war with the Kellogg-Briand Pact on the other. Yet despite its abstract nature, international security has always referenced air and land security. However, though traditionally consumed with military strength, conventional arms, political capital, and nuclear power, the strategies and concerns that had encompassed the international security play book since the early twentieth century have transitioned into a concern of softer, understated issues. International security jargon has progressed as well: what had once been a nebulous allusion to an unacknowledged state of being, the term “security” now addresses a plethora of interlocking problems. Strategy and lexicon today have embraced an understanding that security is no longer an exclusive issue relevant to physical borders. It affects the daily lives of men, women, and children in the most understated ways. Food; clean-air; soil; land; the ability to travel freely; the right to access courts; the basic entitlement to security of person. Today’s security threats are diverse. Yet despite this diversity, it is also understood that the variance between these issues is directly connected to the most traditional security concerns, namely violence and extremism. The world of practitioners, scholars and policy-makers finally understands that there is more than correlation between states that contract their citizens’ right of movement and states that have vibrant militant groups enforcing these laws. And that the bulk of these issues directly affect the lives of women.

On October 17, 2000 the UN passed a landmark resolution. To date, UN Security Council Resolution 1325 is the world’s most translated UN resolution— the document, and through it its signatories, acknowledges that women experience conflict differently than men; that women and children predominantly account for the compilation of the refugee community; that sexual abuse abounds during armed conflict, disproportionately affecting women. However, most notable is the action plan that 1325 creates, reaffirming the critical role women play in conflict prevention and peacebuilding, and the need to incorporate women into peace-building teams.

Though UN Resolution 1325 was a watershed in the movement to incorporate women into security and peacebuilding matters, establishing a normative framework for peacebuilding and conflict prevention, the document, and the subsequent National Action Plans written by a multitude
of countries, was not created in a vacuum. It was built on the shoulders of the women who protested war at the Hague in 1915. It was structured around the 1969 Commission on the Status of Women, the nucleus around which commissions and programs were established to advocate for women and children globally: the original interrogator that questioned whether the violence women and children face during conflict necessitates the creation of special laws to protect them during war. It was the fusion of these ideas that led to the adoption of the General Assembly’s 1974 Deceleration on the Protection of Women and Children in Emergency Armed Conflict. When the UN started hosting World Conferences on Women in 1974, landmarks started to be reached: the CEDAW was passed, crystalizing the women’s international bill of human right, and the Beijing Platform was drafted, recognizing how civilian casualties during conflict far outpace the death of militants, that women and children comprise a larger portion of the victims than men, and calling for the application of international human rights law and international humanitarian law in protecting women during conflict.

Noise has a ripple effect, and the more noise you make, the grander your accomplishments. These breakthroughs all paved the way for Resolution 1325, which not only cemented women’s rights as an international issue but also sealed them as laws. Two important elements of 1325 and the road that led to its creation must be underscored. First, the most significant trope in this narrative is the constant call for the application of international humanitarian law, and international human rights law in protecting women and children during conflict. Law undeniably is the foundation on which policy is drafted; it is unshakable, the ultimate regulatory system governing state actions, and holding states and individuals accountable for the decisions they make. There is no higher authority than law, which is why women have fought so hard to create the CEDAW, and to have 1325 passed in the Security Council. It is the Lockean framework tempering Hobbes’ leviathan. Yet, time and again, law is flouted with women and children disproportionately falling victim to actors who doubt international law’s potential to be enforced. For this reason, law is a necessary mean for achieving the end— for making women’s rights a norm instead of an obligation, thereby tempering extremism and helping stability and peace flourish—but it cannot be the end in itself.

Second, while past documents and platforms have argued tirelessly for law’s preeminence, Resolution 1325 is the first document that argued not only for women’s protection, but also for including their voices in the peacebuilding process. It recognizes that because women suffer disproportionally, they deserve the right to draft the laws that will guarantee their protection. Upon reaching this milestone, 1325 chartered a new course for women in the peace and security
movement. Since 2000, literature, data, and law have all emerged proving that not only do women have the human right to participate in peacebuilding, to represent their countries and serve in law enforcement, and to the inalienable right of security of person, to food and water and clean air, but that when women are included in the colloquy of voices advocating for peace and drafting laws to prevent conflict, society is stronger, economies thrive, children live longer, and peace abounds. Yet, these numbers still fall short. Though when women are included in peacebuilding efforts they are sixty-four percent less likely to fail, between 1992 and 2011, women only comprised two percent of chief mediators, four percent of witnesses and signatories, and nine percent of negotiators.

This compilation of papers on the women, peace and security agenda builds on these two critical developments: that law is a necessary tool for finalizing and implementing 1325 and the women, peace and security agenda, but that it cannot be the only tool. Success requires women be included in the drafting process as well. For law to pass, women must be involved in drafting its language. Yet often enough, this too is not sufficient. Law must be changed, women must be involved in changing it: These two central themes are pivotal elements of the attached white papers, yet this compilation goes one step further still, explaining how there is always a lingering third variable that must be incorporated for the women, peace and security agenda to thrive. Debunking the myth of a homogenous approach to peace, each of the following sixteen papers touch on a potential, workable third element to combine with the necessary prerequisites of changing law and making space for women at the table.

The following pages include the next generation’s answers to both history’s most stubborn problems, and the struggles born of past solutions. This compilation is drafted around the central theme that discriminating against women is a deterrent to peace, and the simple fact that when discrimination is prevalent, everyone suffers. These papers, supported and bolstered by statistics and data, prove that when women are systemically denied their rights, extremism abounds and conflict ensues, but they are written through a lens that also embraces the verity of the situation: states that adhere to gender equality also have stronger human rights records.

Gender discrimination is an early warning sign for pending extremism, yet the inverse is true as well: gender equality in law making is a preventative measure, augmenting national and global security and preemptively combating violence and extremism. The topics discussed in the next few pages address the gargantuan issues we are fighting to erode, and embraces the necessary hybrid approach to solving them. They are interdisciplinary, diverse and progressive. They successfully weave together academic journal articles, statistics, economics, religion and
international peace treaties, creating a synchronized compilation of ideas that could be directly implemented into UN Women’s repertoire. They range in scope as well: while some tackle perverse practices like virginity testing in Indonesia, state tolerance of domestic violence in El Salvador and Timor-Leste, or global tolerance of the Rohingya Women’s continued stateless existence, others address macro problems such as transnational justice, the persistent tension between religion and international law, and cultural relativism. While these topics are diverse, they are woven together through the common thread of law and policy, and the inescapable truth that women are indispensable to the Women, Peace and Security Agenda, and that the WPS agenda is a necessary prerequisite to a more secure world.

This compilation is broken into three parts. Part I encompasses the following titles: “Education is the Only Solution”: The Power of Girls’ Education to Prevent Conflict and Facilitate Peace; Virginity Testing in Law Enforcement: A Case Study Examining How Indonesia’s Virginity Tests Threaten Women’s Peace and Security; Family Planning: The Closest Thing to a Silver Bullet for Armed Conflict; Continued Impunity and 1325: Why Rape Remains in Liberia Despite Efforts Towards International Norm Compliance; Sex Trafficking and Women’s Rights, Peace, and Security: Case Studies on Romania and Nepal; Domestic violence As an Indicator of State Stability: Lessons from EL Salvador and Timor-Leste. These papers fall under the banner of “The Domestic Sphere”, directly addressing the effects of local, domestic policy on a woman’s life. These papers tackle the complex issues of education, virginity testing, sex-trafficking, domestic violence and family planning. They underscore the preeminence of changing laws to achieve real change. Recognizing that putting women in leadership positions is only the starting point and not an end to itself, Part I, eighteen-years after the Security Council passed 1325, makes the call to empower women at home through international law—closing loopholes, strengthening UN watchdog groups, increasing finances for the SDG goals, and passing new security council resolutions. These papers leave no rock unturned in their quest to secure human security as a necessary prerequisite for curtailing and combatting violence and extremism, and they understand that to ensure human security, the Women, Peace and Security agenda must be emboldened through a renewed focus on tackling the micro-issues directly and tangibly impacting women’s lives.

Part II is titled “Culture and Religion”. A shorter section, these four papers confront cultural and religious norms, reemphasizing the fact that law may change but culture is more resolute. This section includes the titles Cognitive Dissonance: Conceptualizing the Apparent Conflicts between Religious Freedom and Women’s Rights in International Law; Transnational Justice and the
Importance of Giving Primacy to Women’s Representation in Security Forces; Culture in Practice: International Policy Mechanisms for a Gendered Approach to Cultural Expression in Transitional Justice; How the Similarities between Saudi Arabia’s Vision 2030 and the UN SDG Goals Present an Opportunity for the Women, Peace and Security Agenda. Part II is particularly intriguing: though it recognizes that changing culture is indeed a more onerous task, it also accentuates the principle that policy can be the bridge alleviating the stress between cultural rigidity and legal flexibility. Furthermore, this section calls for cultural sensitivity, advocating for the use of cultural justice, particularly for women, as an additional mechanism in the post-conflict reconciliation process and proposes practical ways of incorporating cultural justice into the international justice regime. Finally, this section also discredits the myth that religion is incongruent to international human rights law, arguing instead that religion can be an asset to the women, peace and security agenda, that it possesses a latent emancipatory potential in advancing and developing women’s right. Though the issues in this section are far from homogenous, Part II’s multifaceted analysis of the role of culture and religion in transnational justice and women’s rights is illuminating and astute, and its contribution to the UN’s approach to the women, peace and security movement should not be underestimated.

Finally, Part III addresses the concepts of “Development, Economics, and the Government”. The following papers encompass this final section: The Role of Women in Transforming North Korea from the Inside and Out: An Untold Story of Marketization and Defection; Rwanda: Trailblazers in Politics, but not in Daily Lives; Leveraging National Action Plans to Fortify Peace Accords: A Case Study on the Mindanao Peace Process; The Continuing Statelessness of Rohingya Women; Land Grabbing and the Impact on Women’s Peace and Security; Ladies First- India’s Accountability Under UNSCR 1325: The Need for a National Action Plan. This section’s papers address a wide array of issues: marketization, women’s role in post-conflict politics, land tenure in a woman’s identity, and the preeminent issue of citizenship rights. Three critical themes develop out of this section: These papers bypass the strictures of local bureaucracy and regulations to highlight a critical, core relationship between equal participation or representation and the economic development of a country as a whole; the incontrovertible fact that lacking citizenship is an aggravating factor in conflict, a tool for enemy exploitation; and finally, though women in legislature may successfully create new laws that theoretically liberate women, in practice these laws fall short and do not have the requisite teeth to impact women’s private lives. Together, these papers argue for a feminist perspective in economic and political development, a critical approach to law and policy that often gets overlooked in a quixotic quest to fit the mold of
more traditional approaches to problem solving.

Law and policy are two regulatory branches inextricably woven together. Building on law’s preeminence and the undeniable truth that when women make policy, society is more likely to thrive, these papers offer cutting edge solutions, proposing new laws to bolster policy, new policy approaches to guarantee sounder laws, that taken together will help the Women, Peace and Security Agenda, charter its next path and tackle the most perverse problems challenging women, children and the global community in 2018. These law and policy papers confront issues ranging from economic conundrums, migrant rights, sex trafficking, transnational justice and the right of every global citizen to call themselves a citizen of their state. Proving that the journey is never over, that to achieve perfection you can never stop working towards solutions, these papers are the next generation’s promise to never stop fighting, and to never stop advocating for the rights women and society are entitled to.
“EDUCATION IS THE ONLY SOLUTION”: THE POWER OF GIRLS’ EDUCATION TO PREVENT CONFLICT AND FACILITATE PEACE

Genevieve Lim Urban

1. INTRODUCTION

“Let us pick up our books and our pens. They are our most powerful weapons. One child, one teacher, one pen and one book can change the world. Education is the only solution. Education first.” – Malala Yousafzai

All around the world, girls are prevented from attaining their education. Perhaps the most famous example is the shooting of Malala, which has dominated international headlines since 2012. After actively campaigning for girls to go to school in Taliban-controlled Pakistan, Malala was shot in the head, neck and shoulder by a masked gunman while she was on the school bus. Malala has bravely continued to campaign for girls’ rights to education, and she has since won the Nobel Peace Prize. The world was similarly captivated when Boko Haram kidnapped 276 girls from a boarding school in Chibok, Nigeria in 2014, and again in early 2018 when they kidnapped another 110 girls in a neighboring town. Boko Haram, a terrorist group in Northeastern Nigeria, has abducted over one thousand children since 2013. Boko Haram, which roughly translates to...
“Western education is a sin,” attacks schools because the militants believe the schools corrupt Islamic values. They continue to terrorize the region, purposely attacking girls’ schools. In Afghanistan, girls risk being attacked by acid or poisoned when they go to school. In Latin America, gang violence threatens girls on their way to school: millions of youth routinely miss school “because their route carries risks, the classrooms are caught in crossfire, or they fear being targeted by armed gangs.” Even in the United States, girls are targeted, removed from classrooms and sent home from school because of their appearance. While being removed from school for dress code violations is far less dangerous than facing armed assault, it is one more example of girls around the world being prevented from learning.

These narratives show that girls’ education is under attack around the globe. This is particularly frightening, as the social returns to educating girls are high; thus, attacks on girls’ education are attacks on women’s ability to participate in society, which threatens society at large. Keeping girls and women ignorant and uneducated fosters social and economic dependence on men. When girls are educated, they grow up to become liberated women, free from the social chains of dependence on men. In this way, education is revolutionary. Educated girls can achieve economic independence, participate in the political realm, and be seen as equal and valuable members of the family. With this freedom, women can achieve their full potential to act as agents of peace, thereby preventing conflict.

With the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and UN Security Council Resolution 1325 (SCR 1325), the United Nations aims to

---


11 Studies show again and again that the social returns to educating girls are high: maternal mortality drops, fertility is controlled, economic outcomes for families and communities are improved, and child outcomes are better. Countries that have equalized educational attainment for men and women have grown faster than countries that have not. T. Paul Schultz, Why Governments Should Invest More to Educate Girls, 30 World Development 207, 207 (2002).
elevate women to equal status and participation. These documents emphasize the importance of women having equal status as men and participating in decision-making at all levels. However, it is not enough to simply have quotas of women at the political table; gender equality is important in all spheres, such as the economic sphere and the domestic sphere. Education spans all spheres. Because of the rhetoric of education’s power and its ability to transform individuals, communities and society, I queried whether the National Action Plans included education as indicators. After conducting a qualitative study of the available National Action Plans to implement SCR 1325, I found a conspicuous absence of girls’ education indicators. This dearth of education indicators in the National Action Plans is worrisome, in light of the fact that terrorists, by perpetually attacking girls’ schools and girls who attend school, indicate that girls’ education is a threat to their violent extremism and radicalization. Member States’ understanding must be transformed to acknowledge the power of girls’ education. To facilitate this transformation, the United Nations Security Council must pass a new Security Council Resolution that acknowledges the primacy of educating girls, not only as a fundamental human right, but also as a tool to prevent conflict and foster peace.

2. Attacks on Girls’ Education as a Sign of Extremism

“Where justice is denied, where poverty is enforced, where ignorance prevails, and where any one class is made to feel that society is in an organized conspiracy to oppress, rob, and degrade them, neither persons nor property will be safe.”

– Frederick Douglass.12

A. The Importance of Girls’ Education

The importance and benefits derived from girls’ education is often taken for granted in academic literature.13 It is worth emphasizing, however, that studies show that social returns to educating girls is high; countries that have promoted equal education between girls and boys have progressed the most socially and economically.14 In countries where men’s and women’s educational achievements have equalized, countries have, on average, grown faster than countries where men’s and women’s educational achievements remain unequal.15 Education yields benefits

13 See Shirley Anne Porter, Girls’ Education, Development and Social Change, 14 POL’Y FUTURES IN EDUC. 517, 517 (2016) (“There has been so much written on the effects of educating girls on development and social change that articles no longer reference these claims. The rhetoric has been in the range of hyperbole as educated girls are seen as the solution to all development problems.”).
14 Schultz, supra note 11.
15 Id. at 219-20.
for the individual and for society—individuals acquire skills and can reap economic benefits from those skills, and society benefits from a prosperous community.16

B. Attacks on Girls’ Education

Zainab Bangura has said, “When we think of terrorism we think of destruction of property… But we cannot deplore the public violence of terrorism while ignoring the violence terrorists inflict on women and girls behind closed doors.”17 Most do not conceive of the atrocities against women and against girls’ education as terrorism because those acts are not typically framed as threats to security. However, violence in the private sphere is as much of a threat to security as public violence. There is a wide literature on the relationship between education and violent conflict.18 In times of conflict and violence, girls’ education is often the first to suffer.19 Schools are under-financed and attacked, and students and teachers are threatened. A country does not have to be in the midst of conflict, however, for gendered violence to affect girls’ education: men may feel threatened when girls are educated and learn how to speak up for their rights.20 Discrimination against girls’ education is emblematic of “a violently patriarchal society,” in which violence against girls and women as they attempt to acquire an education is typically perpetrated by men in highly patriarchal societies, “because [the girls’] educational aspirations [are] considered dangerous.”21 Conversely, education can facilitate peace building and prevent conflict.22 By increasing access to education, creating curricula that promotes tolerance and inclusivity, building conflict resolution skills, and promoting critical thinking, education can actively prevent conflict.23 Studies have shown that there is a relationship between low levels of educational attainment and a higher risk of conflict; a 2006 study calculated that increasing youth attendance in schools by 10% decreases the risk of conflict by 4%.24

Perhaps the Global Study on the Implementation of 1325 put it best: “Across religions and regions, a common thread shared by extremist groups is that in each and every instance, their

16 Sarah Doerrer et. al, A Gendered Examination of Education in the Reintegration Strategies of Liberia and Sierra Leone, 7 HARV. AFRICA POL’Y J. 41, 47 (2010).
18 Lyndsay McLean Hilker, The Role of Education in Driving Conflict and Building Peace: The Case of Rwanda, 41 PROSPECTS 267, 267 (2011).
19 See Porter, supra note 13, at 525.
20 Id.
22 Hilker, supra note 18, at 268.
23 Id.
24 John, supra note 21 at 269.
advance has been coupled with attacks on the rights of women and girls, [including the] right[] to education”25 The study notes that terrorists “deliberately attack schools.”26 Women and girls are particularly targeted when terrorists attack schools—although 19% of schools are girls’ schools, they are the targets in 40% of attacks on schools.27 This has downstream effects as well; many girls do not attend school for fear of attacks.28 This is exacerbated in regions in conflict, when girls’ education comes under direct attack.29 Conflict only widens the gender gap in enrollment and retention, and States in conflict usually divert resources away from education.30

C. Education and Security

Violence against women and girls on their way to school or in schools is a warning sign of more violence and extremism to come. This places education as central to conflict resolution and nation-building. Existing legal frameworks provide support for facilitating girls’ education. Specifically, Article 10 of the CEDAW, CEDAW General Recommendation 36, the Sustainable Development Goals (SDG), and SCR 1889 all address girls’ access to education. Despite this, however, States have not recognized the preventative power of education to arrest conflict in their National Action Plans. This indicates that a new SCR is necessary to signal to Member States that girls’ education is critical to the Women, Peace and Security agenda and should be included in the National Action Plans as such.

Article 10 of the CEDAW specifically addresses gender equality in education.31 The CEDAW mandates that States ensure that women have equal rights to education as men.32 Article 10’s demands are many, but it essentially has one goal—ensure that women have equal access to education as men. It seeks to accomplish both formal and substantive equality. It demands formal equality by requiring States to provide “the same” conditions for career and vocational guidance, “the same” curricula, “the same” scholarship opportunities, “the same” access to continuing

25 UN WOMEN, PREVENTING CONFLICT, TRANSFORMING JUSTICE, SECURING THE PEACE: A GLOBAL STUDY ON THE IMPLEMENTATION OF UNITED NATIONS SECURITY COUNCIL RESOLUTION 1325 1, 16 (2015), at http://wps.unwomen.org/ [hereinafter Global Study].
26 Id. at 68.
28 Id. at 70.
29 Id. at 79. For example, in Somalia, girls are forcibly removed from schools to become the “wives” of Al-Shabab fighters.
30 Id. at 80.
32 See CEDAW, art. 10 (“States Parties shall take all appropriate measures to eliminate discrimination against women…in the field of education”) (emphasis added). By using the word “shall,” the CEDAW makes it mandatory for States to eliminate discrimination in the field of education.
education, and “the same” opportunities to physical education. It demands substantive equality by requiring States to eliminate gender stereotypes in education “by encouraging coeducation…and, in particular, by the revision of textbooks…and the adaptation of teaching methods” as well as by reducing girls’ drop-out rates and providing all students with information about family planning.

The CEDAW Committee further commented on Article 10 by issuing General Recommendation No. 36 regarding the right of girls and women to education. General Recommendation No. 36 takes a rights-based approach to education access. It is closely tied to SDG 4, which seeks to “ensure inclusive and equitable quality education and promote lifelong learning opportunities for all” as well as SDG 5, which seeks to “achieve gender equality and empower all women and girls.”

UNSCR 1325 was a landmark resolution, in that it perceived women not only as victims in conflict, but as powerful agents of peace. In the Global Study, UN Women “provides a comprehensive evidence base demonstrating that women’s equal and meaningful participation in peace and security efforts is vital to sustainable peace.” The Global Study addresses girls’ education several times. It documents that

Further, the United Nations Security Council (UNSC) passed Resolution 1889, which addresses girls’ access to education as it relates to Women’s Peace and Security, but only in post-conflict situations. Education, as a human right, is vital in post-conflict situations. What 1889 fails to do, however, is recognize education’s power in pre-conflict situations. UNSCR 2242 refers to education, but only tangentially.

33 CEDAW, art. 10(a), (b), (d), (e), (g).
34 CEDAW, art. 10(c).
35 CEDAW, art. 10(f).
36 CEDAW, art. 10(h).
38 Id. at ¶ 14.
41 Global Study, supra note 25, at 1.
42 S. C. Res. 1889, ¶ 11 (Oct. 5, 2009) (urging Member States “to take all feasible measures to ensure women and girls’ equal access to education in post-conflict situations, given the vital role of education in the promotion of women’s participation in post-conflict decision-making”).
43 S.C. Res. 2242, ¶ 14 (Oct. 13, 2015) (recognizing that terrorism and violent extremism has a “differential impact on the human rights of women and girls” and acknowledges that “they are often directly targeted by terrorist groups…”).
Brigitte Balipou, a magistrate in the Central African Republic, has said, “Conflict prevention lies at the core of the [WPS] agenda, and the maintenance of international peace and security….Without strengthened investment in women’s human rights, equality, education, and women-led civil society, we will not see sustainable peace.” Generally, when education is mentioned in the various legal frameworks discussed above, it is referred to as a fundamental human right, and girls’ and women’s rights are violated when they are denied education. While undoubtedly true, these frameworks ignore the capacity of education as a tool to facilitate change. Education is one tool to prevent violent extremism, and the education of girls and women is a tool to facilitate peace.

3. Qualitative Study of National Action Plans

To implement UNSCR 1325, the President of the Security Council charged Member States to create National Action Plans (NAPs) that outline and define those States’ strategies to combat gender inequality and utilize women as agents of peace. Given the arsenal of research regarding the benefits of girls’ and women’s education to states, including states’ peace and security, one might expect the NAPs to reflect this by including education, especially girls’ education, as indicators. Otherwise, can women be meaningfully included at all levels of decision-making?

In what is perhaps the first study of its kind, I analyzed the available NAPs for references to education, and particularly, girls’ education. In studying the NAPs, I also searched for language regarding girls’ education as a valuable tool to combat extremism and prevent conflict. While 88% of available NAPs reference education, only 50% reference girls’ education. Further, only 26% include girls’ education as actionable indicators, and those largely discuss girls’ education in conflict or post-conflict situations. The results suggest that States acknowledge education as a human right that should not be denied, but beyond rights-based reasoning, States do not view education as a way to prevent conflict.

---

44 Global Study, supra note 25, at 209.
47 S.C. Res. 1325, ¶ 1 (Oct. 31, 2000) (urging “Member States to ensure increased representation of women at all decision-making levels”).
A. Methodology

As of February 2018, seventy-two (72) Member States had adopted at least one National Action Plan to implement SCR 1325. Of those, only sixty-six (66) had published their NAP. Where a Member State had more than one National Action Plan, the most recent available document was analyzed. For the fifty-two (52) NAPs available in English, I searched the documents for references to “school” and “education.” I then read the surrounding text for context and evaluated whether the reference to education was to primary and secondary education, or whether it referred to campaigns or military training. I only considered the NAP to refer to education if it referred to primary and/or secondary education, not public campaigns or military training. Then, I read the documents for references to girls’ education more specifically, and I evaluated the indicators for references to girls’ education. These references were coded with either zeros or ones—zero for non-references and one for references.

Fourteen (14) of the available NAPs were in languages other than English. For the NAPs in Spanish, I had the assistance of a translator, who implemented the same search strategy that I used in the English NAPs, described above. For the remaining non-English NAPs, I used Google Translate. I used the translation tool to determine the search criteria, then after conducting the search, I used the translation tool to decipher the surrounding text for context. For example, when reviewing the Brazilian NAP, I translated “school” and “education” in Google Translate from English to Portuguese. I then conducted a search in the documents for “escola” and “educação,” respectively. Then, I used Google Translate to translate the surrounding paragraphs and evaluated the non-English NAPs in the same manner as the English NAPs. In further studies, I would recommend professional translators, who may better understand the nuance of the languages than the Google Translate tool. However, because the NAPs are straightforward policy documents and not high literary works, I believe that the Google Translate tool was sufficient for this study, which sought to uncover whether the NAPs included girls’ education in their indicators.

B. Results

As shown fully in Table 1, fifty-eight (58) of the sixty-six (66) NAPs, or eighty-eight percent (88%) included references to education. Only thirty-three (33), or fifty percent (50%), however, referenced girls’ education. Most of these NAPs reference education and girls’ education

49 The following countries did not have available NAP documents as of February 2018: El Salvador, Guatemala, Montenegro, Niger, Solomon Islands, and Timor Leste.
50 Google Translate, translate.google.com (last accessed April 21, 2018).
only as part of their rhetoric, however. Only seventeen (17) NAPs, or twenty-six percent (26%) included girls’ education in the indicators.\textsuperscript{51}

Table 1: Girls’ Education in the National Action Plans to Implement SCR 1325

<table>
<thead>
<tr>
<th>COUNTRY NAME</th>
<th>REFERENCES EDUCATION Y=1, N=2</th>
<th>REFERENCES GIRLS’ EDUCATION Y=1, N=2</th>
<th>INCLUDES GIRLS’ EDUCATION AS INDICATOR Y=1, N=2</th>
<th>COUNTRY NAME</th>
<th>REFERENCES EDUCATION Y=1, N=2</th>
<th>REFERENCES GIRLS’ EDUCATION Y=1, N=2</th>
<th>INCLUDES GIRLS’ EDUCATION AS INDICATOR Y=1, N=2</th>
</tr>
</thead>
<tbody>
<tr>
<td>Afghanistan</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>Korea (Republic of)</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Argentina</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>Kosovo</td>
<td>1</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Australia</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>Kyrgyzstan</td>
<td>1</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Austria</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>Liberia</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Belgium</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>Lithuania</td>
<td>1</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Bosnia</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>Macedonia</td>
<td>1</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Herzegovina</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>Mali</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Burkina</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>Montenegro</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Burundi</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>Nepal</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Cameroon</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>Netherlands</td>
<td>1</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Canada</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>New Zealand</td>
<td>1</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Central</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>Niger</td>
<td>1</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>African</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>Norway</td>
<td>1</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Republic</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>Palestine</td>
<td>1</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Democratic</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>Paraguay</td>
<td>1</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Republic</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>Philippines</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Congo (DRC)</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>Portugal</td>
<td>1</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

\textsuperscript{51} Croatia, Estonia, Finland, France, Gambia, Georgia, Japan, Korea, Liberia, Nepal, Philippines, Senegal, Slovenia, South Sudan, Spain, Tajikistan, and the United States of America each included girls’ education in the indicators of their National Action Plans. See Table 1.
<table>
<thead>
<tr>
<th>Country</th>
<th>References to Education</th>
<th>References to Girls’ Education</th>
<th>Girls’ Education as Indicator</th>
</tr>
</thead>
<tbody>
<tr>
<td>Estonia</td>
<td>1</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Finland</td>
<td>1</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>France</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Gambia</td>
<td>1</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Georgia</td>
<td>1</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Germany</td>
<td>1</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Ghana</td>
<td>1</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Guatemala</td>
<td>1</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Guinea</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Guinea-Bissau</td>
<td>1</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Iceland</td>
<td>1</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Indonesia</td>
<td>1</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Iraq</td>
<td>1</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Ireland</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Italy</td>
<td>1</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Ivory Coast (Cote d'Ivoire)</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Japan</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Kenya</td>
<td>1</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>TOTALS</td>
<td>References to Education</td>
<td>58</td>
<td>References to Girls’ Education</td>
</tr>
</tbody>
</table>

C. *Analysis*

The high number of references to education within the National Action Plans demonstrate the nearly ubiquitous assumption that education is a fundamental human right. Yet, the lack of references to education in the indicators demonstrates that States and policy makers do not conceive of education as a tool to enact change. For example, the Afghanistan National Action Plan includes many lofty references to education: “[T]he Government of Afghanistan has developed this National Action Plan to achieve…[increased] access to education and higher education for girls and women,”[^52] and declares that the Afghan Constitution has a provision on education, which it

declares is a prerequisite “for [women’s] meaningful political participation”\(^{53}\) Yet, education is not mentioned after page 7 of the Afghanistan NAP, and none of its thirty-nine (39) indicators mention primary or secondary education. The Burkina Faso NAP considers the lack of education to be a form of social violence and considers education part of economic development, yet the NAP does not include girls’ education in any of its indicators.\(^{54}\) The Canadian NAP does not include girls’ education in its indicators, nor does it discuss education as a means to defines “women’s and girls’ empowerment” as “women and girls taking control over their lives” and that they “can be empowered…by establishing conditions in which women…have access to good quality education…”\(^{55}\)

Some Member States understand the importance of education to peace and security, and correspondingly, they include girls’ education as indicators in their Action Plans. Finland, for example, understands education as a “precondition[] for the strengthening of women’s participation and rights in peace processes,”\(^{56}\) and “emphasises the right of women…especially girls, to education from pre-primary education to university level and adult education” as a way to “prevent[] conflict.”\(^{57}\) As another example, the Philippines NAP identifies education as a cause of armed conflict\(^{58}\) as well as a factor in facilitating peace.\(^{59}\) Because it identifies education as such, the Philippines NAP includes education in its indicators, and it seeks to “enhance existing programs…in providing…educational…services for women and girl survivors of armed conflict”\(^{60}\) as well as “[i]ntegrate peace, non-violence and gender education in all levels of formal and non-formal education.”\(^{61}\) When States and policy makers understand the connection between education—especially girls’ education—and security, it logically follows that they include action steps related to education in their Action Plans to implement the Women, Peace and Security agenda.

D. **Case Study: South Sudan National Action Plan**

The South Sudan National Action Plan should be highlighted for its attention to girls’

\(^{53}\) *Id.* at 3.


\(^{57}\) *Id.* at 20-21.

\(^{58}\) Philippines National Action Plan 3 (2009), at http://peacewomen.org/nap-philippines (“Other perceived causes of armed conflict are poverty, lack of education and lack of basic social services.”) (emphasis added).

\(^{59}\) *Id.* at 5 (“Peace can be attained if there is…promotion of human rights such as [the] right to education…”).

\(^{60}\) *Id.* at 10.

\(^{61}\) *Id.* at 20.
education, not only as a fundamental human right, but also as a tool to facilitate peace and prevent conflict. What the South Sudan NAP does right is three-fold. First, it has a specific strategic action to campaign for girls’ education and to eliminate all forms of discrimination against girls’ education that are a result of cultural attitudes, customs and traditions. Performance indicators include enrollment, retention and completion of school, as well as enforcement of legislation against practices that force girls out of school, such as child marriage. Second, the NAP does not stop at simply providing education—it includes indicators related to gender responsive teaching and training curricula and materials. Finally, the NAP includes more than rhetoric and language; it provides financial resources for these interventions. By doing these things, South Sudan acknowledges girls’ education as a way to promote women’s participation in decision-making at all levels.

At the most basic level, South Sudan’s NAP campaigns for and provides girls with access to education. The performance indicators include the number of girls who enroll in school, who are retained in school, and who complete school. Access is the first step, for if girls do not have access to education, they cannot be educated. By including measurable indicators, South Sudan can assess whether the campaigns for girls to attend and complete school are successful. In addition to campaigning and encouraging girls to attend and complete school, the South Sudan NAP addresses cultural factors that prevented girls from attending and completing school in the first place. They implement a strategic action of “[e]nforc[ing] laws and regulations that encourage girls’ enrolment [sic] and retention in schools by addressing barriers to their education such as: sexual harassment, female genital mutilation, early marriages and early pregnancies,” accompanied by the performance indicator of “[e]nforcement of legislation against practices that force girls out of school, such as child marriages.” For example, The Child Act (2008) seeks to protect girls from abuse, including “rape, incest, early and child marriage, female circumcision and female genital mutilation,” and no girl should be removed from school or prevented from finishing school because of pregnancy or motherhood. By enforcing this Child Act and encouraging girls to go to school,

62 See South Sudan National Action Plan 11 (2015), at http://www.peacewomen.org/action-plan/national-action-plan-s-sudan (noting that the overall objective of the NAP is “to strengthen the participation of women in peace and security efforts and facilitate the creation of an enabling environment for their leadership and political participation in conflict resolution and allow for more inclusive, just and sustainable peace, recovery and reconstruction processes, where a gender perspective is integrated into the design and implementation of all policies related to peace and security.”).
63 Id. at 41.
64 Id.
65 Id.
66 Id.
67 Id. at 29.
South Sudan will demonstrate a commitment to removing the cultural barriers that devalue girls and women attaining an education.

Access to education, while a fundamentally important step, is not enough. Education must be responsive to gender and advance the goals of equality. The South Sudan NAP includes the strategic action of “[r]eview[ing] all the teaching and training curricula…to ensure that education is gender responsive and empowering to women and girls.”\textsuperscript{68} The performance indicators include “[g]ender responsive teaching and training curriculums” and “adequate gender sensitive instructional and teaching materials,” with improved educational outcomes for girls and women that address gender stereotypes and promote women’s leadership skills and qualities.\textsuperscript{69} By doing this, South Sudan takes a holistic approach to education that does not simply stop at promoting literacy and mathematics. It takes a gendered approach to education, which highlights women’s contributions and encourages their leadership.

Finally, South Sudan includes a specific strategic action to “[i]ncrease budgetary allocation for targeted interventions aimed at increasing girl-child retention in schools….”\textsuperscript{70} This resource allocation not only includes funding for the Ministry of Education but also includes as performance indicators the number of girls’ boarding schools and the distribution of free or subsidized sanitary towels for menstruating girls and women in schools.\textsuperscript{71} While admirable in its inclusion, no specific amount is provided in the NAP, however, and the current political and financial situation in South Sudan makes it unlikely that the budget will be sufficient to achieve the NAP’s lofty goals.\textsuperscript{72}


Because of evidence that indicates the important connection between education and security and because of the absence of indicators related to education in the National Action Plans to implement SCR 1325, I recommend the United Nations Security Council pass a new Security Council Resolution that acknowledges the importance of girls’ education—not only because it is a fundamental human right—but because it is a critical tool in preventing conflict. In this manner, the

\textsuperscript{68} Id. at 40.
\textsuperscript{69} Id.
\textsuperscript{70} Id. at 41.
\textsuperscript{71} Id.
\textsuperscript{72} See Denis Dumo, *South Sudan Asks Donors to Pay for a Third of National Budget*, REUTERS (July 7, 2017), at https://www.reuters.com/article/southsudan-budget-idUSL4N1JY3M6 (indicating reluctance among developed countries to fund the South Sudan budget because of corruption and conflict in the region); see also Sophie Edwards, *Amid Crisis, South Sudan’s Education Chief Sets Out an Ambitious Agenda*, DEVEX (Jan. 31, 2018), at https://www.devex.com/news/amid-crisis-south-sudan-s-education-chief-sets-out-an-ambitious-agenda-91965 (indicating that other issues within the country, such as internal conflict and government corruption, make funding and implementing the lofty education measures difficult).
Security Council can take education out of the sphere of “soft” policy and into the realm of “hard” policy that recognizes education’s power to contribute to a country’s peace and security.

Education cannot simply be waved around like a magic wand, however. Education for peace and conflict-prevention is more than learning how to read or do sums. In fact, there are ways that education can *exacerbate* factors that lead to violent conflict.73 If access to education is uneven, if the curriculum is manipulated for political purposes, or if critical thinking is discouraged, education can advance conflict.74 Thus, the SCR should acknowledge that certain types of education will not suffice.

The SCR should contemplate access to education, and if there are cultural factors that prevent girls from attending school, those factors should be addressed, such as in the South Sudan NAP. Additionally, education should be considered in a holistic manner, that incorporates gender-responsive materials and teaching methods. Further, curricula should promote citizenship building and incorporate gender equality in all aspects of school and learning, dismantling stereotypes that classify girls and women as second-class citizens. Education should also include peace education,75 which “not only deals with violent conflicts or aggressive behavior but also works on solving problems in peaceful ways and improving human relationships.”76 Peace can thus be thought of as both the absence of violence and the affirmative process of promoting cooperation and integration.

One example of peace education is the Women of Integrity, Strength and Hope (WISH) program in Kenya.77 While not referenced in the Kenyan National Action Plan,78 Kenya has implemented a national policy related to peace education.79 The WISH program aims to help students explore their identity, curate self-awareness, and learn interpersonal skills related to leadership and social change.80 The program emerged from the need to address gender disparities; when girls are educated and empowered, they can identify sources of conflict within their lives.

---

73 See Hilker, *supra* note 18, at 268; see also Clive Harber & Noriko Sakade, *Schooling for Violence and Peace: How Does Peace Education Differ from ‘Normal’ Schooling?*, 6 J. PEACE EDUC. 171, 171-72 (2009) (noting that the UN has recognized that schools can sustain violence, including gendered violence against girls by fellow teachers and students, and perpetuate structural violence); John *supra* note 21 at 190 (“When one considers the consequences of such denial of education for purpose of control of girls…one could see such acts as structural violence”).

74 *Id.*

75 See Harber & Sakade, *supra* note 73, at 174 (“Peace education is understood generally to aim to offer opportunities to develop the skills, knowledge and values required for the practice of conflict resolution, communication and cooperation in relation to issues of peace, war, violence, conflict and injustice.”)

76 *Id.* at 175.


79 Zanoni, *supra* note 77, at 114.

80 *Id.* at 116.
communities and navigate them using their learned interpersonal skills.\textsuperscript{81} Studies of the program suggest that WISH increases girls’ capacities as peacebuilders.\textsuperscript{82}

A new SCR related to the Women, Peace and Security Agenda is critical, because of all the Security Council Resolutions, 1325 is one of the most cited,\textsuperscript{83} which makes it and its progeny particularly potent. The UNSC should pass a new Resolution because the violence perpetuated against girls seeking their education demeans them. Quotas and efforts to put more women at the table are futile if the root cause of disempowerment and disenfranchisement is not addressed.\textsuperscript{84} Without education, women will be excluded from engagement and participation in public life—education is the heart of women’s empowerment. Educated girls are a threat to terrorism and extremism, and we should value them both inherently and as agents of peace.

5. \textbf{CONCLUSION}

Former Secretary General of the United Nations, Ban Ki Moon, once said, “With armed extremist groups placing the subordination of women at the top of their agenda, we must put women’s leadership and the protection of women’s rights at the top of ours.”\textsuperscript{85} When girls are educated, they become empowered women who lead. To put women’s leadership at the top of the human rights agenda, girls’ education must be a top priority. By focusing on girls’ strengths and their potential as agents for peace, the Security Council, through passing a Resolution on girls’ education as a tool to prevent conflict, can advance its mission of fostering peace and security around the world.

\textsuperscript{81} \textit{Id.} at 118-19.
\textsuperscript{82} \textit{Id.} at 121.
\textsuperscript{83} Rangita de Silva de Alwis, Associate Dean for International Programs, University of Pennsylvania Law School, Address at Perry World House: Attacks on Women’s Education as a Marker of Violent Extremism: The Need for a Breakthrough Security Council Resolution and Feminist Foreign Policy (Feb. 13, 2018).
\textsuperscript{84} \textit{Id.}
This paper calls for an end to government-mandated virginity testing in Indonesia for female military and police recruits. As Part 1 explains, “virginity tests” are physical exams that attempt to discern a woman’s virginity status. These tests are inaccurate and have no medical value to a woman’s health. However, communities still rely on virginity tests to control women’s lives, such as their marriage eligibility, benefits assistance, and access to schooling and jobs. This paper focuses on Indonesia, where virginity tests are mandatory for all women who apply to serve in the Indonesian Armed Forces and the National Police.

Virginity testing has long served the role of perpetuating stereotypes about women. From decades of use in Indonesian law enforcement agencies to being a tool of humiliation in the Egyptian revolution (explored in Part 2), virginity testing relies on society’s stereotypes that women who are not virgins are immoral, unstable, and not to be respected. The government in Indonesia uses this to justify the tests, claiming that recruits must be of sound mind and morality.

This cannot continue. As Part 3 describes, Indonesia’s virginity tests are sex discrimination, mandate physical and sexual assault on female bodies, and deter women from entering law enforcement. Part 4 explains how vital those female perspectives are in law enforcement, as research shows an increase in female officers leads to a reduction in domestic violence and an increase in reporting of violence against women.

Part 5 explores current protections for Indonesian women, including Indonesia’s own constitution and international human rights. In Part 6, this paper implores Indonesia to immediately cease all virginity testing and provides recommendations to help achieve that goal.

1. Virginity Testing Generally

1.1 Virginity Testing Defined

Virginity testing, which is also referred to as “two-finger” testing, is a physical examination of a woman’s genitalia to determine whether she has had sexual intercourse.86 This is typically done by inspecting the hymen for size or tears and inserting two fingers into the vagina to measure features of the vaginal wall.87 The examiner may also test the size of the vaginal opening and “the degree of

87 Id.
vaginal penetrability.” These tests are often used in determining women’s marriage eligibility, assessing their claims of sexual assault, or as part of their employment applications.

Virginity tests have “no scientific value” and are “medically irrelevant.” The state of a woman’s hymen has no correlation with virginity status, and the test has no way of determining whether prior penetration has ever occurred. Simply, the fact that the hymen is absent or damaged does not mean that there has been penetration, and the fact that the hymen is intact does not mean no penetration has occurred. Beyond attempting to determine virginity status, the tests also have no medical use – they do not help detect sexually transmitted infections, and a woman’s sexual history has no relevance to a medical examination in instances of sexual assault. “Health professionals therefore have no medical foundation for conducting virginity examinations.” In fact, it is important for the health of the patient and the integrity of the medical profession that they do not administer these tests. The fact that a virginity test may be administered by a health professional can actually exacerbate a women’s subsequent trauma because they may feel they were violated by someone who was meant to care for them.

1.2 Harms of Virginity Testing

Virginity testing has direct physical and psychological harms for women. The test itself can be extremely painful, making examinees cry and scream, and examiners can aggravate existing injuries. The tests can also damage the hymen, cause bleeding, and lead to infection. Third parties can be an additional source of harm to examinees – for example, after one South African child failed a virginity test, her relatives broke both of her arms. Beyond the examiner and third parties, examinees even suffer physical harm at their own hands, as suicides following examinations have been reported.

This last physical harm ties directly into the psychological harms associated with virginity testing. Most of the research performed has focused on the harm of forcible virginity testing, which

---

89 Olson & García-Moreno, supra note 1.
90 Independent Forensic Expert Group, supra note 3, at 123.
91 Id.
92 Id.
93 Id.
94 Id.
95 Id.
96 Id. at 124.
97 Olson & García-Moreno, supra note 1, at 6.
98 Independent Forensic Expert Group, supra note 3, at 122.
99 Olson & García-Moreno, supra note 1, at 7.
100 Id.
“resulted in the psychological distress of the examinee, causing rejection, suicide, depression, and weakened self-confidence.” The testing at issue in this paper is not “forcible” to the extent that women can decide whether they want to follow through with the recruiting process and subsequent medical testing, and no one physically forces them to undergo the test (however, the “voluntariness” of any virginity test should be questioned). That said, these tests still have extreme psychological consequences for women who “choose” to undergo them. The following quote from a retired Indonesian air force officer who had been subjected to a virginity test in 1984 demonstrates those harms:

Four years after I took the test, I married my fiancé. Like most normal newlyweds, we took a honeymoon in Bali and we wanted to make love. But my body was so stiff. I cannot open my legs. I cried the whole night. We could only have sex [for the first time] two months later. It was because of the trauma that I had with that “virginity test.”

Regardless of whether the findings of the test are accurate, the results can have serious social repercussions for women as well. For example, women who “fail” a virginity test may be kept out of marriages, refused access to jobs and schooling, become ineligible for social benefits, and be denied assistance from justice systems. In Indonesia, as will be explored throughout, the tests serve as an eligibility criterion for women’s admission to the military and police force.

2. Historic Context: The Egyptian Revolution

On January 25, 2011, thousands of Egyptian protestors demonstrated against President Hosni Mubarak and the government, developing into an 18-day protest in Tahrir Square. Mubarak eventually resigned, but women returned to the streets on March 8 for International Women’s Day. They sought to celebrate women’s achievements but also demand gender equality through increased political representation, more accountability and severe punishment for sexual harassers, and even a female presidential candidate. Their demands at the time were severely unmet – in the 2010 World Gender Gap Report, Egypt had ranked 125 out of 134 countries. Yet as these women filled the Square, male counter-protesters arrived calling for the women to stop detracting from Egypt’s

101 Id.
103 Independent Forensic Expert Group, supra note 3, at 122.
105 Id.
106 Id.
107 Id.
newfound unity and, put simply, wait their turn to focus on their issues.\textsuperscript{108} One woman recalled them saying that “the closest [we] would ever get to a president is if we gave birth to one,” and things only escalated from there, ending with military intervention.\textsuperscript{109} Only it was the women, not the counter-protestors, who found themselves dragged to a military prison.\textsuperscript{110}

18 women were detained, beaten, and given electric shocks.\textsuperscript{111} The next day, 17 of those women were also strip searched, threatened with charges of prostitution, and made to take non-consensual virginity tests.\textsuperscript{112} Husseini Gouda, one of the detainees, recalled being taken to a stretcher in the hallway outside their cell; that was where the tests would be conducted, with the women given only a blanket to “shield [them] from the gaze of the soldiers loitering in the hallway.”\textsuperscript{113} Their requests for a female doctor were denied.\textsuperscript{114} Although the test “didn’t take long,” Gouda found it “horribly humiliating.”\textsuperscript{115}

Egyptian authorities originally denied the events.\textsuperscript{116} A senior Egyptian general finally admitted the forced virginity tests, but attempted to provide justification. The general proclaimed:

The girls who were detained were not like your daughter or mine. These were girls who had camped out in tents with male protesters . . . We didn't want them to say we had sexually assaulted or raped them, so we wanted to prove that they weren't virgins in the first place. None of them were.\textsuperscript{117}

Amnesty International condemned the words, finding the admission “an utterly perverse justification of a degrading form of abuse” and that “[t]he women were subjected to nothing less than torture.”\textsuperscript{118} Virginity status has no impact on whether an individual was raped, so the explanation completely lacked relevance.\textsuperscript{119} Whatever the reported justification, the goal of these tests was to shame the women and prove to society that revolutionary women are second-class citizens who are not to be respected. To the Egyptian government, and still too many others worldwide, one of the clearest ways to attack women was to attack their sexuality, and in turn their morality and social worth.

\begin{flushleft}
\textsuperscript{108} Id.
\textsuperscript{109} Id.
\textsuperscript{110} Id.
\textsuperscript{112} Id.
\textsuperscript{114} Id.
\textsuperscript{115} Id.
\textsuperscript{117} Egypt: Admission of Forced “Virginity Tests” Must Lead to Justice, supra note 26.
\textsuperscript{118} Id.
\end{flushleft}
3. Virginity Testing in Indonesia

3.1 Military and Police Force Eligibility

Indonesia routinely subjects female applicants to the Indonesian Armed Forces and the National Police to virginity tests. The practice was first exposed back in 2014 by Human Rights Watch, but the government has taken no action to condemn or halt the tests. The National Police alone have tested thousands of female applicants beginning as early as 1965. It is unknown exactly when the testing started in the military, but armed forces spokesman Major-General Fuad Basya relayed that they had been conducting virginity testing on female military recruits “for even longer than police.” This was true of all branches of the military: air force, army, and navy.

Only women are ever tested, although sometimes the authorities will extend the requirement to fiancées of male military officers. Human Rights Watch interviewed 11 female military recruits and fiancées of military officers, and all of them said the tests were required of all other women who applied to join the military or who planned to marry an officer. They reported that only women with “powerful connections” or those who had bribed the doctors avoided being tested. The test included the “two-finger test,” and they are normally conducted in military hospitals “en masse in large halls divided into curtain-separated examination rooms.” Typically female doctors perform the tests, but male doctors have performed them. All 11 women also described the test as “painful, embarrassing, and traumatic.”

Indonesian officials have defended the tests by declaring them “crucial to preserving the dignity and the honor of the nation.” In fact, the tests are officially classified as “psychological examinations for mental health and morality reasons.” Inspector General Moechgiyarto, a senior police official, said the tests ensure “high moral standards” and suggested that those who fail the tests are prostitutes. General Moeldoko, who was the commander of Indonesia’s armed forces at

---

121 Id.
122 Id.
123 Id.
124 Id.
125 Id.
126 Id.
127 Id.
128 Id.
129 Id.
130 Id.
131 Id.
133 Indonesia: Military Imposing ‘Virginity Tests,’ supra note 17.
the time (he now serves as Indonesian President Joko Widodo’s chief of staff), pushed back on criticisms by saying, “So what’s the problem? It’s a good thing, so why criticize it?”

3.2 The Impact on Women’s Peace and Security

Virginity tests both directly and indirectly threaten women’s peace and security. First, the tests are direct sex discrimination. They can be and only are performed on women, giving female recruits an additional testing criterion that male recruits are not subjected to, and there is no legitimate basis for the sex distinction. Rather, the female-only tests rely on and perpetuate harmful stereotypes about women, particularly that women who are not virgins are immoral or mentally unwell, harkening back to the claims from the Egyptian government in 2011.

Also, as outlined in Part 1, the tests cause physical, psychological, and social harm to women while also having no accuracy or medical value. These tests are a direct act of physical and sexual violence against the female person.

Virginity tests also indirectly threaten women’s peace and security. For women who want to enter law enforcement as a career, the tests present an additional barrier and deterrent. By deterring women from entering law enforcement careers, the tests hinder women’s economic freedom and access to equal employment opportunities. This in turn keeps women from occupying seats at the table of law enforcement agencies, like the military and police. This can have serious consequences for women in society generally, as these law enforcement agencies are often key players in addressing violence against women, such as domestic violence and sexual assault. By keeping women out of those positions of power, virginity tests prevent law enforcement from integrating female perspectives on important issues of violence against women. The seriousness of that indirect harm is explored below in Section 4.

4. The Impact of Women in Law Enforcement

The United Nations’ own former “top cop” and Senior Police Advisor Anne-Marie Orlé has emphasized the importance of integrating women into law enforcement. In an interview with UN Women, she explained:

It is easier for women, especially those who are victims of gender-based violence, to reach out to females in uniform rather than to their male counterparts. Just the presence of a woman makes female victims more inclined to open themselves up to discussion. They feel the sensitivity of the female police mediators because of the female mediators’ “sympathetic ear,” and they have less fear talking about their experiences of conflict and abuse. Female police officers empower other women. With them in the police force, a less macho environment emerges. Female officers

134 Kine, supra note 35.
exhibit strength without sacrificing tenderness.\textsuperscript{135} She went on to explain that when the police represent the different perspectives in society equally, such as male and female perspectives, society benefits because the police now provide greater security to all those represented viewpoints and women are not left out of the picture.\textsuperscript{136} Further, female police empower other women, serving as “a ray of hope to women victims” and “building confidence in police services overall” by increasing response to and reporting of sexual violence.\textsuperscript{137} She asserted that “the presence of a critical mass of female officers in police services will bring about a significant change and translate into fewer gender-related problems.”\textsuperscript{138}

The former Senior Police Advisor’s comments are supported by research. One 2016 study examining the impact of integrating women in United States’ police forces between the late 1970s and early 1990s found that increasing female officers improved overall police quality.\textsuperscript{139} In fact, increased female office presence increased the reporting rates of violent crimes against women.\textsuperscript{140} While reporting increased, the actual rates of domestic violence decreased as the number of female officers amplified.\textsuperscript{141} Rates of domestic violence per population, of repeated domestic violence per month for current victims, and of intimate partner homicide for female victims all decreased.\textsuperscript{142}

Another report noted that female officers demonstrated “more concern, patience, and understanding” when responding to domestic violence calls than their male counterparts, and the victims of such crimes rated female officer responses more favorably.\textsuperscript{143} The report further explained that increasing representation of women in police forces can also reduce sexual harassment in the forces themselves by transforming the work climate.\textsuperscript{144}

A third report found that police officers historically have held problematic views of intimate partner violence, including over-simplification, victim blaming, patriarchal attitudes toward women, and presuming victims won’t cooperate.\textsuperscript{145} However, female officers bring a refreshing relief to these

\begin{flushleft}
\textsuperscript{136} Id.
\textsuperscript{137} Id. at 5.
\textsuperscript{138} Id. at 4.
\textsuperscript{139} Amalia R. Miller & Carmit Segal, Do Female Officers Improve Law Enforcement Quality? Effects on Crime Reporting and Domestic Violence Escalation 4 (Sept. 2016).
\textsuperscript{140} Id.
\textsuperscript{141} Id.
\textsuperscript{142} Id.
\textsuperscript{144} Id. at 9.
\end{flushleft}
views. The study found that female victims tend to be more satisfied with female officers, female officers are more likely to support victims and give them additional information, and female officers are less likely to hold those problematic views based in gender biases and stereotypes.146

However, the report noted that it is not enough to just recruit more women. Instead, police forces must also focus on recruiting men who respect women as equals and integrate gender stereotyping trainings.147 That said, integrating more women into the force can itself reduce gender stereotyping. For example, the report described findings from the Texas A&M Corps of Cadets, where integrating women was associated with more favorable stereotypical judgments of women and had no negative impacts in terms of backlash against women.148

All of this research demonstrates that having more women in positions of law enforcement not only gives women access to the work field and economic freedom, but impacts the safety and security of female citizens. Women feel more comfortable reporting domestic violence, and in fact rates of domestic violence decrease, making women safer in their own homes. Further, increasing female presence in a typically male-dominated field like law enforcement helps break down gender stereotypes, change patriarchal culture, and reduce sexual harassment.

By forcing female military and police recruits to undergo virginity tests, Indonesia has erected a barrier directly in front of these advantages and progresses. Although some women pursue these careers despite the test, the tests are a deterrent to more women entering the field. Until these tests no longer prevent women from seeking the professional and economic freedom of military and police service, the trickle-down effects of increased peace and security for women in the nation cannot be achieved.

5. Protections Already in Place

5.1 Indonesia’s Constitution

The Constitution of the Republic of Indonesia was adopted in 1945 and last amended in 2002.149 Women seeking protection from the use of discriminatory virginity tests may find support and protection in some of the Constitution’s provisions. The preamble itself calls for “a world order based on freedom, lasting peace and social justice,” as well as a “just and civilized humanity.”150 A just and civilized humanity seeking lasting peace and social justice is unattainable without women’s

146 Id. at 86.
147 Id. at 83.
148 Id. at 85-86.
150 INDON. CONST. PMBL.
peace and security, and so the preamble should serve as a reminder of that goal and promise.

Section X, entitled “Citizens and Residents,” also sets out a number of provisions that can be invoked to protect women under the power of the law:

- **Section X, Article 27**
  - (1) All citizens shall have equal status before the law and the government and hold without exemption the law and the government in esteem.
  - (2) Each citizen shall be entitled to an occupation and an existence proper for a human being.
  - (3) Each citizen shall have the right and the duty to participate in the defense of the nation.\(^{151}\)

This last provision relating to the “defense of the nation” is particularly relevant, and in fact is reiterated later in the Constitution (Section XII, Defense and Security of the State, Article 30(1) states that “Each citizen has the right and the duty to participate in the defense and security of the nation”).\(^{152}\) Yet virginity tests serve as a direct barrier to women obtaining that very right and duty, running contrary to the Constitution’s guarantee.

Section XA, entitled “Fundamental Human Rights,” provides further protection for women. There are 26 provisions in Section XA, but the following are particularly relevant to the issue of virginity testing and gender discrimination:

- **Article 28D**
  - (1) Each person has the right to recognition, security, protection and certainty under the law that shall be just and treat everybody as equal before the law.
  - (2) Every person is entitled to an occupation as well as to get income and a fair and proper treatment in labor relations.
  - (3) Each citizen has the right to equal opportunity in government.

- **Article 28E**
  - (1) Each person is free to worship and to practice the religion of his choice, to choose education and schooling, his occupation, his nationality, his residency in the territory of the country that he shall be able to leave and to which he shall have the right to return.

- **Article 28G**
  - (2) Each person has the right to be free from torture or inhuman and degrading treatment and shall be entitled to obtain political asylum from another country.

- **Article 28H**
  - (1) Each person has a right to a life of well-being in body and mind, to a place to dwell, to enjoy a good and healthy environment, and to receive medical care.

- **Article 28I**
  - (1) The rights to life, to remain free from torture, to freedom of thought and

---

\(^{151}\) *Id.* at § X, art. 27(1-3).

\(^{152}\) *Id.* at § XII, art. 30(1).
conscience, to adhere to a religion, the right not to be enslaved, to be treated as an individual before the law, and the right not to be prosecuted on the basis of retroactive legislation, are fundamental human rights that shall not be curtailed under any circumstance.

- (2) Each person has the right to be free from acts of discrimination based on what grounds ever and shall be entitled to protection against such discriminative treatment.
- (4) Protecting, promoting, upholding, and the full realization of human rights are the responsibilities of the state, foremost of the government.
- (5) To uphold and protect human rights in accordance with the principles of a democratic and law-based state, the implementation of fundamental human rights is to be guaranteed, regulated, and laid down in laws and regulations.\(^{153}\)

These provisions provide Indonesian women with the right to personal security and protection, equal opportunity in government, choice of occupation, freedom from torture and degrading treatment, well-being in body and mind, freedom from discrimination, and full protection under the law of these human rights. That is a powerful assembly of protections that should be invoked in condemning Indonesia’s virginity tests.

However, while the Constitution protects women through these provisions, there are dangerous qualifications to those protections. Perhaps the most concerning is the very last provision of Section XA, Fundamental Human Rights, Article 28J(2), which states: “In exercising his rights and liberties, each person has the duty to accept the limitations determined by law for the sole purposes of guaranteeing the recognition and respect of the rights and liberties of other people and of satisfying a democratic society’s just demands based on considerations of morality, religious values, security, and public order.”\(^{154}\) Since the government justifies virginity testing as an issue of morality that ties directly to the nation’s security and public order, this clause helps the government escape accountability under its Constitution. It is also worth noting that although many provisions provide security to women, the words “gender,” “sex,” and “women” never appear in the Constitution.

5.2 Komnas Perempuan - Indonesia’s National Commission on Violence Against Women

Indonesia also has its own National Commission on Violence Against Women called the Komnas Perempuan (“the KP”). In 2016, the KP filed a report with the UN expressing its disappointment “with the policy gap that fails to prevent the culture, discourse and practices of virginity testing.”\(^{155}\) The KP recommended that the national institutions cease practicing virginity

\(^{153}\) See generally id. at § XA.

\(^{154}\) Id. at § XA, art. 28J(2).

tests completely.156

5.3 International Human Rights

The UN recognized women as agents of change in 2000 with Security Resolution 1325. Declaring that women serve a vital role as decision-makers in conflict prevention and resolution, the Resolution calls for increased female decision-maker representation in institutions preventing, managing, and resolving conflict.157 The Resolution also calls for increased gender-sensitive training efforts,158 which echoes the call from the aforementioned research advising that gender stereotyping training be integrated into police forces. And importantly, the Resolution calls for “special measures to protect women and girls from gender-based violence, particularly rape and other forms of sexual abuse, and all other forms of violence in situations of armed conflict.”159 Although Indonesia’s virginity testing does not constitute “armed conflict,” the military and police forces are vital players in conflict prevention, resolution, and peacekeeping. The Resolutions’ calls must be integrated into their policies and procedures to ensure a more just and equal society.

Indonesia has also ratified a number of vital international human-rights treaties that inform on the issue of virginity testing. This testing contravenes the mandates of the International Covenant on Civil and Political Rights, the Convention against Torture, and the Convention on the Elimination of All Forms of Discrimination against Women, all of which Indonesia has ratified.160

First, virginity testing violates article 7 of the International Covenant on Civil and Political Rights, which states: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.”161 The United Nations Human Rights Committee has noted in a General Comment that article 7 exists “to protect both the dignity and the physical and mental integrity of the individual.”162 By invading a woman’s body to perpetuate stereotypes, the virginity testing breaches all three – women’s dignity, their physical integrity, and their mental integrity.

Second, virginity testing violates article 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which states: “Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article I, when such acts are

156 Id.
158 Id. at art 7
159 Id. at art 10.
160 Indonesia: No End to Abusive ‘Virginity Tests,’ supra note 47.
162 Indonesia: No End to Abusive ‘Virginity Tests,’ supra note 47.
committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity."\textsuperscript{163} Again, virginity testing is a government-endorsed – and indeed government-forced – treatment that meets all three criteria: cruel, inhuman, and degrading.

Third, virginity testing violates the Convention on the Elimination of All Forms of Discrimination against Women. States that have ratified the CEDAW have adopted its promise to, as the name clearly states, eliminate all forms of discrimination against women. Article 1 defines “discrimination against women” as “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”\textsuperscript{164} Here, the violation is simple: the CEDAW clearly prohibits sex discrimination, and only women are subjected to virginity testing. There is no legitimate basis for the distinction, the tests are medically invalid and irrelevant, and they result in women’s physical, emotional, and economic harm. Given this sex distinction, virginity testing “constitutes discrimination against women as it has the effect or purpose of denying women on a basis of equality with men the ability to work as police officers.”\textsuperscript{165}

The Committee on the Elimination of Discrimination Against Women had the opportunity to consider the combined sixth and seventh periodic report of Indonesia back in July of 2012.\textsuperscript{166} Although the Committee’s concluding observations were made in 2012, two years before Human Rights Watch brought the government’s virginity testing to the surface, it is worth noting that virginity testing was not mentioned anywhere in the 2012 report.\textsuperscript{167}

The report did note that discriminatory laws were still rampant in Indonesia, and that although the State party had taken measures to eliminate stereotypes that contribute to violence against women, those measures were insufficient.\textsuperscript{168} Virginity testing absolutely relies on such stereotypes, particularly that women who are not virgins are mentally unstable and immoral. The Committee’s recommendation for the State party to enact a comprehensive results-oriented strategy to eliminate such harmful stereotypes is a necessary start to dismantling the harmful narratives that support

\textsuperscript{163} Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment art. 16(1), Dec. 10, 1984, 1465 U.N.T.S. 85.
\textsuperscript{165} Indonesia: No End to Abusive ‘Virginity Tests,’ supra note 47.
\textsuperscript{166} Committee on the Elimination of Discrimination against Women, Concluding observations of the Committee on the Elimination of Discrimination against Women: Indonesia, CEDAW/C/IDN/6-7 (July 27, 2012).
\textsuperscript{167} See generally id.
\textsuperscript{168} Id. at 6.
practices like virginity testing.\textsuperscript{169}

The report also acknowledged a deep concern about sexual abuse of women in police detention, police and militant sexual misconduct, and a need to encourage reporting of sexual and domestic violence.\textsuperscript{170} Given the research on increased female officers increasing reporting, decreasing violence against women, and improving the gender bias culture in police forces, the report’s call demonstrates the urgency of having more female voices at the table of law enforcement in Indonesia. To achieve that goal, irrelevant barriers to their inclusion – such as virginity tests – must be removed.

Indonesia’s own international action aside, the World Health Organization, the UN Special Rapporteur on Torture and Cruel, Inhuman or Degrading Treatment or Punishment, and the UN Special Rapporteur on Violence Against Women, Its Causes and Consequences have all condemned virginity tests as a form of sexual violence.\textsuperscript{171} The European Court of Human Rights has also ruled against virginity testing, when in 2009 it held that two women were subjected to “severe ill-treatment” when they were forced to undergo non-consensual virginity tests while in police detention.\textsuperscript{172}

In sum, Indonesia’s ratified treaties and participation in the international human rights movement dictate that Indonesia’s virginity testing cannot continue.

6. Recommendations

Women cannot attain peace and security while their governments sanction virginity testing. These tests rely on and perpetuate dangerous stereotypes, physically and sexually violate female bodies, mentally traumatize examinees, prevent women’s economic freedom and equal access to the workforce, and serve as a barrier keeping female perspectives out of law enforcement. They contravene international human rights treaties and are an affront to women’s human rights. Women deserve to be free in their bodies and have a right to bodily autonomy. These findings inform the following recommendations:

- **Indonesia Should Uphold Its Promises under the ICCPR, the Convention against Torture, and the CEDAW and Cease All Virginity Testing** – Virginity testing contravenes the values and promises of all three treaties that Indonesia has ratified. Although many of the

\begin{footnotesize}
\textsuperscript{169} Id.
\textsuperscript{170} Id. at 7, 8, 14.
\textsuperscript{171} Independent Forensic Expert Group, \textit{supra} note 3, at 122.
\textsuperscript{172} Id.
\end{footnotesize}
following recommendations must occur to lead to this end, these treaties call for the practice’s immediate cessation.

• **President Joko Widodo Should Call for an End to Virginity Testing** – In March of 2018, Indonesian President Joko Widodo tweeted in support of International Women’s Day and stated that in “building Indonesia, we need tough women.” Yet President Widodo has a chief of staff, General Moeldoko, who has supported virginity testing and pushed back on its critics. If President Widodo wants to actually encourage “tough women” who will join the very forces “building Indonesia,” then he must call for an end to these government-forced virginity tests.

• **Pass Legislation Banning Virginity Tests** – Although the military and police forces should cease virginity testing even without an official law, having a passed piece of legislation provides additional protection to women and sends a message to the country and the rest of the world that virginity testing will not be tolerated or supported. Of course, appropriate enforcement measures must be in place so the legislation can be more than just an abstract message but carry real consequences.

• **Implement Gender Bias Training in the Indonesian Military and Police Forces** – Virginity tests are based in gender stereotypes about female morality and sexuality. Implementing gender bias training in law enforcement would provide insight into how these stereotypes are harmful and inaccurate and help lead to a culture shift in the military and police. Starting gender bias training even earlier, such as in schools, would be ideal.

• **Shadow Reports** – Although Human Rights Watch’s coverage has aired Indonesia’s dangerous virginity testing, more knowledge must be gathered about the practice and the intricacies of how it is enforced. Non-governmental organizations should investigate the military and police use of virginity tests and produce shadow reports to the Committee on the Elimination of Discrimination against Women. These shadow reports could then be used to better inform evaluations of the government reports.

• **Committee on the Elimination of Discrimination Against Women Concluding Observations** – At its next opportunity, the Committee should directly address Indonesia’s forced virginity tests and include in their recommendations that the practice be immediately ceased.

---

• **Cease Use of Indonesia’s Forces in Peacekeeping** – A more extreme measure, the UN could send a clear message to Indonesia that virginity testing will not be tolerated by refusing to use Indonesian forces in UN peacekeeping until the tests are discontinued.
1. Introduction

Countries with gender inequality are more likely to experience interstate conflict and are more likely to resolve interstate conflict through violence.\textsuperscript{174} Higher gender inequality also indicates a greater likelihood that a state will experience intrastate conflict.\textsuperscript{175} We can use fertility rates and participation in the work force as measurements of the level of gender discrimination and gendered structural hierarchy in a society.\textsuperscript{176} A country with a high fertility rate—3.01 children per woman or higher—is 83\% more likely to have internal armed conflict compared to countries with a fertility rate of 3.00 or below.\textsuperscript{177} For women’s participation in the labor force, a country with a 10\% participation rate is 29.1 times more likely than countries with a 40\% participation rate to experience internal armed conflict.\textsuperscript{178}

These statistics seem rather obvious given what we know about the world. The numbers, however, control for the presence of at-risk minority groups, the number of at-risk minority groups, polity type, transitional policies, GDP per capita, average GDP per capita growth rate, prior domestic conflict, and number of years in peace.\textsuperscript{179} If none of the above factors are causing the correlation between gender equality and likelihood of intrastate armed conflict, then what is? I argue that women’s lack of access to voluntary family planning is an undeniable catalyst for armed conflict.

2. The Harshest Consequences of No Family Planning

Between 200 and 220 million women in the world have an unmet need for modern contraception.\textsuperscript{180} By definition, these women do not want to become pregnant but do not have access to family planning.\textsuperscript{181} For example, a woman can travel days to obtain contraception only to find out upon arrival at a health facility that there is none in stock.\textsuperscript{182} An element of geographical

\textsuperscript{175} \textit{Id.} at 171.
\textsuperscript{176} \textit{Id.} at 171-2.
\textsuperscript{177} \textit{Id.} at 172.
\textsuperscript{178} \textit{Id.}
\textsuperscript{179} \textit{Id.}
\textsuperscript{182} Barnes, \textit{supra} note 7.
inequality is at play in the lack of access. In Sub-Saharan Africa and South Asia, less than 20 percent of women are using modern contraceptives.\(^{183}\) In both these low-access regions and the rest of the world, the consequences are gargantuan: out of 80 million annual unintentional pregnancies,\(^{184}\) meeting the need of women in developing countries who want safe and effective family planning would prevent 67 million unintended and unwanted pregnancies each year.\(^{185}\)

**A. Adolescent Motherhood**

A large part of the unmet need falls on the shoulders of adolescent women, or women between the ages of fifteen and nineteen. Twenty-three million young women around the world do not want to become pregnant but lack access to modern contraceptives.\(^{186}\) This discrepancy translates to half of adolescent pregnancies being unintended, and these unintended pregnancies can have a significant negative impact on young women’s futures.\(^{187}\) When women leave school because of unintended pregnancy, they lose opportunities to develop skills and knowledge that they could have used to obtain employment or create other sources of income.\(^{188}\) “Early and unintended pregnancy can be both a cause and a consequence of dropping out of school, so family planning can help women and girls stay in school, become literate, and achieve their educational and employment aspirations. All of these outcomes lead to more peaceful communities and societies.”\(^{189}\)

Furthermore, adolescent pregnancy threatens a woman’s health. The leading cause of death for women between the ages of fifteen and nineteen is pregnancy and childbirth, in part because adolescent women face pregnancy and birthing complications at a higher rate than women above the age of nineteen.\(^{190}\) Each year, 2.5 million girls under the age of fifteen give birth, and the number rises to 15 million for women between the ages of fifteen and nineteen.\(^{191}\)

**B. Maternal Death**

\(^{183}\) *What We Do*, supra note 8.

\(^{184}\) Id.


\(^{189}\) Starbird, *supra* note 14.


\(^{191}\) *Worlds Apart, supra* note 15.
Between 1987 and 2018, the world has seen a 43 percent drop in the number of women dying from pregnancy and childbirth. Still, in 2018, 800 women die every day from pregnancy and childbirth. Per year, that adds up to an astonishing 308,000 deaths. The same geographical pattern of inequality for the prevalence of unintended pregnancies exists for maternal death: More than 50 percent of maternal deaths occur in Sub-Saharan Africa and South Asia. In Sub-Saharan Africa alone, the risk of maternal death is 100 times that of the United States.

The risk of maternal death is also associated with poverty and armed conflict. The probability that a fifteen-year-old will, in her lifetime, die from pregnancy or childbirth is 1 in 4900 in developed countries. In developing countries, the risk balloons to 1 in 180. Most concerningly, in fragile states, the probability reaches 1 in 54. Women in war-torn countries, therefore, have the highest risk of maternal death. Maternal health is “an issue of human rights, equity, and social justice.” One scholar wrote that “[i]f this kind of problem occurred in the male population, it would likely have received much more attention up until now.”

Family planning is an essential strategy to reduce maternal mortality, and meeting the demand for safe and effective family planning in developing countries would reduce maternal mortality by 100,000 deaths annually. Asian countries such as Vietnam, Bangladesh, Thailand, Malaysia, and Sri Lanka have dramatically increased their rates of modern contraceptive use and experienced corresponding dramatic drops in maternal death. Lowering the rate of non-fatal injuries is critical as well, since carrying and giving birth to many children in quick succession can cause a lifetime of poor health. Obstetric fistula, one of the most well-known maternal injuries, is a condition in which a hole in the vagina to either the rectum, ureter, or bladder causes incontinence by way of the vagina. This condition, in addition to other non-fatal injuries, can

---

192 Barnes, supra note 7.
193 Id. Much of the progress can be attributed to the Safe Motherhood Initiative, which launched in Nairobi in 1987.
194 Id.
195 Maternal Mortality, supra note 17.
196 Barnes, supra note 7.
197 Maternal Mortality, supra note 17.
198 Id.
199 Id.
201 Barnes, supra note 7.
202 Maier, supra note 27, at 105.
203 Id. at 106.
204 Safe, Effective Family Planning, supra note 12.
205 Maier, supra note 27, at 101, 106.
207 Maier, supra note 27, at 103.
debilitate and socially isolate women. Furthermore, 25 percent of the 80 million women who become unintentionally pregnant each year obtain an unsafe abortion. Finally, and most bluntly, access to family planning prevents pregnancies, and without pregnancy there is no maternal death.

3. The Many Benefits of Access to Family Planning

A. Economy

Access to family planning is not only in the best interest of women—it also contributes to economic growth. Natalia Kanem, the Executive Director of the United Nations Population Fund, stated, “better reproductive health care—including voluntary family planning—could bolster economies and contribute to sustainable development by empowering women to complete school and join the labour force.” This is not merely a hypothesis but a reality. When family sizes shrink in an economy, there is an increased proportion of working adults to dependent children. The change is called a “demographic dividend” and triggers economic development.

For example, one-third of Asia’s “economic miracle” after World War II is attributed to family planning. In Korea and Thailand, the governments aligned population policy and family planning services with human capital development—particularly girls’ education—in order to accelerate economic growth. In Bangladesh, there was a direct connection between the decline in fertility—from 5.3 to 3.3 children per woman—and women’s involvement in civil society and the economy. The Philippines did not embrace these family planning policies, and it was the only country whose economy did not take off in the economic miracle.

B. Prosperity in the Household

On a smaller scale, family planning creates prosperity in the household. “By helping young women time and space their pregnancies, family planning . . . allows women to properly feed, clothe and educate the children they decide to have.” Family planning leads to increased

---

208 Id.
209 What We Do, supra note 8.
210 Barnes, supra note 7.
211 Starbird, supra note 14.
212 Safe, Effective Family Planning, supra note 12.
214 Id.
215 Id. For information on China and India, see the section on coercive family planning, infra page 11.
216 Starbird, supra note 14.
217 Goldberg, supra note 40, at 85.
218 Id. at 42.
219 Starbird, supra note 14.
incomes, savings, and investments and is key to reducing poverty.\textsuperscript{220} Families who are able to choose “whether, when or how often”\textsuperscript{221} to have children not only are better able to come out of poverty but are also less likely to fall into or return to it.\textsuperscript{222} In short, “[i]nvestments in family planning help lead to prosperity for all.”\textsuperscript{223}

C. Education

There is a strong negative correlation between fertility and female education.\textsuperscript{224} Women and girls with control of their own fertility are more likely to complete their educations, and educated women are more likely to use family planning.\textsuperscript{225} Education that includes family planning information reduces fertility, and education in general creates more access to family planning and changes women’s perspective of childrearing from that of quantity to quality.\textsuperscript{226} The quality perspective leads to a demographic dividend, meaning fewer dependent children and greater investment in those children.\textsuperscript{227}

D. Reduction in Child Mortality

Greater investment per child would lower child mortality, especially for newborn infants, who in 2016 made up 46 percent of child deaths under the age of five.\textsuperscript{228} 2.6 million children each year die within twenty-eight days of being born.\textsuperscript{229} Per day, that number is 7000.\textsuperscript{230} The risk is especially high immediately after childbirth: One million of the annual deaths are within a day of birth and another million are within the following six days.\textsuperscript{231}

E. Economic Freedom for Women

“[R]eproductive rights are intimately related to women’s economic freedom. Having smaller families allows women to work. When they bring financial resources into the family, their power tends to increase and their daughters’ welfare improves. When their daughters are educated, they also choose smaller families, which can be better cared for.”\textsuperscript{232} When women do not have that

\textsuperscript{220} Starbird, supra note 14.; Safe, Effective Family Planning, supra note 12.
\textsuperscript{221} Worlds Apart, supra note 15.
\textsuperscript{222} Contraception, supra note 33.
\textsuperscript{223} Safe, Effective Family Planning, supra note 12.
\textsuperscript{225} Contraception, supra note 33.; Goldberg, supra note 40, at 76.
\textsuperscript{226} Lutz, supra note 51, at 2782.
\textsuperscript{227} Starbird, supra note 14.
\textsuperscript{229} Id.
\textsuperscript{230} Id.
\textsuperscript{231} Id.
\textsuperscript{232} Goldberg, supra note 40, at 11.
freedom and are subject to gender discrimination, fertility rates increase, and they lose autonomy and decision-making power in their family and their community. Historically, violent nationalism has invoked these traditional gender roles, connecting the dots between gender inequality, fertility rates, economic power, and violence.

F. **Sustainable Age Distribution**

High fertility rates contribute to increased violence via another avenue: age distribution. A given society has a higher probability of experiencing civil conflict when a large portion of the population is between the ages of fifteen and twenty-nine. The problem is exacerbated by economic inequality, which can independently create unrest. When economic inequality combines with "large numbers of disadvantaged and disempowered youth," inequality feeds on itself and sustainable development stalls. Indeed, "[d]epriving young people of future prospects can further contribute to conflicts."

There is some level of disagreement in the research on "youth bulges" and conflict. One study of fifty-five large cities in Asia and Africa did not find age distribution to be a powerful predictor of disorder, violent or non-violent. Others say that the consequences of an extremely young age distribution is specific to the context. In fact, relatively homogenous societies may benefit from a youth bulge. But in contexts with identity-based divisions—such as ethnicity, religion, or race—or economic disparities—such as education, employment, and healthcare—a youth bulge can drive conflict. One study concluded that the ratio of older to younger males in a society predicted one-third of occurrences of war and terrorism in a region. The National Intelligence Council’s Global Trends 2025 report found an “arc of instability” across Sub-Saharan Africa, the Middle East, and South Asia. These findings describe countries with disproportionately young populations (25 years old or younger) and are controlled for income,

---

233 Caprioli, *supra* note 1, at 169.
234 *Id.* at 166, 169.
236 *Worlds Apart, supra* note 15.
237 *Id.*
238 *Id.*
241 *Id.*
242 *Id.*
243 *Id.*
244 De Souza, *supra* note 66.
ethnic homogeneity, and polity type.\textsuperscript{245}

Although there is some disagreement over the impact of a youth bulge, the general consensus is that “the biological, economic, and sociopolitical ramifications of the ‘youth bulge’ resulting from rapid population growth are primary contributors to political conflict and terrorism—especially in environments with inadequate job opportunities.”\textsuperscript{246} The consensus on this demographic concern can also be taken in a positive perspective, however: Lower fertility rates increase the likelihood of preserving or developing a liberal democracy due to the aging population.\textsuperscript{247}

\textbf{G. Low Financial Costs and High Financial Rewards}

Policies meeting the need for family planning are and would be extremely cost-effective. According to the United Nations Population Fund, for every $1 spent on contraceptives, $2.30 is saved on pregnancy-related care.\textsuperscript{248} Additionally, $1 spent on family planning can save governments up to $6, allowing those resources to be used elsewhere.\textsuperscript{249}

\textbf{4. Addressing Roadblocks to Family Planning}

Thus, family planning contributes to a host of factors that make armed conflict less likely: It balances a society’s age distribution, lowers fertility rates, prevents adolescent pregnancies, reduces maternal death, accelerates a country’s economy, decreases poverty, enables women to receive education, increases female workforce participation, decreases infant mortality, and improves the health of the whole family. If providing access to voluntary family planning saves money and eventuates significant positive social change, why aren’t civil societies and governments clamoring to expand family planning?

\textbf{A. Sexual Immorality}

One of the first concerns is that family planning will encourage “sexual immorality.” Setting aside for the moment that the phrase “sexual immorality” reeks of damaging beliefs and practices, let us address what is a very real concern for millions—if not billions—of people. Family planning advocates must admit that there are women for whom newfound access to family planning may change their sexual practices. But for those who are concerned about sexual immorality, it first must be noted that for the vast majority of people engaging or not engaging in

\textsuperscript{245} \textit{Id.}
\textsuperscript{246} Potts, \textit{supra} note 67, at 507.
\textsuperscript{247} Starbird, \textit{supra} note 14.
\textsuperscript{248} \textit{Safe, Effective Family Planning}, \textit{supra} note 12.
\textsuperscript{249} \textit{What We Do}, \textit{supra} note 8.
“sexual immorality,” access to family planning will not change their practices. What it will do, however, is trigger the plethora of benefits listed above, which includes savings lives. Michelle Bachelet, the former president of Chile, is a model for advocating for family planning amid societal concerns about sexual immorality, as she successfully created access for adolescents fifteen or older to the morning after pill, even without parental consent.

**B. Children for a Purpose**

Another impediment to family planning is that, for many women, children are sources of labor, retirement plans for when parents age, or a public declaration of a woman’s social status and family security. These may be legitimate reasons to bear children, and the ultimate choice on fertility must lie with the woman; but, for those women who do want to limit the size of their family, giving birth to or raising an unmanageable number of children can lead to many negative consequences. In fact, when women have access to family planning, they tend to choose smaller families anyways. Furthermore, when women can manage their own fertility, they are better able to obtain an education or participate in the workforce, and “participation in the work force leads to greater gender equality by improving livelihoods and increasing women’s self-esteem, social status within society and the family, and their decision-making power.” With the opportunities voluntary family planning creates, women may not need or want to rely on a high quantity of children for labor, retirement, or social status.

**C. Abortion**

Perhaps the most well-known impediment to voluntary family planning is that some believe it to be synonymous with abortion. Voluntary family planning includes a vast range of services and products, of which abortion is sometimes a part. It may ease the minds of pro-life advocates to know that although increased access to the full array of family planning increases the number of abortions (because women become less willing to accept an unintentional pregnancy), the change is

---

252 Goldberg, *infra* note 40, at 70.; Jutta Joachim, Agenda Setting, the UN, and NGOs: Gender Violence and Reproductive Rights 135 (2007).
253 Goldberg, *infra* note 40, at 11.
254 Caprioli, *infra* note 1, at 170 (citations omitted).
temporary, and the number of abortions go back down. Additionally, pro-life advocates should remember that banning access to safe and effective abortion does not eliminate abortion: Each year, 20 million women, who represent 25 percent of the 80 million annual unintended abortions, undergo unsafe abortion procedures.

In January 2017, President Trump revived the 1984 global gag rule, officially known as the Mexico City Policy. The global gag rule prevents federal funding from ending up with international institutions that provide abortion services, regardless of how minor the abortion services are in comparison to the rest of the organization’s work. The issue with the global gag rule, apart from stripping women of their right to choose, is that it prevents the provision of general family planning services as well. Since meeting the need for contraception would prevent 35 million abortions each year, the global gag rule may create the opposite effect of what pro-life advocates intended, without the extensive benefits of providing access to voluntary family planning described above.

D. Bad History

1. Building the Family Planning Infrastructure

Concerns over sexual immorality, social status and security, and abortion are not well-founded and in fact can be better addressed through providing access to family planning. There is a final, historical reason that family planning is a sensitive issue despite its benefits. Since World War II, the West has spearheaded and assisted other governments with addressing population concerns by changing the “sexual and childbearing norms of their peoples.” The United States was at the front of the charge, and the global distribution of contraceptives was, at the time, a bipartisan effort. With the Earth on track to host 8 to 10 billion people by 2050, and given that all of the increase would be in the developing world, the international reproductive rights movement “began in a spirit of grim Malthusian fear.” Though the movement was partially

---

255 Goldberg, supra note 40, at 71-72.
256 What We Do, supra note 8.
258 Id.
261 Goldberg, supra note 40, at 5.
262 Id. at 40.
263 Lutz, supra note 51, at 2779.
264 Goldberg, supra note 40, at 44.
compassionate and “would extend and enrich the lives of millions of women around the world,”265 it undeniably had roots in fears for national and global security.266

Global support for the movement extended beyond government policies. During the surge in public education on family planning in the 1960s and 70s, The Walt Disney Company created a short cartoon.267 It specifically explained the possibility and consequences of a smaller family size, showing a happy and healthy family with three children and a hungry and sad family with eight children.268 Though the United States’s support for access to family planning would eventually wax and wane depending on which political party controlled the presidency, the global infrastructure has persisted.269

2. Coercive Population Control by the West

The reason this initiative created legitimate sensitivities surrounding family planning today is because the measures were coercive. “[R]ealpolitik-driven fears of swelling third world population, more than humanitarianism, drove early efforts by the United States to bring family planning to poor countries. America’s international commitment to birth control was intended to fight communism, not to liberate women.”270 The West was afraid of poor people, communism, and the “Other,” and the nation adopted neocolonialist measures in response.271 It continued the “long history of Western colonialists justifying themselves by promising to liberate benighted native women.”272 In the early 1970s, USAID distributed Dalkon Shield IUDs globally, and after investigations and FDA hearings, Dalkon Shield issued an international recall in 1975 because of uterine damage and even death.273 The IUDs could not effectively be recalled from remote areas, which led to the public perception of “dumping unsafe contraceptives,” despite USAID’s belief that they were safe.274

3. Coercive Population Control by the Developing World

Though the West is culpable for coercive population control, it was not alone in its

265 Id.
266 Id. at 46-7.
267 Id. at 71.
269 Goldberg, supra note 40, at 7.; Shepherd, supra note 84.
270 Goldberg, supra note 40, at 41.
271 Id. at 6.
272 Id. at 10.
273 Id. at 79.
274 Joachim, supra note 79, at 138.; Goldberg, supra note 40, at 79.
coercion. After World War II, countries across the globe realized that uncontrolled overpopulation would prevent development. Instead of turning to voluntary family planning and consensual population management, countries outside of the West turned to coercive measures as well. China enforced its one-child policy by taking valuable property from transgressors, forcing abortions on women, or threatening to fire transgressors from their jobs. Under the leadership of Sanjay Gandhi, the Indian government imposed forced sterilization on vast swaths of its population. This tragic history of coercive population control left a well-justified sensitivity to family planning programs.

4. From Coercive Population Control to Policies Centered on Women

Although coercive population control is unacceptable, there is no denying the need for some sort of voluntary population management. Fortunately for the well-being of humanity, women are eager to use contraceptives so they can have smaller families. Feminists in the 1970s, concerned about the lack of attention paid to the parts of women’s lives unrelated to fertility, argued, “If overpopulation was a problem, its root cause lay in women’s subordination, which too often gave them little choice over how many children to have and almost no social value outside of reproduction.” Finally, at the 1994 Cairo International Conference on Population and Development (ICPD), policies switched from focusing on population control to focusing on a woman’s rights and quality of life. The switch would still effectively manage population by lowering fertility and slowing population growth, but would do so in a way that respected human dignity and equality. The ICPD in Cairo set out to provide universal access to family planning and put reproductive health and rights within the purview of the United Nations. Coming out of the conference, governments settled on providing a broader array of reproductive health services and working on social development outside of family planning.

The ICPD in Cairo in 1994 saw the triumph of women’s rights advocates over coercive

---

275 Goldberg, supra note 40, at 6.
276 Id. at 6, 83.
278 Goldberg, supra note 40, at 82-83.
279 Id. at 67.
280 Id. at 6.
281 What was Cairo?, supra note 86.
282 Id.
283 Joachim, supra note 79, at 161.
284 What was Cairo?, supra note 86.
population controllers. The world realized that it could not address family planning without addressing other aspects of family health, such as STI’s that caused infertility, or the health of the children. In countless families, males dominate all decisions within the household, which includes women’s health and fertility. In contrast, the power to prevent a pregnancy is the power of women to choose their own future and pursue their goals, fighting against pernicious structural violence in the form of gender inequality. Despite the bad history that stains the creation of global family planning infrastructure, women were and still are eager to have access to contraceptives. Unintended pregnancies interfere with educational, civic, and economic opportunities.

By bridging the gap of that interference, family planning also bridges the global gender gap. The World Economic Forum calculates a gap between men and women for income, workforce participation, education, health, and politics. Policies aimed at reducing fertility rates and increasing labor opportunities for women increase women’s political participation. When the scales of gender are balanced, societies overcome the impediment to peace that is gender inequality. Peace requires “overcoming social relations of domination and subordination,” including those based on gender.

5. International Law and Policies

A. Sustainable Development Goals

Thankfully, laws, policies, and goals already exist that support achieving equality and reducing armed conflict through family planning. The United Nations Population Fund has set out to meet the global need for family planning by 2030. Furthermore, access to voluntary family planning will accelerate the achievement of half the Sustainable Development Goals (SDGs), including no poverty, zero hunger, good health and well-being, quality education, gender equality, decent work and economic growth, reduced inequalities, and peace, justice and strong institutions.

285 Goldberg, supra note 40, at 67-68, 70.
286 Id.
287 Maier, supra note 27, at 102.
288 Contraception, supra note 33.; Caprioli, supra note 1, at 164.
289 Goldberg, supra note 40, at, 67.
290 Worlds Apart, supra note 15.
291 Id.
292 Id.
293 Caprioli, supra note 1, at 172.
294 Id. at 165.
295 Caprioli, supra note 1, at 165 (citing J.A. Tickner, Gender in International Relations (1992)).
296 Safe, Effective Family Planning, supra note 12.
(see Appendix A for the full Sustainable Development Goals graphic). Most notable would be achievement of SDG subpoints 3.1, 3.2, and 5.6:

3.1 By 2030, reduce the global maternal mortality ratio to less than 70 per 100,000 live births.\textsuperscript{298}

3.2 By 2030, end preventable deaths of newborns and children under 5 years of age, with all countries aiming to reduce neonatal mortality to at least as low as 12 per 1,000 live births and under-5 mortality to at least as low as 25 per 1,000 live births.

5.6 Ensure universal access to sexual and reproductive health and reproductive rights as agreed in accordance with the Programme of Action of the International Conference on Population and Development and the Beijing Platform for Action and the outcome documents of their review conferences.\textsuperscript{299}

B. The Convention on the Elimination of All Forms of Discrimination against Women

Increased access to family planning would also fall under the requirements of Articles 10 and 14 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

- **Article 10** States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women.\textsuperscript{300}

- **Article 14** States Parties shall take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families, including their work in the non-monetized sectors of the economy, and shall take all appropriate measures to ensure the application of the provisions of this Convention to women in rural areas.\textsuperscript{301}

C. Framework of Analysis for Atrocity Crimes

Finally, expanding women’s access to voluntary family planning decreases the likelihood of atrocity crimes, which include genocide, crimes against humanity, war crimes, and ethnic cleansing. The United Nations Office on Genocide Prevention and the Responsibility to Protect has created a Framework of Analysis that uses early warning signs of atrocity crimes to determine a


\textsuperscript{301} \textit{Id.} at Article 14.
particular locality’s level of risk. Access to voluntary family planning lowers several of the factors: presence of armed conflict (1.2), economic instability (1.7-1.9), control over resources (4.2), identity-based supremacy (4.7), discriminatory or exclusionary practices against a protected group (9.1), and most notably, under signs of an intent to destroy in whole or in part a protected group, indicator (10.4): the “[d]evelopment of policies or measures that seriously affect the reproductive rights of women.”

6. Conclusion

In reducing the prevalence of armed conflict, it very well may be true that “[t]he pill is mightier than the sword.” Childbearing is a choice for women, not their fate. Without access to family planning, unacceptable rates of armed conflict, maternal death, infant death, and adolescent motherhood will continue to needlessly take lives. With renewed efforts to provide access, economies will grow, there will be more prosperity in the household and less armed conflict outside of it, populations will be better educated and will have more sustainable age distributions, and women will increase their economic freedom and decision-making power. The costs of access to family planning are low and ultimately save money, and concerns over sexual immorality, children for a purpose, and abortion are either misguided, unworkable, or better served through voluntary family planning. Although global family infrastructure launched with questionable motives and eventuated disturbing consequences, family planning has become a voluntary and women-centered strategy for improving and savings women’s lives. In fact, because of its ability to dismantle triggers for armed conflict, family planning improves and saves the lives of the whole family and community. The global gag rule must be rolled back, and resources must be poured into voluntary family planning to achieve the Sustainable Development Goals and deliver on obligations under the Convention on the Elimination of All Forms of Violence against Women.

With increased control of fertility, women will exit a place of victimhood and become survivors and agents of change. Access to voluntary family planning not only increases women’s peace and security but also that of their country.

---


304 See generally, Potts, supra note 67.

305 Goldberg, supra note 40, at 6.

306 Shepherd, supra note 84.
Appendix A

CONTINUED IMPUNITY AND 1325: WHY RAPE REMAINS RAMPANT IN LIBERIA
DESPITE EFFORTS TOWARD INTERNATIONAL NORM COMPLIANCE
By Lauren Wyszomierski

1. Introduction

Liberia was still in the early stages of emerging from the horrific civil war that had ravaged the country for nearly 14 years when in 2005 it elected Africa’s first female head of state, Ellen Johnson Sirleaf.307 For Women’s Peace and Security scholars, Liberia was renowned globally as the model for attempting post-conflict gender equality.308 A party to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), not only did Liberia elect a woman president, but in 2009 it promulgated a National Action Plan to Implement the United Nations Security Council Resolution 1325, and most importantly in 2005 it passed what became known as the New Liberian Rape Law.309 As far as the UN recommendations go, as promulgated in UN Security Council Resolutions 1325, 1820, 1889, and 2242, Liberia was following the correct recipe for strengthening women’s peace and security in a post-conflict situation.310 When Johnson’s presidential tenure came to an end in January 2018, however, rape remained widespread

310 See generally S.C. Res. 1325 (Oct. 31, 2000) (aiming to increase women’s participation in all efforts related to peace and security and to strengthen the protection of women in armed conflicts); S.C. Res. 1820 (June 19, 2008) (calling for the involvement of women in post-conflict and reconstruction phases); S.C. Res. 1889 (Oct. 5, 2009) (emphasizing the need to end the impunity for all forms of violence committed against women and girls in armed conflict); S.C. Res. 2242 (Oct. 13, 2015) (reinforcing 1325 and reiterating the importance of having women at the table during the institution building phase of a post-conflict situation).
in Liberia and continues to be committed with impunity.\textsuperscript{311} This paper raises the question of why this continued impunity for rape remains possible in Liberia. It seemed like Liberia had the right recipe, so what is the missing ingredient?

Section I begins with a survey of the relevant international legal standards concerning women’s peace and security, with a focus on provisions relevant to the prevention of rape. The first section goes on to examine Liberia’s efforts to conform to these international standards, including its constitutional provisions. Section II introduces the New Liberian Rape Law and interrogates its language and reach. Next, Section III goes on to examine the impact of the new rape law in practice and explores the various factors at play in Liberia contributing to the continued impunity for perpetrators of rape despite the implementation of the new legislation. Section IV interrogates Ellen Johnson Sirleaf’s role as Liberia’s female head of state during this ongoing rape crisis. Finally, Section V concludes with recommendations.

2. Setting the Stage: The International Legal Standards

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) is the standard-setting instrument for international women’s peace and security. Liberia ratified the CEDAW in 1984.\textsuperscript{312} Article 2(b) of the CEDAW calls on States Parties “To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;” while Article 2(f) requires States Parties “To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.”\textsuperscript{313} The New Liberian Rape Law legislation passed in 2005 was an effort by Liberia to prohibit the future practice, and to curb its current practice, of discriminating against women by allowing them to be raped with near impunity. Impunity for rape in Liberia is a consequence of its 14-year civil war, spanning from 1989 to 2003, during which state institutions collapsed and shocking acts were committed across the country.\textsuperscript{314} The World Health Organization estimates that during this civil war between 61.4 and 77.4 per cent of women and girls in Liberia were raped.\textsuperscript{315}

\textsuperscript{311} See generally United Nations Mission in Liberia (UNMIL) and Office of the United Nations High Commissioner for Human Rights (OHCHR), Addressing Impunity for Rape in Liberia (October 2016) [hereinafter U.N. Impunity Report].

\textsuperscript{312} U. N. TREATY COLLECTION, supra note 2.


\textsuperscript{314} Keith B. Richburg, Out of America: A Black Man Confronts Africa 134 (1997).

\textsuperscript{315} U.N. Impunity Report, supra note 4 at 5.
The CEDAW is not the only relevant international instrument when searching for solutions to Liberia’s rape crisis. Liberia is also a State Party to the Protocol to the African Charter on Human and Peoples’ Rights of Women in Africa, otherwise known as the Maputo Protocol. \[316\] Sections 2(a) and (e) respectively of the Maputo Protocol’s Article 4 on The Rights to Life, Integrity, and Security of the Person call for States Parties to take appropriate and effective measures to “enact and enforce laws to prohibit all forms of violence against women, including unwanted or forced sex whether the violence takes place in private or public;” and “punish the perpetrators of violence against women . . . .” \[317\]

Furthermore, the United Nations Security Council issued four relevant Security Council Resolutions: 1325, 1820, 1889, and 2242. UNSCR 1325, in relevant part, “calls on all parties to armed conflict to take special measures to protect women and girls from gender-based violence, particularly rape and other forms of sexual abuse, and all other forms of violence in situations of armed conflict,” and

“Emphasizes the responsibility of all States to put an end to impunity and to prosecute those responsible for genocide, crimes against humanity, and war crimes including those relating to sexual and other violence against women and girls, and in this regard stresses the need to exclude these crimes, where feasible from amnesty provisions.” \[318\]

UNSCR 1820, UNSCR 1889, and UNSCR 2242 are considered the progeny of 1325. UNSCR 1820 requests that women and women-led organizations be consulted during the disarmament, demobilization, and reintegration processes, and in justice and security sector reform, and designates rape as a war crime, a crime against humanity, and a constitutive act with respect to genocide. \[319\] UNSCR 1889 calls on Member States to specifically “put an end to impunity” and to prosecute those responsible for all forms of violence against women, including rape. \[320\] UNSCR 2242, on the other hand, reiterates the importance of having women at the table during the institution building phase of a post-conflict situation – a suggestion which Liberia looked to implement with the election of Africa’s first female head of state, Ellen Johnson Sirleaf. \[321\] UNSCR 1820 is not alone in designating rape as a crime against humanity and a war crime, as the Rome Statute establishing the International Criminal Court does the same in Articles 7 and 8,

\[317\] Maputo Protocol at art. 4.
\[319\] S.C. Res. 1820, ¶ 4, 10 (June 19, 2008).
respectively. 322 Finally, the United Nation’s Sustainable Development Goal 5 is also of standard-setting relevance for Liberia, as Goal 5 is to achieve gender equality and empower all women and girls. 323 In particular, Target 5.2 aims to eliminate all forms of violence against women and girls in the public and private spheres. 324

3. Situating Liberia’s Efforts in the International Framework

In 2009 Liberia issued its National Action Plan to Implement 1325. 325 According to the authors of the National Action Plan, post-conflict Liberia “epitomizes the principles and the letter and intent of Resolution 1325.” 326 Although the continuing rape crisis in Liberia seems calls this assertion into question, Liberia has many valid reasons for making this claim. First and foremost, having women in leadership positions during a post-conflict period is considered of critical importance for the implementation of UNSCR 1325, and Liberia had Ellen Johnson Sirleaf as its Head of State, the zenith of leadership. 327 To further implement 1325, Liberia implemented four joint programs with the United Nations: The UN Joint Program to Prevent and Respond to Sexual and Gender Based Violence, which takes a holistic approach to addressing the issues of sexual and gender-based violence (SGBV); The UN Joint Program on Food Security and Nutrition, which targets groups of women farmers in order to improve their livelihoods; The UN Joint Program on Gender Equality and Women’s Economic Empowerment, which brings together UN agencies to support policy development in order to achieve gender equality in Liberia; and The UN Joint Program for Employment and the Empowerment of Young Women and Men, which aims to promote the employability of young Liberians. 328

Beyond the four Joint Programs, the Liberian National Action Plan also notes the following:

“Liberia also has the only serving female Special Representative of the UN Secretary-General (SRSG) and the first All-Female Formed Police Unit deployed by India. The United Nations Mission in Liberia (UNMIL) is one of the largest peace keeping missions with a clearly defined mandate to implement Resolution 1325 and the Office of the Gender Adviser (UNMIL OGA) is very active in ensuring that this mandate is met. In addition to implementing resolution 1325, UNMIL, in recognition of the high incidence of sexual and gender-based violence (SGBV) in Liberia, is also taking steps to implement Resolution

324 Id.
325 LIBERIAN NATIONAL ACTION PLAN, supra note 2.
326 Id. at 7.
327 Id.
328 Id.
Liberia also established the Ministry of Gender Development (MoGD) as a national machinery to promote gender equality and women’s advancement in Liberia. The MoGD, which oversees the implementation of Liberia’s National Action Plan to implement 1325, also advises the government “on all matters affecting the protection, promotion, participation and advancement of women in Liberia and thus coordinates gender mainstreaming efforts to ensure that women are integrated into development programs and that all forms of violence against them are prevented.”

The only place where Liberia seemingly falls short of its goal of working toward gender equality is its Constitution. While the 1986 Liberian Constitution enshrines many fundamental human rights that would be violated by sexual violence, such the Article 11 rights to life and to the security of the person, the Constitution lacks a gendered awareness. In terms of equal protection, the Constitution does provide that “all persons are born equally free and independent and have certain natural, inherent and inalienable rights . . . irrespective of ethnic background, race, sex, creed, place of origin or political opinion . . . ”. The words “woman,” “women,” “female,” or “she” can be found only once, however, in the context of rights to marital property. In 2015, the CEDAW Committee noted its concerns with Liberia’s constitution, pointing out that it does not encompass all prohibited grounds of discrimination, such as marital status.

It was within this domestic and international legal framework and in the shadow of its civil war that the transitional government passed Liberia’s new anti-rape law in 2005. Ellen Johnson Sirleaf quickly pledged her support for the new anti-rape law, and the new law was released to the public in 2006 under the Sirleaf Administration. Details of what became known as the New
The New Liberian Rape Law

When it was passed in 2005, the Act to Amend the New Code Chapter 14 Sections 14.70 and 14.71 And to Provide for Gang Rape, known colloquially as the New Liberian Rape Law, was heralded as a huge step forward for women’s rights in the fight against gender-based violence in Liberia.338 The new law defined the offense of rape as follows:

“A person who has sexual intercourse with another person (male or female) has committed rape if: a) (i) He intentionally penetrates the vagina, anus, mouth or any other opening of another person (male or female) with his penis, without the victim’s consent; or, (ii) He/she intentionally penetrates the vagina or anus of another person with a foreign object or with any other part of the body (other than the penis), without the victim’s consent. b) The victim is less than eighteen years old, provided the actor is eighteen years of age or older.”339

Additionally, the New Liberian Rape Law was notable for its inclusion of Gang Rape as a separate, first degree felony, and for its classification of rape (in certain instances) as a capital, non-bailable offense.340 The law provides for severe sentences, including the possibility of life imprisonment for first-degree rape.341

The New Liberian Rape Law represented an effort to comply with international standards. For instance, the New Rape Law raised the age of consent from sixteen to eighteen years of age in order to comply with the Convention on the Rights of the Child.342 Similarly, the definition of “rape” itself was broadened to include penetration with a foreign object or body part other than the penis in order to become more in line with international norms.343 Finally, the New Liberian Rape Law also employed a more gender-neutral approach to its wording, thereby making rape an offense

338 New Liberian Rape Law, supra note 2.
339 Id.
341 New Liberian Rape Law, supra note 2 (The law defines rape as a felony of the first degree when: (i) the victim was less than 18 years of age at the time the offense was committed; or (ii) the offense involves gang rape as defined in sub-paragraph 2 above; or (iii) the act of rape complained of results in either permanent disability or serious bodily injury to the victim; or (iv) at the time of the relevant act or immediately before it began, the defendant threatened the victim with a firearm or other deadly weapon). See also U.N. Impunity Report, supra note 4 at 9 (noting that as of 5 June 2016 19 individuals in Monrovia Central Prison were serving life sentences for rape).
343 Id.
possible of being committed by both men and women.344 While technically, this broad language of the New Liberian Rape Law allows for marital rape to fall within its definition of “a person” raping “another person,” the failure of the New Rape Law to contain a specific provision on marital rape was viewed as a shortcoming by many.345

The New Liberian Rape Law was accompanied in 2008 by the establishment of Criminal Court “E” in Montserrado County.346 Criminal Court “E” has exclusive jurisdiction over the crimes of rape, gang rape, aggravated involuntary sodomy, involuntary sodomy, voluntary sodomy, corruption of minors, sexual abuse of wards, and sexual assault.347 The motivation behind the establishment of this special court was to fast track sexual violence cases through the backlogged criminal justice system.348 The Act establishing the court also provides for the creation of Sexual Crimes Divisions within the circuit courts of the other 14 Liberian counties to deal exclusively with sexual crimes.349 Although this Special Court was celebrated as part of Ellen Johnson Sirleaf’s attack on all forms of sexual and gender-based violence (SGBV), shortcomings in the implementation of the New Liberian Rape Law and the operation of Criminal Court “E” have been glaring.350 For instance, as of 2016, eight years after the passage of the Act, none of the special Sexual Crimes Divisions had been established any of the other 14 counties.351

5. The Impact of the Law in Practice: Impunity Remains

In October 2016, the United Nations issued a report by the UN Mission in Liberia (UNMIL) and the Office of the High Commissioner for Human Rights revealing that eleven years after the passage of the New Liberian Rape Law there remained widespread impunity for rape in Liberia.352 The report, which gathered information from January 2015 to March 2016, revealed that 803 cases of rape were reported in 2015, making rape the second most commonly reported serious crime in Liberia.353 Possibly the most appalling finding of the report, however, was that

---

344 Id.
345 Id.
347 Id.
348 Africa’s First Female President Set New Course for Liberia, supra note 29.
353 The most commonly reported serious crime was aggravated assault. U.N. Impunity Report, supra note 4 at 5.
only two percent of rapes and SGBV cases reported in 2015 resulted in a conviction.\textsuperscript{355} This means that despite the New Liberian Rape Law and the establishment of the special Criminal Court “E,” out of 803 reported cases of rape only 34 individuals were convicted in all of Liberia.\textsuperscript{356}

A further break down of the numbers illustrates the extent of the continued impunity for rape in Liberia. From 2014 to 2015, 1,511 cases of rape were reported to law enforcement officials, health care providers, and non-governmental organizations.\textsuperscript{357} Out of these 1,511 reported cases, only 836 were registered by the police, and a mere 259 were sent to court.\textsuperscript{358} While these numbers do not account for unreported cases and are thus, if anything, under-representative of the problem of rape in Liberia, they do represent a clear failure of the mechanisms established by the New Liberian Rape Law and Criminal Court “E”.\textsuperscript{359} One of the most controversial components of the New Liberian Rape Law was the provision making rape in certain instances a non-bailable capital offense. This clear concern with keeping violent sexual offenders off of the streets has manifestly not been adhered to in practice.

As of the UN report in 2016, the SGBV Crimes Unit of the Ministry of Justice that oversees the prosecution of sexual offenses at Criminal Court “E” and at regional justice and security hubs\textsuperscript{360} was staffed with eight prosecutors, four Case Liaison officers, two social workers, and several administrative staff.\textsuperscript{361} Despite the failure to establish the Sexual Crimes Divisions in Liberia’s other counties as called for in the act establishing Criminal Court “E,” the SGBV Crimes Unit has managed to spread beyond Montserrado. The Ministry of Justice has SGBV prosecutors in eight counties and established an SGBV sub-unit in the Gbarnga regional justice and security hub.\textsuperscript{362} Even with these resources, Liberia has been unable to effectively prevent or implement accountability for rape, largely due to lack of coordination, capacity constraints, and a lack of resources.\textsuperscript{363}

More than 34 alleged perpetrators of rape were arrested; however various factors prevented

\textsuperscript{355} Id.
\textsuperscript{356} Id.
\textsuperscript{357} Id. at 5.
\textsuperscript{358} Id.
\textsuperscript{359} It should also be noted that these numbers represent only rape, and not all SGBV crime. The total number of sexual violence cases in Liberia (including rape) was 1,055 in 2015. This number includes cases of sodomy, sexual assault, attempted rape, and “corruption of a minor,” which is when a person under 18 years old rapes or sexually assaults a person under 18. U.N. Impunity Report, \textit{supra} note 4 at 5.
\textsuperscript{360} So far only the first of five planned hubs haves been established in Gbarnga. U.N. Impunity Report, \textit{supra} note 4 at 9-10.
\textsuperscript{361} U.N. Impunity Report, \textit{supra} note 4 at 10.
\textsuperscript{362} Id. (The eight counties are Bong, Grand Gedeh, Grand Kru, Lofa, Nimba, Maryland, River Gee, and Sinoe).
\textsuperscript{363} Id.
them from being brought to trial, and thus have created an atmosphere of impunity surrounding rape in Liberia. A previous UN report published in 2015 had already reported on the impunity for rape in the Liberian traditional and cultural contexts. The 2016 report went further in identifying numerous causes behind the impunity for rape in Liberia.

6. Factors Supporting Impunity

Barriers to accountability for rape in the Liberian context include feelings of shame, community pressure to settle, undue influence of traditional actors, problems related to the investigation and collection of evidence, legal and procedural issues, institutional weaknesses, inadequate funding of the SGVB Crimes Unit, and corruption. For many, the shame of accusing a community or family member of rape prevented the victims from reporting the case in the first place. Alternatively, some survivors may not see themselves as victims due to the dominant Liberian social norms surrounding women and sexuality. For instance, a 2008 survey conducted by the UNMIL’s Legal and Judicial System Support Division found that 83 per cent of respondents believed that women who were raped bore some responsibility, and 44 percent of respondents did not believe that rape could be committed in marriage or other intimate relationships. These attitudes are reflected in the reluctance of many victims to report their rape to the police because of the common police practice of victim-blaming.

Another key factor hindering the effectiveness of the New Liberian Rape Law is the social pressure to informally settle cases outside of court. These settlements usually take the form of payment by the perpetrator to the survivor or the survivor’s family. This pressure is often augmented by undue interference by traditional actors, who technically do not have any jurisdiction over rape cases. For those who would like to take their court, it may be a logistical or financial

---

364 Id. at 4.
367 Id. at 12.
368 Id. at 12. (These attitudes may also explain why children make up such a large proportion of reported rape victims: “child rape reports may be higher because they shock the conscience and are not pre-empted by the generally discriminatory attitudes towards women survivors of rape. The high number of reported child rapes thus might not necessarily be an accurate indicator that children are overwhelmingly targeted.”)
369 Id.
370 Id.
371 Id. at 13.
372 Id.
373 Id. (Under article 40 and 41 of the Hinterland Regulations, Paramount Chiefs and Clan Chiefs have jurisdiction over minor offences, including criminal cases punishable by a fine not exceeding US $10 or by imprisonment for a period not exceeding three months. Under these Regulations, traditional actors have no authority to adjudicate any rape cases).
impossibility. Particularly if the victim lives in rural Liberia, police stations and courts may simply be so geographically remote so as to be an insurmountable barrier to justice.\textsuperscript{374} Finally, victims and families may agree to settle out of court, and thus perpetuate the atmosphere of impunity surrounding rape, because of a widespread lack of confidence in the justice system.\textsuperscript{375}

Liberian women’s lack of confidence in the justice system is not unwarranted. A majority of rape cases in Liberia are ultimately dismissed due to lack of proper evidence gathering by police, corruption, or simply the lack of will and diligence on the part of police and prosecutors.\textsuperscript{376} Even if the police have the requisite motivation to pursue the investigation, Liberia lacks the adequate forensic capacity to collect the necessary evidence in a rape case.\textsuperscript{377} If a Liberian official wishes to perform a forensic test in an investigation, such as a DNA test, it must be sent to Ghana.\textsuperscript{378} As a result, most rape cases lack the scientific evidence that would be sufficient to convict a person beyond a reasonable doubt.\textsuperscript{379} When combined with the cultural attitudes that support victim-blaming, this leaves victims with lackluster police investigation, little witness cooperation, and no evidence.\textsuperscript{380}

If a victim is able to overcome the numerous hurdles at the reporting and investigative levels, barriers remain at the legal, procedural, and institutional levels. Throughout the legal system, systemic problems have caused a severe backlog in all criminal cases.\textsuperscript{381} When it comes to rape, and Criminal Court “E” in particular, space and capacity constraints have hindered the judicial process.\textsuperscript{382} As of 2016, Criminal Court “E” had only one of two mandated sitting judges, and the SGBV Crimes Unit did not employ as many prosecutors as were mandated by law.\textsuperscript{383} As a result, in 2015 only three cases were tried in Montserrado County out of 137 cases on the docket at Criminal Court “E”.\textsuperscript{384} Outside of Montserrado County, the problem is only worse, with magistrates who often lack even a solid understanding of the rape law.\textsuperscript{385}

\textsuperscript{374} Id. at 15.
\textsuperscript{375} Id. at 14-15.
\textsuperscript{376} Id. at 15.
\textsuperscript{377} Id. at 16.
\textsuperscript{378} Id.
\textsuperscript{379} Id.
\textsuperscript{380} Id.
\textsuperscript{381} Id. at 17.
\textsuperscript{382} There are accusations of more insidious powers at play throughout the judicial system, as well. Criminal Court “E” has been accused of being complicit in the mysterious disappearances of rape defendants after their arrest. It is believed that the defendants, mostly foreigners, bribed their way out. \textit{Liberia Rape Law in the Female-Led Government, supra} note 30.
\textsuperscript{383} U.N. Impunity Report, \textit{supra} note 4 at 20.
\textsuperscript{384} Id.
\textsuperscript{385} Id.
7. Ellen Johnson Sirleaf: Her Legacy

In her inauguration speech, Ellen Johnson Sirleaf referred to a horrific incident of gang rape she witnessed and the routine brutalization of women in Liberia before, during, and after its 14-year civil war.\textsuperscript{386} This was the start of her campaign to stigmatize rape.\textsuperscript{387} A few weeks after she was elected, Ms. Sirleaf personally intervened to ensure the arrest of a man accused of raping a nine-year-old girl.\textsuperscript{388} Ms. Sirleaf thus seemed poised to be the driving force Liberia needed to end the rampant sexual violence that had plagued Liberia for over a decade, but then her government made no attempt to prosecute the war’s suspected perpetrators of violence against women and instituted a de facto amnesty.\textsuperscript{389} Fast forward to the end of her administration, and with less than a week before the first round of the presidential elections to replace her, the Liberian senate quietly voted to amend the New Liberian Rape Law to allow accused rapists out on bail before their trials.\textsuperscript{390} The once heralded law, later called a “paper tiger” in practice, is now further reduced.\textsuperscript{391} Two months after exiting the presidency, Ellen Johnson Sirleaf’s legacy hopes to avoid similar diminution.

As the first African female head of state, much of the criticism that surrounded Ellen John Sirleaf’s administration involved accusations of Ms. Sirleaf acting too similar to her 54 male counterparts.\textsuperscript{392} For instance, Ms. Sirleaf was frequently condemned for corruption and nepotism. Critics often cite her decision to appoint her sons to key governmental positions as evidence to support these accusations.\textsuperscript{393} On the other hand, the importance of Ms. Sirleaf peacefully stepping down from power at the end of her term cannot be overstated, as the refusal of her male counterparts to do just that is driving conflict across the continent. In this, Ms. Sirleaf demonstrates the virtues of women leadership.

As far as Ms. Sirleaf’s legacy with Liberian women, the reception is mixed. Liberian women appreciate her for breaking Liberia’s glass ceiling, and a mural in Monrovia thanks “Ma Ellen” “For the development and the peace.”\textsuperscript{394} On the other hand, the women of Liberia often

\textsuperscript{386} David Pilling, The Mixed Legacy of Liberia’s Ellen Johnson Sirleaf, THE FINANCIAL TIMES (Jan. 10, 2018), https://www.ft.com/content/1dabecc8-f530-11e7-8715-e94187b3017e.
\textsuperscript{387} Helene Cooper, Iron Lady: The Promise of Liberia’s Ellen Johnson Sirleaf, 173 WORLD AFFAIRS 43, 46 (2010).
\textsuperscript{388} Id. at 47.
\textsuperscript{389} Ruthie Ackerman, Rebuilding Liberia: One Brick at a Time, 26 WORLD POL’Y J. 83, 86 (2009).
\textsuperscript{390} Africa’s First Female President Set New Course for Liberia, supra note 29.
\textsuperscript{391} Liberia Rape Law in the Female-Lead Government, supra note 30.
\textsuperscript{392} The Mixed Legacy of Liberia’s Ellen Johnson Sirleaf, supra note 79.
\textsuperscript{393} Id.
\textsuperscript{394} Africa’s First Female President Set New Course for Liberia, supra note 29.
claim that Ms. Sirleaf did not do enough to advance the status of women in Liberia. For many, she was a woman president, but not a women’s president. Detractors point to her failures to do more in the fight against female genital mutilation and to promote more women. Most egregiously, to some, was the fact that there were no viable female presidential candidates to replace Ms. Sirleaf in 2017. This was viewed as proof that Ms. Sirleaf neglected to consolidate broader gains for women in favor of pursuing her own political aspirations. Korto Williams, country director for ActionAid Liberia and a feminist activist, summed up Ms. Sirleaf’s administration as follows: “Symbolically her presence was very important. But in terms of concrete actions to dismantle the oppression of women, there’s been much less of that.”

Feminist activists point out that Ms. Sirleaf made little effort to connect with the women of Liberia after her election. MacDella Cooper, the only female presidential candidate in the 2017 election (who was eliminated in the first round), attributed Ms. Sirleaf’s distance from the women in Liberia to Ms. Sirleaf’s failure to appeal to their shared experience of sexism in Liberian society. By way of explanation, Leymah Gbowee, peace activist and former ally of Ms. Sirleaf who shares her 2011 Nobel Peace Prize, made this cutting observation: “What it comes down to is this: President Sirleaf is a politician, not a feminist.”

One of Ms. Sirleaf’s final acts as president indicates that Ms. Gbowee was half right; instead, it may be more accurate to say that President Sirleaf was a feminist constrained by politics. On January 19, 2018, Ms. Sirleaf issued an executive order on domestic violence that includes a ban on female genital mutilation (FGM). While it is binding law, the executive order will only be effective for one year, due to a 1974 Liberia Supreme Court ruling. Executive Order Number 92 on Domestic Violence defines domestic violence as

“in general any act of violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, men, or children, including threats of such acts,

---

395 See, e.g., The Mixed Legacy of Liberia’s Ellen Johnson Sirleaf, supra note 79; Africa’s First Female President Set New Course for Liberia, supra note 29.
396 The Mixed Legacy of Liberia’s Ellen Johnson Sirleaf, supra note 79. But see: Africa’s First Female President Set New Course for Liberia, supra note 29 (noting that early on in her administration, Ms. Sirleaf appointed women to head crucial ministries such as Finance and Justice, put a woman at the head of the national police force, and put another woman at the head of the commission on refugees).
397 The Mixed Legacy of Liberia’s Ellen Johnson Sirleaf, supra note 79.
398 Africa’s First Female President Set New Course for Liberia, supra note 29.
399 Id. (noting that Ms. Sirleaf left her husband in the 1960s after he beat her).
400 Id.
coercion or arbitrary deprivation of liberty, whether occurring in public or private life between parties in an existing or former domestic relationship.”

The executive order goes on to explicitly declare that, “female genital mutilation performed on a person under the age of eighteen or a person eighteen-years-old or over without their consent” constitutes the offense of domestic violence. The executive order comes after the passage of a Domestic Violence Bill in 2016 that failed to include a ban on FGM, despite efforts by President Sirleaf. Although Ms. Sirleaf failed to achieve a permanent ban on FGM through legislation during her time as president, her last act reveals that she did not forget her pledge to the women of Liberia. Unfortunately for her legacy, it may prove to be too little too late.

8. Conclusion

Many Liberian communities have come to view sexual violence as “normal” because of its frequency and the lack of serious consequences for perpetrators. Time has revealed that the New Liberian Rape Law and a woman in the Executive Mansion were not enough to overcome this permissive climate for SGBV crimes in Liberia, nor were all of the other positive efforts touted by Liberia in its National Action Plan. After two terms, Ellen Johnson Sirleaf’s post-conflict presidency thus reveals that women in leadership are not enough if those women leaders are not supported by underlying institutional and practical reforms that will remain long after their tenure. As the rollback of the rape law and the temporary nature of President Sirleaf’s FGM-ban through Executive Order illustrate, changes must go beyond the gender of the leaders and instead permanently permeate the core of the state institutions these women hope to change.

In a check-the-box approach, Liberia appears to have checked every box. Therefore, I propose that we need new, more practical boxes. As we have seen, the continued impunity in Liberia reveals the limitations of the current international toolbox in terms of its scope and focus. It is clear that the current tools and boxes to check do not address what are actually the deciding factors in peoples’ lives. To remedy the situation going forward, I have three recommendations that the UN, global civil society, and the Liberian government itself should assist Liberia in implementing. First, the UN and other international advocates cannot view women in office as an end point, but merely as the first step in the right direction towards lasting institutional change. To
accomplish this, first Liberia needs to amend its constitution to further entrench all forms of gender equality. The reforms in favor of gender equality cannot continue to be surface level or ad hoc, because as we have seen with the recent roll back of the anti-rape law, these types of advancements are too easily reversed. Necessary reforms and appeals to gender equality must come from the heart of Liberia’s political and justice systems. Second, and of a more practical nature, Liberia needs to allocate the requisite funds to finish implementing its current plans. The remaining four regional justice and security hubs should be stood up, and the capacity and space issues hindering Criminal Court “E” rectified, as starting points. Additionally, transportation options or rural claims-centers should be included in the budgeting process so that rural women are not barred from seeking justice due to distance or financial constraints. Finally, Liberia’s leading figures in the fight for gender equality and the eradication of SGBV crimes need to engage with traditional communities so that they cease being a roadblock when survivors seek justice.\textsuperscript{407} It is a practical reality that allowing for the informal settlement advocated by these traditional leaders increases the culture of impunity by decreasing the visibility of the consequences for rape in the public eye. The traditional leaders cannot be allowed to provide loopholes to the reforms being made in the formal justice system. Liberia has already taken so many measures throughout its recovery from the civil war to bring itself in line with the aspirational international standards embodied by the CEDAW and UNSCR 1325 and its progeny; it cannot let practical setbacks stop it from seeking peace and security for all of its citizens.

SEXY TRAFFICKING AND WOMEN’S RIGHTS, PEACE, AND SECURITY: CASE STUDIES ON ROMANIA AND NEPAL

By Kerri Gallagher

1. Introduction

Sex trafficking across the globe has been used as a tool within war, terror and violent extremism. Women’s bodies have been manipulated and abused as a result of such violence. Trafficking of women and children is one of the fastest growing criminal industries, yet not much information is known about the issue and the effectiveness of programs to combat the problem and rehabilitate the victims. Zainab Bangura, the Security-General’s Special Representative on Sexual Violence in conflict said, “A young man wants to smoke a cigarette but he does not have the money to buy a pack. He has a slave girl, he goes and sells her to another man, and he gets enough money for a pack of cigarettes. That’s it. She is the value of a pack of cigarettes.” This is a story of many women living in Iraq sold into slavery by terrorist groups using women and sexual violence as a main tool in their ideology.

This paper will examine two case studies, Romania and Nepal, and compare and contrast the ways in which government and civil society address women’s peace and security through sex trafficking. Although it is difficult to determine exact numbers of the women and children trafficked, it is estimated that over one-third of Romania’s trafficked victims are under aged girls; approximately 25,000 women and girls were trafficked or attempted to be trafficked in 2013 in Nepal. Strengthening the legal framework surrounding sex trafficking is imperative to protecting women’s rights, peace, and security.

Securing and implementing polices on sex trafficking has been a global challenge, although in recent years many countries have been moving forward in a positive direction. The author aims to synthesis some of the most current research and statistics and introduces some additional

410 Romania and Nepal were chosen as the case studies because they are countries in transition, both emerging from conflict and in tumult. Further, both countries have a minority population that creates instability. The author chose one country from Eastern Europe and one country from Asia for differentiation.
perspectives on how to continue to combat the problem by specifically focusing on Romania and Nepal. Further, the author hopes to address the root causes of the problem and link them to the principle argument of fundamental human rights for women. This paper seeks to present a broad overview of gender equality in Romania and Nepal through the lens of sex trafficking by exploring the strengths and weaknesses and gaps and flaws of the countries’ responses. Further, the author aims to examine sex trafficking through a critical lens and link it to women’s rights, peace and security.

In section one of this paper, the author will evaluate the interplay between sex trafficking and violent extremism in order to create a framework for the remainder of the paper. In section two, she will identify some of the international recommendations, resolutions, and articles that address sex trafficking as it relates to women’s rights, peace and security. Women’s rights to protection against human trafficking are rooted in international human rights documents because some of the key determinants of trafficking include gender discrimination, poverty, low levels of education, and lack of awareness among the most vulnerable segments of the population. In section three of this paper, the author will evaluate the background information of each country that is pertinent to the analysis. In section four, she will examine some of the policies and laws set forth by the governments of Romania and Nepal to increase protection of its women and children from sex trafficking. In section five, the author will conduct a robust analysis of the policies and legislation implemented in both countries, the effectiveness of the policies and legislation, and any gaps or missing links that are crucial. The author will conclude with the egregious effects of the lack of enforcement by Romanian government and the positive yet limiting efforts set forth by the government of Nepal. Finally, the author will propose recommendations that, if implemented, will have positive and lasting impacts on women’s rights, security, and peace as they pertain to sex trafficking in Romania and Nepal.

2. The Interplay between Sex Trafficking and Violent Extremism

Sex trafficking is a global issue that has particularly effected countries in transition that are emerging from conflict, experiencing tumult, and facing instability from minority populations. Violent extremism breeds in these countries as drivers of violent extremism include lack of socio-economic opportunities, marginalization and discrimination, poor governance, and unresolved

---

conflict. Actions must be taken in order to halt violent extremism by strengthening the law, repealing discriminatory legislation and implementing effective policies and laws.

The central ideology of terrorism is supported by sex trafficking. In groups such as ISIS, sex trafficking facilitates the recruitment and retention of fighters by offering them such rewards upon service. Further, the disruption of land and society that terrorist groups have initiated has led to great migration. Such migration has never been seen by the world, yet during times of migration human trafficking spikes. International and national security are threatened and sex trafficking is both a cause and a consequence of the threat to security. Radhika Coomaraswamy, the UN Special Rapporteur on Violence against Women, states “Trafficking of girls and women often follow the same root as legitimate migration…traffickers fish in the stream of migration.” The link between sex trafficking and violent extremism and how it relates to the issue of migration around the world is crucial when addressing women’s rights, peace and security.

3. International Documents Addressing Human Trafficking and the Relationship Between Human Trafficking and Women’s Peace and Security

Several international documents such as Security Council Resolution 1325, Security Council Resolution 1820, Security Council Resolution 1889, the Convention on the Elimination of All Forms of Discrimination Against Women (“CEDAW”), UN Convention against Transnational Crime Protocol, Global Report on Trafficking, and The European Convention: Convention on Action Against Trafficking address human trafficking as it pertains to women’s rights and requires appropriate actions to be taken. It is crucial to understand that women’s rights, peace, and security are human rights and that such rights greatly depend on the elimination of sex trafficking.

The CEDAW, the international bill of rights for women, specifically in Article 6,
General Recommendation 19, and General Recommendation 26, all condemn trafficking of women. Article 6 of the CEDAW urges state parties to take all appropriate measures to suppress trafficking and exploitation of prostitution of women. General Recommendation 19 recommends that state parties shall review their laws and policies concerning gender based violence. General Recommendation 26 affirms that migrant women should not be discriminated against and that state parties are obligated to respect, protect, and fulfill the human rights of migrant women.

The curtailment of and protection against further sex trafficking among women enables the reduction of violence and advances women’s rights, peace, and security for several reasons. First, women protected by sex trafficking have the opportunity to escape poverty and hence be a positive force against terror and violent extremism rather than a victim of it. Second, protection of women against sex trafficking promotes greater security and peace that is longer lasting and sustainable.

Poverty is a major cause of war, terror, and violent extremism and a key determinant of trafficking because of the lack of employment available to women. Research shows that due to gender based discrimination, poverty affects women more so than men. Many women and girls become trapped in exploitative situations as a result of forced labor and debt bondage within agriculture, forestry, construction, and manufacturing sectors. Another way women and girls become trapped into trafficking is by false promises of labor recruitment agencies and job brokers who exploit the women and girls with attractive job offers and opportunities in other countries. Sex tourism within these countries has also grown substantially. Online advertisements have attracted foreigners to visit cities where major sex markets have been developed and grant tourists the opportunity to sexually exploit women and girls. All of these factors place women in a more problematic situation than men during times of war, terror, and violent extremism. Hence, protecting women and girls from sex trafficking could reduce poverty rates and positively

---

423 CEDAW, supra note 5, at art. 6.
424 General Recommendation No. 19, supra note 7.
425 General Recommendation No. 26, supra note 8.
contribute to the reduction of conflict.

Policies that promote the protection of women and girls from sex trafficking could bring about the change that is necessary to curb war, terror, and violent extremism. Protecting women from sex trafficking will have lasting effects that extend beyond just the realm of trafficking. Such protections will enable women to have the opportunity to escape poverty, greater access to education and employment, and increased gender equality. By enabling women to have access to these opportunities, we empower them to be less prone to violence and conflict.

4. Backgrounds on Romania and Nepal

Romania has a total population of 21,529,967 inhabitants with approximately 55% of the population residing in urban areas and cities.\textsuperscript{428} With one of the highest poverty rates in the European Union, the share of Romanians in relative poverty is approximately 25%.\textsuperscript{429} Further, over 50% of Romanian children are at risk for poverty.\textsuperscript{430} Romania is also considered a source, transit and destination country for women and children subjected to sex trafficking.

In the aftermath of the breakaway from the Soviet Union, the transition for Romania from communism to a free market economy took a very long time and left society wanting opportunities outside the nation. Prior to the 1989 Revolution, Romania was a nation that was constantly in that shadows of those countries of Western Europe and left Romanians yearning for a life outside of Romania’s borders. The interplay of political, social, and culture changes widen the poverty gap, specifically for women, which leads to the increase of trafficking.\textsuperscript{431}

These women were in search for any type of income to improve their living situation back home and to help support their families. Due to this desire to provide, women started responding to advertisements in newspapers for work abroad. They were unsure of what this work entailed, but felt that they were lucky enough to have the privilege of a having job. Some of these women knew that the work consisted of prostitution, but they were lured in with the idea that they would be granted the opportunity to make fast cash abroad and be able to return home with no one

\begin{thebibliography}{9}
\end{thebibliography}
knowing what they had done. However, most of these advertisements did not turn into fast lucrative employment, but rather sex trafficking that destroyed their lives and the lives of their families.

With an estimated population of 29,384,297 people, Nepal is comprised of over 125 caste/ethnic groups, of which Chhettri, Brahman-Hill, and Magar are the three largest ethnic groups.\textsuperscript{432} There are over 123 languages reported as mother tongue.\textsuperscript{433} It is estimated that about 80% of the population resides in a rural setting and the sex ratio is approximately 0.95 males/female.\textsuperscript{434} Nepal, within the South Asian region, has been labeled a “sending” country of origin for trafficking.\textsuperscript{435} The victims are typically subjected to forced labor and sex trafficking in three areas: (1) cross border trafficking to India; (2) cross border trafficking beyond India; (3) internal trafficking in domestic industries. Women are subjected to all three types of trafficking, but especially for the purpose of sexual exploitation. The victims are typically trafficked to India, the Middle East, Malaysia, Hong Kong, and South Korea, and within Nepal.\textsuperscript{436} It is estimated that approximately 2.5 million girls and women are vulnerable to sexual exploitation.\textsuperscript{437}

Trafficking women and girls for the purpose of sexual exploitation has a long history in Nepal.\textsuperscript{438} During the Pana Regime (1847-1951), trafficking began with women and girls being trafficked to be housemaids.\textsuperscript{439} In the 1950s, cross-border trafficking of girls and women for the purpose of sexual exploitation to Indian brothels began and continues to grow. In the 1980s, the growth of various industries integrated Nepal’s economy into the global economy which lead to the rural to urban migration of women and girls without skills or knowledge working in poor conditions for low wages. This situation furthered the vulnerability of girls and women to sex trafficking. Additionally, between 1995 and 2006, Nepal was in armed conflict which further led to

\textsuperscript{433} Id.
\textsuperscript{434} Id.
\textsuperscript{437} Id.
\textsuperscript{439} Id.
sexual exploitation of women and girls.440

Nepal has a reputation for being the poorest country in South Asia and the twelfth poorest country in the world which makes Nepal a breeding ground for sexual exploitation of girls and women. Over 20% of the general population is impoverished with 10% of the urban population and 35% of the rural population living in poverty. Those residing in rural areas depend on subsistence farming and lack access to basic needs such as health care, education, clean water, and proper sanitation. Safe drinking water is only attainable by half of the population and over half of the children under five years old are underweight. Education in Nepal is also a serious issue as approximately only 57% of the adult population can read and write. Further, the literacy rate of youth males is 12% greater than the rate of youth females. In both primary schools and secondary schools, male students attend school at a greater rate than female students.441

5. Policies and Amendments Introduced by the Governments of Romania and Nepal

In 2014, Romania adopted a new Criminal Code in which Chapter Seven deals specifically, with crimes of trafficking and the exploitation of vulnerable persons. Article 210 of Chapter Seven defines human trafficking as:

“Recruiting, transporting, transferring, hosting or welcoming a person with the purpose of exploitation, committed:

(1) Through constraint, kidnap, threat, misleading or authority abuse;
(2) Taking advantage of that person’s incapability of protecting itself or express its own will or state of obvious vulnerability of that person;
(3) By offering, accepting, or receiving money or other materials in exchange of the consent of the person that has authority over that person.”442

It would seem that such a definition encompasses the activity of traffickers to ensure that they are punished accordingly. The New Criminal Code even goes as far to explain the definition of the exploitation of a person. In Article 182, five main points are articulated to define the exploitation of a person: performing work in forced conditions, keeping someone in slavery, forcing the practice of prostitution or pornographic representations and any other forms of sexual exploitation, forcing the practice of begging, and organ harvesting.443

Also, the New Criminal Code punishes a person convicted of trafficking with the aim of

440 Id.
441 Id.
443 Id. at 62-63.
sexual exploitation to a prison sentence between three and ten years according to Article 210. If the individual is a public servant, the sentence range increases to five to twelve years. Further, according to Article 182, a person using the services will be sentenced to a prison term of anywhere between 6 months and three years.444

Romania has an encompassing definition of human trafficking, expansive definition of the exploitation of a person, and strict ranges of prison sentences for convicts. Further, Roma law, which Romania follows, defines war crimes to include rape, which is connected to sex trafficking as it relates to conflict.445 It would seem that Romania has an effective criminal code that can be implemented properly and create great benefit for not only the victims, but also all women and children of Romania. It would also make sense to say that the new laws adopted in the New Criminal Code are probably more stringent than those laws of the past.

However, such implementation is rarely executed, and the New Criminal Code actually relaxed the sentencing range for convicted traffickers. Prior to 2014, sentencing for traffickers was anywhere from five to fifteen years. However, as stated above, in 2014 the sentence was reduced to a range of three to ten years. Legal reforms such as this one leaves the women of Romania in an even more egregious situation than before. Further, people who testify in court against the trafficking defendant are named publicly by the police. Hence, many vulnerable victims do not testify which makes it even more difficult to convict the defendants and ensure that they serve proper sentencing. The lenient and soft laws allow Romania to be a breeding ground for criminals engaging in sex trafficking which ultimately has egregious effects on the peace, security and rights of Romanian women.

6. Legal and Civil Reforms and Amendments by the Government of Nepal

Nepal has ratified several international and domestic initiatives to combat sexual exploitation of women and girls. Nepal has adopted a new constitution in 2015 that defines a person’s right against sexual exploitation and addresses gender equality.446 Further, Nepal adopted the 2007 Trafficking in Persons and Transportation (Control) Act and Regulation 2008 for the purpose of controlling the acts of trafficking and to protect and rehabilitate the victims.447

In 2015, Nepal adopted a new constitution, which includes an article explaining a person’s right against exploitation:

444 Id.
“Article 29. Right against exploitation

((1). Every person shall have the right against exploitation.

((2). No person shall be subjected to any kind of exploitation on the basis of
religion, custom, tradition, culture, practices or any other bases

((3). No person shall be subjected to human trafficking or bonded labor, and such
an act shall be punishable by law.”448

The constitution prohibits all forms of trafficking against humans and also prohibits forced
labor.449 Further, it addresses gender discrimination and equality concerns. It is imperative that the
constitution prohibits human trafficking and gender discrimination which Nepal’s constitution
accomplishes. For the purpose of protecting the women of Nepal, defining human trafficking is
also crucial which was accomplished through the Trafficking in Persons and Transportation
(Control) Act.450

In 2007, Nepal adopted the Trafficking in Persons and Transportation (Control) Act that
strives to prevent trafficking both within Nepal and across Nepal’s border.451 The framework of the
Act addresses all three building blocks: procedure, prosecution, and protection.452 To begin, the
Act defines human trafficking which is imperative to properly move forward in a productive
manner to protect the peace, security, and rights of women.453 The Act includes several additional
features that are vital to successfully tackling human trafficking. For example, the Act shifts the
burden of proof from the victim to the accused, which should lead to additional convictions.454
Next, the Act protects victims who share their testimony which allows reluctant victims who are
afraid of being further attacked to come forward and share their story.455 Additionally, testimony of
a trafficked victim authenticated in court is sufficient evidence regardless of whether the person
appears further before the court. Further, this Act provides not only the defense with counsel, but
provides the trafficking victim with counsel, too, if necessary.456

7. Gaps in the Governments’ Efforts to Advance the Equality of Women

448 Constitution of Nepal, supra note 37.
449 Responses to Human Trafficking in Bangladesh, India, Nepal, and Sri Lanka. UNODC: United Nations Office on
trafficking/2011/Responses_to_Human_Trafficking_in_Bangladesh_India_Nepal_and_Sri_Lanka.pdf
450 Human Trafficking and Transportation (Control) Act, supra note 38.
451 Id.
452 Id.
453 Id.
454 Id.
455 Id.
456 Id.
The New Criminal Code adopted by Romania in 2014 was instituted with the intent of strengthening human trafficking laws and protecting the victims, primarily women and children.\textsuperscript{457} For instance, according to the 2017 Trafficking in Persons Report Country Narrative, the Government of Romania is making significant efforts to meet the minimum standards for the elimination of trafficking. The report determined that the government increased efforts within law enforcement and worked well with NGOs to identify victims. Further, the government is in the process of developing mechanisms to financially support NGOs.\textsuperscript{458}

Also, the report recognized that the New Criminal Code offers sufficiently stringent penalties for those individuals convicted of trafficking crimes. Statistics also show that authorities opened 864 new trafficking cases in 2016 as opposed to 858 in 2015.\textsuperscript{459} In 2016, prosecutors indicted 358 suspected traffickers compared to 480 in 2015.\textsuperscript{460} In 2016, the courts convicted 472 traffickers compared to 331 in 2015. 78\% of convicted traffickers received time in prison as opposed to 68\% in 2015.\textsuperscript{461}

These facts seem as if Romania is closing the gaps in advancing women’s rights with regard to human trafficking, but there are flaws and there is a lot of improvement to be made in securing the women’s rights, peace, and security. In addition to the New Criminal Code being less stringent than the previous one, other gaps include: (1) judges lack specialized training on how to handle trafficking cases; (2) the country has limited resources for victims; and (3) the police contribute to the crime of trafficking.\textsuperscript{462} All of these gaps contribute to the success of human trafficking within Romania and hinder women’s rights, peace, and security. The author acknowledges two additional gaps: (1) efforts to eradicate poverty; (2) implementing nondisclosure of victims who testify against perpetrators.

Although much of Romania’s efforts towards abolishing human trafficking are generalized towards the population as a whole, and can make sense to do so, the argument must be made that human trafficking efforts directed towards the specific needs of women would be efficient for several reasons. Often times women resort to human trafficking because of their need to provide for their children. Further, gender discrimination with regard to employment has exacerbated the issue of human trafficking. Lastly, coupling women and children together as victims of human trafficking.

\footnotesize{\textsuperscript{457} Id.\
\textsuperscript{459} Id. at 1.\
\textsuperscript{460} Id. at 1.\
\textsuperscript{461} Id. at 2.\
\textsuperscript{462} Id. at 3.}
trafficking further stigmatizes women as being below men and groups them with children.

Nepal has properly executed the first step to advancing the equality of women by way of combating sex trafficking through its passing of various laws and policies targeted at this issue. Nepal’s 2015 constitution addresses gender equality and rights against exploitation which is vital in the fight against sex trafficking and impressive given the fact that many countries facing similar issues do not address these important concerns. However, the next step must be to effectively implement these laws, which Nepal is attempting to do, but there is more work to be done.

For example, trafficked victims are typically very reluctant to report criminal activity to the police for fear of retaliation. The 2007 Trafficking Act has allowed for victims to report the activity privately, but that knowledge is sparse among the victims. The law is useless if it is not known or utilized to its fullest potential. Also, the police in Nepal are typically unskilled and improperly equipped to handle the trafficking cases properly. This gap creates a difficult barrier to accomplishing the purpose of the implementation of the law.

Also, as a developing country, Nepal lacks the legal framework necessary for implementing these laws. For example, forensic science, such as fingerprinting or DNA profiling, are not usually used. The legal system mainly depends on certified victim statements and witness testimony. In order to improve the investigation and prosecution of sex trafficking within Nepal, it is imperative that training among the law enforcement officers takes place, victims are properly interviewed, and evidence is gathered using progressive techniques that are efficient for human trafficking cases.

8. Recommendations

Safeguarding women from human trafficking, a fundamental human right, is a powerful mechanism in protecting women’s rights, peace, and security. Further, protecting women from human trafficking can positively impact women in several ways including: (1) the opportunity to escape poverty; (2) access to education; (3) the opportunity to receive healthcare and access to the courts; (4) property ownership; and (5) the opportunity to assist in shaping policies and laws. Romania and Nepal are two countries whose women have been plagued by the heinous acts of human trafficking. Both countries have instated laws and policies towards eradicating human trafficking.

---

463 Human Trafficking and Transportation (Control) Act, supra note 38.
465 Id.
466 Id.
trafficking such as formally defining human trafficking and the exploitation of a person, having strict prison sentences for convicts, and working closely with NGOs. However, Romania specifically has difficulty executing these laws and providing protection for its women. Nepal, although making attempts and having more success than Romania, has room for improvement in the execution of these laws and policies, too.

Further, human trafficking is a part of a larger women’s peace and security framework even though such a framework does not currently look at the way sex trafficking is important. For example, Nepal’s National Plan does not address sex trafficking. Further, Resolutions 1325, 1820, and 1889 do not speak about sex trafficking. This lack is such an egregious gap given the fact the women’s rights, peace, and security greatly depend on the eradication of sex trafficking.

Addressing sex trafficking through this critical lens is imperative to promoting women’s rights, peace, and security.

Additional efforts that could strengthen Romania and Nepal’s attempts in protecting women from human trafficking include:

- **Bring women to the table:** Romania and Nepal could both benefit from having women participate in the process of eradicating human trafficking by way of procedure, prosecution, protection, and rehabilitation. Female perspective and suggestions are crucial and very useful in determining appropriate actions that affect women’s rights, peace, and security.

- **Combat poverty among women:** Poverty being a key determinant in the growth of human trafficking means that in order to eradicate the egregious acts, poverty must be addressed. Women must be able to provide for themselves by way of employment and have the ability to obtain safe living conditions.

- **Make education of women and girls a priority:** The education of women greatly affects the outcomes of decisions that address human trafficking concerns. In order to implement long-lasting results and prevent the undoing of achieved progress, women must feel empowered and confident to aspire to obtain better employment. Educating women allows for women to achieve these goals.

- **Amend traditional notions of women’s peace and security:** Allow women who are not only victims and survivors of human trafficking, but also those who are peacemakers post-conflict to be sources of prevention and resolution. Redesign the system to allow women to have a voice, but also the ability to create lasting change.
• Ensure enacted policies and law are complied with: Passing laws and accepting policies are the first steps to combating human trafficking, which Nepal and Romania have done well. However, laws are useless unless they are complied with. Nepal and Romania need to work with various sectors of society, including law enforcement, NGOs, and local community leaders, to integrate the laws and policies within the community and begin the process of adopting them as norms.

• Make access to the legal system feasible: It is imperative that vulnerable women who are victims to sex trafficking have adequate access to the legal system that easy-to-use and supportive. In addition to ensuring that such services are available to the victims, working alongside NGOs and community leaders to spread awareness that such access is available is crucial.

• Incorporate human trafficking in Women’s Peace and Security Framework: In order to work together to promote women’s peace and security, addressing human trafficking through international documents and domestic policies is crucial. Human trafficking must be brought to the table so that it can be discussed and plans to combat it can be put in place.
DOMESTIC VIOLENCE AS AN INDICATOR OF STATE STABILITY: LESSONS FROM EL SALVADOR AND TIMOR – LESTE

By Mary Lester

1. Introduction

It is well recognized that targeted violence against women is a form of warfare. Because of this recognition, State security has become linked to the concept of a woman’s right to be free from violence at the hands of militaries or other conflict-related actors. However, when violence against women only receives attention during conflict, women are stripped of their autonomy as agents of change and a valuable indicator of State stability is wasted. Prior to conflict, violence against women often increases, reflecting the broader rising level of aggression or unrest within a country.\(^1\) And post – conflict, increases or decreases in violence against women may indicate the effectiveness of new laws or legal regimes to generate lasting peace.\(^2\) While both domestic and community levels of violence reflect rising State-wide levels of unrest, early reports signify that increases in domestic violence occur years or even decades before conflict, whereas community-based conflict most often increases in the years immediate years prior. Increasing rates of domestic violence could potentially alert a State to emerging conflict significantly earlier than rates of community based violence, and leave the State with more time to prepare for and prevent emerging conflict.

However, because community-based violence is more visible, and is similar to the violence already recognized as warfare during conflict, the international community has been more comfortable emphasizing the importance of monitoring such violence in all aspects of peacebuilding and recognizing women’s safety in their communities as a factor of State security. In contrast, because of the traditional emphasis on domestic violence as a private family matter, this indicator has thus far had an almost non-existent role in evaluating State security and watching for threats to State stability.

Using case studies from El Salvador and Timor-Leste, this paper argues domestic violence must be considered a matter of State security to be monitored and addressed at all stages of peacebuilding in order to capture a valuable indicator of State stability and allow women to fully participate as agents of change. This first portion of this paper examines El Salvador, and how


\(^2\) Id.
increases in frequency and magnitude of domestic violence reflected State-wide increasing levels of aggression and unrest at least fifteen years prior to its 1980 Civil War. This section highlights the value lost to both women’s individual security and State stability when no monitoring or reporting mechanisms for domestic violence were in place prior to conflict. Using a normative lens, this section then analyzes how the failure to address or monitor domestic violence prior to conflict severely exacerbated all forms of violence against Salvadorian women, and lead to decades-long consequences. The second portion of this paper looks to Timor – Leste, in order to emphasize the positive results of including domestic violence as a matter of State security and addressing this problem at all stages of peacebuilding. This paper concludes with a comparison of the lessons learned from each country’s conflict and peacebuilding processes, and uses these conclusions to argue for the inclusion of domestic violence as a factor of State security to be addressed in all stages of peacebuilding.

2. El Salvador

The failure of El Salvador and third-party peacekeeping entities to neither acknowledge domestic violence as a matter of State security nor address such violence at any stage of peacebuilding resulted in both short and long-term consequences. Short-term, the lack of any domestic violence reporting or monitoring system not only failed to capture an important early warning sign of conflict, but also failed to provide a channel through which conflict-related information not otherwise available may have been procured. And long-term, the failure to address domestic violence within the peacebuilding exacerbated future harms to women by making it more difficult for women’s rights activists to support their arguments for State action against domestic violence. Although in recent years El Salvador has adopted formal protections, such as the CEDAW, Security Council Resolution 1325, and laws criminalizing domestic violence, its continued failure to recognize domestic violence as an issue of State security prevents any real progress towards decreasing its shockingly high rates of domestic violence and femicide.

a. The decades prior to the Salvadorian Civil War

In the two decades prior to the Civil War, a nonexistent political process and increasingly high concentrations of land ownership by the wealthy not only brought long – simmering social and economic inequalities to the surface, but also contributed to increased rates of domestic
violence against women. Prior to the 1980 Civil War, El Salvador was ruled by an oligarchy, comprised of fourteen families who, after forming an alliance with the military in the early 20th century, had total control over economic and social policy.3 This control led to deep disparities in wealth and land ownership.4 In 1950, this oligarchy owned 60% of the land and collected 50% of the country’s annual income, but by 1977 these rates had increased to almost 80%.5 The political process also provided no relief, with a series of military-focused governments retaining control both through state-led violence and election fraud which ensured any opposing progressive political parties were not elected.6

Besides changes in the political process, this increasingly repressive regime also impacted the traditional gender roles of men and women. Historically, El Salvador culture has been dominated by “machismo” attitudes, where displaying feminine characteristics is equated with being weak.7 Men are taught from an early age that violence is a form of power, and “violence, drinking, and womanizing” are ingrained in the construct of the male gender that they “are seen as natural.”8 In the familial structure, men are expected to take on the roles of provider and head of household, while women are confined to child rearing and domestic duties.9 Women were also expected to always be submissive, and are punished if they refuse to obey.10 In the 1950s onward, these traditional roles were challenged as the loss of land ownership meant greater quantities of men had to migrate in search of work, increasing the number of female – headed households.11 The concentration of wealth in the fourteen families also reduced economic opportunity in traditionally male-dominated fields, which resulted in women picking up work outside the home,

4 Id.
6 History of El Salvador. TEACHING CENTRAL AMERICA. (Apr. 8, 2018), http://www.teachingcentralamerica.org/history-of-el-salvador/
8 Id.
9 Id.
and even migrating to cities in search of jobs.\textsuperscript{12} Both female – headed households and women finding work outside the home, especially in cities, broke with traditional gender roles.\textsuperscript{13}

Increasing frustrations from economic and political limitations along with departure from traditional gender norms all created a climate ripe for increased incidents of domestic violence between 1965 and 1980. Numerical data on rates of domestic violence prior to the outbreak of the 1980 Civil War is nonexistent, because domestic violence was regarded as a private family affair, and as such went unreported and unpunished.\textsuperscript{14} However, personal accounts from women during this time along with the identification of established domestic violence triggers can be used to illustrate how domestic violence increased. First, women who inherited the role of head of household while their husbands migrated for work were often subjected to violence when their husbands attempted to re-assert their dominance as head of household.\textsuperscript{15} Women who took jobs outside the home to necessitate the survival of their families were subjected to violence from husbands who felt they’d become too independent, or as a method to retain control over a wife who was no longer economically dependent.\textsuperscript{16} Still further abuse stemmed from husbands who took out their frustrations and the stresses of unemployment and poverty on their wives.\textsuperscript{17}

b. Rates of domestic violence must be monitored at all stages of peacebuilding to capture short-term early warning benefits

Monitoring these increases in either incidents of domestic violence and/or increases in the number of identified triggers of domestic violence in the decade and a half prior to the Civil War would on its own have captured an early warning sign of conflict as such levels reflect increasing

\textsuperscript{12} Id.
\textsuperscript{13} Id.
\textsuperscript{14} See generally UNICEF, Domestic Violence Against Women and Girls. Innocenti Digest No. 6, UNICEF Innocenti Research Center (Florence, 2000).
\textsuperscript{15} Krishna Kumar. WOMEN AND CIVIL WAR: IMPACT, ORGANIZATIONS, AND ACTION. at 15 (Lynne Rienner eds., 2001) (“[Because of the] absence of men, some women became more independent and self-reliant. Some returning men resented that independence and resorted to violence to assert their authority.”)
\textsuperscript{16} Id.
\textsuperscript{17} See Caroline Moser, Dennis Rodgers. Change, Violence and Insecurity in Non-Conflict Situations, at 9. (Overseas Dev. Inst., Working Paper No. 245, 2005), https://www.brookings.edu/wp-content/uploads/2016/06/200503moser.pdf (“Increasing levels of (male) unemployment and associated poverty can increase pre-existing levels of intimate partner and sexual violence, along with the associated increased risk of women being victims.”) Research shows “a direct link between declining male earnings and domestic violence” and that the “stress, loss of self-esteem and frustration” of unemployment frequently manifests as domestic violence.)
State-wide levels of unrest and heightened aggression. However, monitoring and reporting mechanisms would have also been valuable during this period of time for a second reason: as a channel through which to gather conflict-related information not otherwise available until the start of the Civil War. Such a channel is effective because during times of emerging conflict, it is women who can provide the greatest insight into the true state of affairs. First, this is because the majority of identified economic, social, and cultural early warning signs of conflict present in the domestic sphere. Second, women, such as the women of El Salvador, are the ones left at home as their husbands leave to find work or join the armed forces, and are thus in a prime position to detect principal signs of impending conflict, like weapon accumulation and disbursement. Local women are often further aware as to specific knowledge on “the location of arms caches, the routes used to transport them, and the social changes brought about by an influx of guns,” or targeted murders or kidnappings.

Stories from El Salvador’s Mothers of the Disappeared (CO-MADRES) provide some of the most important anecdotal evidence in support of this point. While academic research has mainly focused on the disappearances, violence, and death at the hands of the Salvadorian military and death squads after 1980, it is important to recognize that these acts had been occurring since the late 1960s. CoMadres was formed in 1975, when a group of nine mothers connected while in the process of searching the morgues, military barracks, jails and body dumps for their children. This network of women realized that what was originally believed to be isolated, individual attacks were organized widespread acts of repression. By the time CoMadres became an official

---

18 This concept is not unique to El Salvador. Other countries in which increases of domestic violence occurred as a result of rising State aggression include Ethiopia prior to its war with Eritrea. See Gender-Responsive Early Warning supra note 1 at 4
19 The UN High Commissioner for Human Rights identified five economic, social and cultural rights which factor into early warning of conflict. These five are: food crisis, youth unemployment, health crisis, water crisis, and displacement and forced evictions. As women and girls traditionally have the responsibility to provide water and purchase and prepare food, they will be the first ones aware of any crises. Additionally, since women are also traditionally tasked with child care and tending to a sick family member, they will be the primary sources of information for such rates or rising issues. UN Human Rights Office of the High Comm’r. Early Warning and Economic, Social, and Cultural Rights. Thematic Rep., (2016).
20 See Gender-Responsive Early Warning: Overview and How-to Guide, supra note 1, 18 at 4.
21 Id.
organization in 1977, they also welcomed mothers whose young sons had been forced into the Salvadoran army at the threat of assassinated, an act of coercion that became increasingly common leading up to 1980.24

It was the CoMadres who eventually brought international attention to the egregious human rights violations occurring within El Salvador.25 The violations specifically were the increasing rate of civilian disappearances as well as the raped and mutilated bodies strategically left in public commons to serve as a warning to the community.26 In 1975, El Salvador made international headlines following the student–led protests surround the “Miss Universe” contest, in which conflict state and student reports place the death toll between one and twelve.27 If there had been any reporting mechanism or organization dedicated to monitoring incidents of domestic violence—and by proxy women’s experiences—at this time, is likely the Co–Madres and Salvadoran women could have provided a much more accurate and comprehensive picture about the current state of repression and rapidly increasing unrest within the country.

c. The continued failure of El Salvador to include domestic violence as a matter of State security has prevented the State from fully achieving peace

The failure to address or monitor domestic violence prior to the Civil War severely hindered future efforts to address domestic violence, and resulted in harmful decades-long consequences.28 While the signing of the Chapultepec Accords in 1992 marked the end of the Civil War,29 the peace process only exacerbated the problem of domestic violence in two major ways: first, by failing to establish gender equality or the prevention of violence against women as a matter of future State security; and second, by failing to acknowledge, much less punish, war crimes against women. At the time, the Chapultepec Accords were lauded as the most successful

24 Id.
25 Id.
26 Id.
28 Because the different forms of violence against women employed during the Civil War have been thoroughly researched and analyzed as war crimes, this period of time is excluded from the scope of this paper.
29 Wade, supra note 2, at 15.
of all U.N. peace agreements. However, twenty-five years after the end of its Civil War, El Salvador has the highest rate of gender-based violence and gender-based murders—or “femicides”—within Central America, and one of the highest in the world. These current high levels of domestic violence reflect a larger failure to truly achieve peace and security within the State.

The first failure, that being the failure to incorporate gender equality or the prevention of violence against women in the peace process, is especially significant due to the number of women involved in peace negotiations. Women made up somewhere between 30%-40% of the guerilla forces, including approximately 10% of the leadership roles, at the time the Chapultepec Accords were signed, and approximately 30% of guerilla peace negotiators were women. In general, the presence of women in formal peace negotiations is an indicator of the peace agreement’s future success, under the idea that women will raise gender specific concerns and the new government will be better equipped to handle the problems of all its citizens. The Chapultepec Accords, however, not only failed to incorporate gender-specific issues, but many of its provisions were discriminatory against women.

This contradiction illustrates the importance of not only having women present in peace negotiations, but also ensure social issues such as gender equality and issues such as domestic violence that disproportionately affect women are considered matters of State security, and thus properly addressed in peace processes. Here, the exclusion of a gendered lens in the peacebuilding process meant a significant portion of society’s needs and priorities went unacknowledged.

31 Statement by UN High Commissioner for Human Rights Zeid Ra’ad Al Hussein At the End of His Mission to El Salvador (Nov. 17, 2017)  
33 U.N. Secretary-General, Women, Peace and Security, at 64. Study Submitted by the Secretary-General Pursuant to S.C. Res. 1325 (2000)  
34 See U.N. Women, UNDP, and EU Joint Programme on Women, Peace, and Security, Enhancing Women’s Participation in Peacebuilding and Post-Conflict Planning in Liberia, Timor-Leste, and Kosovo, at 7, hereinafter “Enhancing Women’s Participation” (“And addressing [women’s] concerns – such as demands for quotas for women in post – conflict elections, or for land and property rights be extended to women, or an emphasis on crimes against women to be treated with just as much seriousness as others – is key to building a more robust and sustainable peace.”)  
35 Women, Peace and Security. At 64.  
36 Id.
Without any structures or protections in place to mitigate the negative consequences of women taking on new social and economic roles in the post-Civil War society, domestic violence in particular only continued to increase following the peace process.37

The second failure, that being the failure to neither acknowledge nor punish the war crimes committed against women in the peace process or following investigations, also exacerbated rates of violence against women as it established a precedent of State ignorance towards gender-based violence. When war crimes against women go unpunished, it encourages a society in which all forms of violence against women may go unpunished.38 Because of the failure to address gender equality in the peace process, and an existing reluctance to reprimand perpetrators, the failure to acknowledge domestic violence as an issue in the new government made it much more difficult to force the State to address domestic violence later in time.

Since the signing of the Chapultepec Accords, normatively El Salvador appears to be taking the problem of domestic violence seriously. El Salvador has adopted formal protections, such as the CEDAW, Security Council Resolution 1325, and criminalized domestic violence. However, these formal protections are not enough without also establishing support mechanisms that directly connect with women of all socio-economic and geographical backgrounds to take account of their concerns. Reports from women in El Salvador emphasize the failure of the police to act or properly protect them when they do report domestic abuse. One woman reported being criticized by the police when she left her children alone to use a public telephone to call and report the abuse by her husband.39 Another woman had her case dismissed by a social worker who believed her boyfriend when he claimed she invented the abuse.40

Most alarming are accounts that abusers are threatening to turn their wives or girlfriends over to the extremely violent gangs if the victims make a police report. The abuser’s threat is that if the abuser is sent to jail, they will alert the gangs that the woman is now home alone, and thus unprotected.41 The result of this tip would likely be brutal sexual attacks by the gangs on top of

37 Moser, supra note 17 at 10 (Finding increases in post-conflict “intra-family violence in El Salvador can often be attributed to the new economic and political role adopted by many women” following the Civil War.)
38 Enhancing Women’s Participation, supra note 34 at 6
39 Id. at 67
41 Hume, supra note 1 at 67
the domestic abuse the victim has already suffered.\footnote{Id.} Faced with this choice, the women almost always drop the charges or refrain from making a report. Abusers will then continue to exploit the presence of gangs, knowing this threat insulates them from consequences regardless of the presence of formal legal protections.\footnote{Id.} As such, until the State acknowledges domestic violence as a matter of State security, and works with local women or women organizations to formulate a community based approach to combating domestic violence, there will be no peace for women in El Salvador.

3. Timor-Leste

The examination of El Salvador reflects the various ways by which value is lost in waiting until periods of political peace to address domestic violence. Timor-Leste, on the other hand, shows the value of incorporating domestic violence as a matter of State security in all stages of peacebuilding. Timor-Leste successfully incorporated domestic violence into its earliest conceptions of State security by including both women and a gendered lens in its peacebuilding processes. This early incorporation led to future success in addressing violence against women, as Timor-Leste supported women’s participation in early warning strategies, and adopted a community based approach to implement international mandates on gender equality and violence prevention. Early adoption of domestic violence as a matter of State security was not only beneficial to the women of Timor-Leste in mitigating future domestic-violence related issues, but allowed the State to capture the value of women’s participation in all stages of peacebuilding.

a. Brief history of conflict in Timor-Leste

In 1975, East Timor declared independence from Portugal, only to be shortly invaded by Indonesia.\footnote{Timor-Leste, State of Conflict and Violence, at 182-183. The State of Conflict and Violence in Asia. ASIA FOUNDATION. https://asiafoundation.org/wp-content/uploads/2017/10/Timor-Leste-StateofConflictandViolence.pdf} For the next twenty-four years, guerilla forces within East Timor fought to end the Indonesia’s occupation, and become an independent State.\footnote{Id.} This period of time was marked by human rights abuses at the hands of Indonesian forces, and by 1999, nearly 75% of the East Timor population had been displaced from their homes by the fighting.\footnote{Id.} Finally, a State wide vote for
independence in 1999 ended Indonesia’s occupation, and a multinational UN peacekeeping force entered East Timor to help establish peace in the newly independent Democratic Republic of Timor–Leste.\textsuperscript{47} The State enjoyed a relatively peaceful transition, until 2006, at which time intrastate tensions resulted in a violent political crisis, and UN peacekeeping operations resumed in Timor–Leste.\textsuperscript{48} Today, although some communal conflict is still present, the 2006 peace process has overall been successful in establish in a stabilized independent State.

b. \textbf{Domestic violence was established as a matter of State security}

A gendered lens in its 2002 peace process led to the inclusion of domestic violence as a matter of State security, and set a precedence for women’s participation in future peacebuilding and future conflict. Unlike in El Salvador, Timor-Leste’s peace transition process between 1999 and 2002 included both women and a focus on gender equality.\textsuperscript{49} This focus on gender equality meant domestic violence and other forms of violence against women were identified as an urgent need in Timor–Leste’s transition to independence.\textsuperscript{50} Efforts to address violence against included creating the Policia Nacional de Timor-Leste (PNTL), which mandated that at least 20\% of all recruits be female, in order to make the criminal reporting process less intimidating to women.\textsuperscript{51} Along with the PNTL, special Victim Protection Units were established in 2000, officers of which received specialized training on how to handle reports of domestic abuse and treat abuse victims.\textsuperscript{52} Because these reporting and enforcement bodies were developed with women’s input and considered an important part of conflict resolution, freedom from gender-based forms of violence was linked with State peace and security.\textsuperscript{53} This linkage subsequently provided a strong foundation for women’s advocates, who were able to rely on such linkage to explain the value of addressing domestic violence as a matter of State security during future conflict in 2006, and in the following stabilization period.

c. \textbf{Early adoption set the stage for successful future peacebuilding tactics}

\textsuperscript{47} Id.
\textsuperscript{48} Id.
\textsuperscript{49} Enhancing Women’s Participation, supra note 34 at 26.
\textsuperscript{51} Id.
\textsuperscript{52} Id. at 226. (Explaining these units take complaints and have authority to investigate cases such as rape, attempted rape, domestic violence, child abuse, child neglect, missing persons, paternity and sexual harassment.)
\textsuperscript{53} Id.
Early inclusion of women in peacebuilding processes and addressing domestic violence as a matter of state security led to future success in incorporating women into all stages of peacebuilding as well as developing domestic violence prevention strategies based on community specific needs. Since 2009, Timor-Leste has worked with the NGO BELUN to adopt early warning reporting and monitoring mechanisms that both prioritize employing women as community monitors as well as incorporating gender-based indicators, including rates of domestic violence, in its regular monitoring reports. As a result, Timor-Leste is able to capture the benefits of both the unique knowledge that women possess when it comes to emerging conflict as well as monitor increases in rates of domestic violence that may indicate a reemergence of broader aggressions and unrest.

Besides the utilization of community based monitors, Timor-Leste has recognized the value in taking a community based approach to addressing violence against women both in enforcing its own laws and successfully implementing international mandates. Following the 2006 conflict, Timor-Leste created the Commission for Reception, Truth and Reconciliation (CAVR) as a way for women to receive community justice for their harms along with a dedicated gender unit to gather information about the forms of abuse from which women suffered. Since conflict had traditionally been resolved by a community council, this was a way of modernizing the community based approach to justice, while also forcing communities to criminalize gender-based violence and domestic violence at a local level. The dedicated gender unit also enables the State to address domestic violence reporting limitations as they arise, and often of which the state would not otherwise be aware. Timor-Leste has used the same community-based method in adopting national action plans to comply with the CEDAW, and its 2017 revised national action plan on gender based violence (pursuant to S.C. Res. 1325) is promising in its acknowledgement of the need to continue to work towards eliminating any lingering views of domestic violence as a private, rather than State, matter.

54 Gender-Responsive Early Warning, supra note 1 at 9
55 See Ward, supra note 50 at 340. (Finding such community structures “are more likely than international courts/tribunals to have an impact”)  
56 Id. at 338  
57 Id. at 340  
It should be noted that Timor-Leste’s efforts have not been perfect. The use of CAVR, while allowing women to air the gender-based violence they have suffered, can also fail women. Women have often been referred back to their community leaders to solve a domestic violence charge, rather than being allowed access to the formal courts. However, the continued push of Timor-Leste’s government to include women in the judicial systems, both formal and informal, along with its willingness to work with local women’s organizations to address the problems of domestic violence from the ground up, signify there will be continued progress towards eliminating domestic and other forms of violence against women.

4. CONCLUSIONS AND RECOMMENDATIONS: LESSONS FROM EL SALVADOR AND TIMOR LESTE

After examining the treatment of domestic violence in El Salvador and Timor-Leste, this paper reaches three major conclusions. First, the concept of State peace and security must include security in the home. As seen in both El Salvador and Timor-Leste, domestic violence continues to be viewed as a private family matter, which means it often goes unreported or unpunished. In failing to address domestic violence as a matter of State security, States are not only creating a barrier for women’s participation in peacebuilding, but are also ignoring a valuable indicator of state stability and resource of insider information. Additionally, to fully capture these values, States must establish reporting mechanisms that work directly with local women. As with the CoMadres of El Salvador, women often are aware of important conflict related information, but without any channel to vocalize their concerns, the value of this information is wasted. However, looking to Timor-Leste, the BELUN provides a strong example of a both statistic-gathering and communication channel that captures the relationship between, women, domestic violence, and peacebuilding.

Second, resources should be put towards implementing domestic violence monitoring and reporting mechanisms now, rather than waiting to emphasize the problem during or in a post-conflict rebuilding phase. The current epidemic of domestic violence and femicide in El Salvador illustrates how the longer domestic violence remains unaddressed, the more difficult it is to later implement effective reporting and prevention mechanisms, and exacerbates future rates of violence against women.

59 See Timor-Leste, supra note 44 at 189.
Finally, States must not only agree to abide by Security Council Resolution 1325 or ratify the CEDAW, but must work with local women to end the different forms of violence they specifically face. Often, as seen in El Salvador and somewhat in the CAVR of Timor-Leste, local actors are interfering with State attempts to reduce or eliminate domestic violence. As a result, State should not take a top-down approach when trying to confront the problem as a matter of domestic violence, but should instead work with communities to hold its members accountable.
COGNITIVE DISSONANCE:
CONCEPTUALIZING THE APPARENT CONFLICTS BETWEEN RELIGIOUS FREEDOM AND WOMEN’S RIGHTS IN INTERNATIONAL LAW

By Meredith Christian

Introduction

International law protects both freedom of religion and women’s rights, but these rights are often in conflict with each other, both domestically and abroad. This conflict often provokes a cognitive dissonance for those who study and work in the human rights space: how can we reject the oppression of women that often festers in religious communities while simultaneously maintaining a firm commitment to the protection of religious liberty? One approach is to arrange these rights in a hierarchy such that women’s rights trump religious freedom whenever the two conflict. But another, more prevalent strategy is to narrowly define religion such that freedom of religion, by definition, never conflicts with women’s rights. In this paper, I will show why this second strategy is flawed – both in terms of its underlying logic and its tendency to underestimate the complexity of religion.

In Part I, I will identify two ways religion is narrowly defined to prevent cognitive dissonance and argue that both strategies rest on weak or exclusively Christian logic. In Part II, I will argue that there is a better way to resolve the cognitive dissonance of conflicting rights that does not have the attendant consequence of diminishing religion’s complexity. Religion has the capacity to act as a force for fundamentalism or oppression, but it can also promote the development of women’s rights. To illustrate this point, I will examine how liberation theology broadly and womanist theology specifically can contribute to the promotion of women’s peace and security post-conflict. In no circumstance is religion irrelevant to the project of women’s rights. It is time for human rights actors, and especially the UN, to revise their attitude toward religion in order to fully capitalize on its liberatory potential.

1 See, e.g. European Convention on Human Rights (“ECHR”), Art. 9.
1. Part I

There are two approaches to narrowly defining religion that I wish to address. The first assumes that religion qua religion is necessarily good and therefore regards any religious justification for the oppression of religion as nothing more than an excuse – either a misappropriation or a misinterpretation, but in either event not a product of true religion. Therefore, any appeal to religious freedom as a justification for the oppression of women is nothing more than a smokescreen and rejecting such an appeal does not actually implicate religious liberty. The second approach draws a line in the sand between religious belief, which is seen as the true essence of religion, and religious practice or exercise, which is merely ancillary. Any oppression of women would necessarily arise out of some religious practice; after all, beliefs cannot oppress unless put into action. Under this view, because religious practice is not really religion, limitations imposed on practice to protect women’s peace and security do not infringe on the freedom of religion.

The first strategy abounds in academic work on human rights, judicial reasoning, and the international legal documents themselves. For example, in an essay analyzing majority-Muslim countries’ reservations to the Convention on the Elimination of All Forms of Discrimination against Women (“CEDAW”), Christine Chinkin argued that, because “there is no consistency between those Islamic states that are parties to [CEDAW] with respect to the Convention’s requirements and its compatibility with Islam,” it is somewhat hard to believe that “religion is the sole, or even the dominant concern, of the reserving states.” The implication is that some other force is at work, and religion is merely serving as a palatable front man.

The decision in Siddique v. State, a case from Pakistan’s Lahore High Court concerning a father who murdered his daughter, her husband, and their baby because she married against his will, names this other force: misogyny. Addressing religion’s role in its decision, the Court wrote, “[T]here is nothing religious…nor honorable” about the murders. Rather, the killer was motivated by “male chauvinism and gender bias at its worst. Such prejudices are not country, region or people specific and predate Islam.” The logic of this reasoning rests on the premise that male chauvinism and gender bias are not true facets of religion. Because they are pervasive

---

4 Id. at 66.
and predate Islam, they are not of Islam. As a result, laws protecting religious freedom did not excuse the killer’s actions. A similar imposed separation between religion and misogyny is found in the Human Rights Committee’s General Comment on Equality between Women and Men: “States parties should ensure that…religious…attitudes are not used to justify violations of women’s rights to equality before the law….” (emphasis added).  

In each of these examples, misogyny and gender bias are regarded as separate from religion. Though they may appear in the context of religious doctrine, they merely coincide with religion – they never derive from it. But this is an assumption about the nature of religion, and it’s one that does not seem to comport with reality. As history has shown, “religions have sanctioned wars, persecution, tyranny and oppression, as well as racial…discrimination….” We may regard this as a tragedy, and practitioners may strive to reform their faiths so that they no longer promote such injustices. But the point is that reform is necessary – religion transforms as its followers reject its oppressive tendencies. Gender oppression operates no differently. Denying the misogyny at the heart of many religions does not help to purge it from those faiths. All it accomplishes is a false sense of security that religion and women’s rights are harmonious concepts, and consequently delays the necessary transformation of misogynistic doctrines.

The second strategy assumes a clear separation between religious belief and religious practice. It then locates belief as the true essence of religion. The consequence of this is that limitations to religious practice do not limit the essence of religion, and therefore do not implicate the right to religious liberty. This attitude is evident in the European Convention on Human Rights and Fundamental Freedoms (“ECHR”), which guarantees to all “the right to freedom of thought, conscience and religion” without limitations but qualifies the right “to manifest [one’s] religion or belief, in worship, teaching, practice, and observation.” This secondary right to manifestation of religion may be restricted whenever necessary for “the interest of public safety, for the protection of public order, health or morals, and for the protection of the rights and freedoms of others.”

---

7 ECHR Art. 9(1)
8 ECHR Art. 9(2)
The distinction between belief and practice was essential to the passage of the 2004 French law banning “conspicuous religions signs” in public schools.\(^9\) Although the law applied to all religious signs – including crosses and stars of David – the clear target of the law was the Muslim headscarf. Framed as a necessary move to protect secularism and promote women’s liberation from a patriarchal religion, the law can also be understood as a nationalistic response to a growing Muslim population. Opponents of the law argued that it infringed on religious liberty, but the government responded that it did not infringe religious liberty because it affected only the practice of religion, rather than religion (read: belief) itself.\(^{10}\)

The distinction between belief and practice is tenable in a Christian, especially Protestant, context, but it loses its meaning when applied to Islam. Mayanthi L. Fernando, an anthropologist who studied the French law, found that many of her Muslim French interlocutors not only consider modesty a fundamental aspect of being a pious Muslim woman but also regard veiling as a necessary disciplinary practice for the cultivation of modesty. For them, the veil does not outwardly express an existing state of internal modesty but rather is vital to the ongoing cultivation of that modesty.\(^{11}\)

Thus, veiling is not a practice that plays a supporting role to belief; rather, the practice and belief sustain each other. The understanding of religion underpinning the French laws and the ECHR does not translate when applied to a Muslim, rather than Christian, context. This failure was captured by the statement of a French political theorist who encouraged French Muslim women to simply wear the veil “on the inside.”\(^{12}\) When applied to a religion that does not make such a clear distinction between belief and practice, the protection of religious belief is cold comfort.


\(^{10}\) French law has distinguished between belief and practice since the formation of the Republic. The Rights of Man and the Citizen, adopted in 1789, provides that “No one should be harassed because of his opinions, even religious opinions, as long as their manifestation does not disrupt public order established by law.” (emphasis added). Article I of the Law Concerning Separation of Church and State, adopted in 1905, “ensures freedom of conscience. It guarantees the free exercise of religion only under the restrictions hereafter adopted in the interest of public order.”


\(^{12}\) Id. at 74 (quoting Zaki Laidi, Laïcité: Le bon choix de Chirac, in LA LAÏCITÉ DÉVOILÉE: QUINZE ANNÉES DE DÉBAT EN QUARANTE ‘REBONDS,’ 159 (Jean-Michel Helvig, ed. 2004).
Furthermore, a concept of religion that makes sense only in the context of Christianity cannot possibly bolster a universal right to religious liberty – at best, it pretends at universality while imposing a Christian worldview on other religious communities.

**Conclusion**

Both of the strategies I have described here seek to resolve the conflict between religious freedom and women’s rights by pretending that there is never a conflict. They do this either by defining misogyny as inherently non-religious or by separating religious belief from religious practice. Both strategies rest on flawed assumptions that negate the reality of religion’s role in the oppression of women without advancing any solutions. In the second part of this essay, I will demonstrate how religion can itself be the solution to this problem. Recognizing religion’s complexity is both intellectually honest and practical: because there is no essential Nature of Religion, each religious community has the opportunity to shape a doctrine that promotes human and women’s rights. What follows is an examination of one religious community’s efforts to do just that.

### 2. Part II

“Religion is neither ‘for’ nor ‘against’ human rights. It is both.”

#### a. Introduction

Traditionally, human rights activists have seen religion as either an enemy of the human rights project or completely irrelevant to it. However, because their liberal sensibilities balk at the idea of open antagonism toward religion, they contort the definition of “religion” writ large in the ways I have described above to ensure that it is always defined as ideologically consistent with human rights. Nonetheless, these contortions reveal that the human rights community and international law itself view “religion as natural, irrational, incontestable, and imposed – in contrast to the public sphere, the only viable space for freedom and reason. Simply put, religion is the ‘other’ of international law.”

---

13 Ackerman, supra note 6, at 68.
This othering is a mistake for two important reasons. First, it blinds the human rights community to the reality that religion, far more so than international law, “commonly serves as an effective framework for political and social motivation and mobilization among believers.”

At present, international law depends on states parties to champion human rights. But as Richard Falk has observed, an overreliance on sovereign states is a hindrance to the human rights project. He frames the problem as a paradox: “only a totalitarian state could hope to realize human rights fully in a fundamentalist culture, but by being totalitarian it would stake out an identity that would necessarily be antagonistic to basic human rights.” Religion can do more than merely coerce its followers into compliance with human rights norms by way of law and order; it can instill in them an honest belief in and dedication to the development of human rights.

Religion’s potential as a protector and developer of human rights leads us to the second pitfall of othering religion: it forfeits an important opportunity to work with those religious communities that are already incorporating human rights into their theology and practice.

---

17 Of course, this capacity is balanced out by religion’s equal potential for fundamentalism and oppression. But the point is that religious doctrine is always contested. “[V]irtually any cultural heritage is morally rich enough that it can, if appropriately construed…make inspirational contributions to the struggle for human rights, democracy, and social justice.” Falk, 54.

Abdullahi Ahmed An-Na’im has termed this process the ‘politics of religion.’ See An-Na’im, supra note 15, at 248. Madhavi Sunder prefers the terms ‘cultural dissent’ and sees the dissenters as the creators of a ‘New Enlightenment’:

These individuals reject the binary approach of the Enlightenment, which forces individuals to choose between religious liberty (on leaders’ terms) in the private sphere and equality (without normative community) in the public sphere. Rather, they articulate a vision of human flourishing that requires freedom within the context of religious and cultural community. This vision includes not only a right to equal treatment in one’s cultural or religious community, but also a right to engage in those communities on one’s own terms.

Sunder, supra note 14, at 1408. Whatever the term used, the driving point is that religion is a construct of its followers; as such, they have the power to construct a doctrine that embodies the ideals of human rights.
b. **Liberation Theology**

One example of such a religion is Liberation Theology, or -- perhaps more accurately -- liberation theologies. Described by Elina Vuola as “one of the most significant currents in modern theology,”\(^{18}\) Liberation Theology can be defined “either narrowly or broadly. In the former sense, it is limited to the Latin American theology of liberation (teología de la liberación), born out of a specifically Latin American context in the 1960s. In the latter, broader sense, [liberation theology] also includes other theological currents.”\(^{19}\) In the United States, the most prominent of those currents include black theology, feminist theology, and womanist theology. Internationally, feminist liberation theology has developed as a critique of the original, androcentric liberation theology, and black theology has played an important role in the development of post-Apartheid South Africa.\(^{20}\)

The common thread that runs through each of these theologies is a reframing of Christian doctrine as a call to combat oppression. Liberation theologians are dissatisfied with Christianity’s traditional association between salvation and the afterlife and instead understand salvation as an earthly – and, above all, political – pursuit. This commitment to political action is called praxis, which serves both as liberation theology’s objective and analytical framework. Thus, liberation theological reflection “starts in political, social and economic realities, then analyses (sic) them with the tools of the social sciences, philosophy, and theology, and finally returns to its starting point.”\(^{21}\)

Because my particular focus in this paper is on the relationship between religion and women’s peace and security, I have chosen to focus on womanist theology – a movement developed by black women who were dissatisfied by black and feminist theologies’ inability to fully address the impact of race and gender on their lives. In doing so, I do not wish to minimize the important work of international feminist theologians, but rather to shine a light on those not yet appropriately recognized for their potential as international women’s rights activists. I first learned about womanist theology as an undergraduate studying comparative religion. I can

---

\(^{18}\) Elina Vuola, LIMITS OF LIBERATION 1 (2002).

\(^{19}\) *Id.*


\(^{21}\) Vuola, *supra* note 18, at 3.
clearly remember the first time I read work by Alice Walker and Delores Williams – it felt like waking up. Although my experience as an atheist, white woman does not contribute to the womanist project, I admire womanist theology for its emphases on lived experience, female competence, intersectionality, and inclusivity. These four traits, combined with all liberation theologies’ commitment to praxis, both reflect and bolster the core values that undergird the UN’s directives on women’s international peace and security. These are: a belief that women’s lived experience must direct normative policy; a commitment to women’s participation in conflict resolution and peace-building; a focus on intersectionality; and a determination to achieve universal respect for women’s rights. I will analyze each of those four themes below.

c. Experience

The Security Council’s published directives concerning women’s peace and security recognize that if the Council’s work is to have its intended effect, it must ground its policy recommendations in the lived experience of women in combat zones. To that end, UNSCR 1325 instructs all actors – states parties or otherwise – to adopt a “gender perspective” when negotiating and implementing peace agreements.22 This includes, inter alia, “the special needs of women and girls during repatriation and resettlement and for rehabilitation, reintegration and post-conflict reconstruction.”23 A gender perspective is also required in the development of “measures that support local women’s peace initiatives and indigenous processes for conflict resolution.”24 An emphasis on women’s experience is made even more explicit in the Committee on the Elimination of Discrimination against Women’s General recommendation No. 30, which addresses women’s role in conflict prevention, conflict, and post-conflict situations. In its introduction, the Committee describes “ensuring that women’s diverse experiences are fully integrated into all peacebuilding, peacemaking, and reconstruction processes” as an “important objective[e] of the Convention.”25

Both of these texts recognize that women do not belong to a homogenous group with identical challenges that can be addressed by a single, one-size-fits-all policy solution. Rather,

23 Id. at Art. 8(a).
24 Id. at Art. 8(b).
women’s needs will depend on their specific contexts, and all policy decisions must treat women’s experience in those diverse contexts as the starting point from which to understand problems and design solutions.

Womanist theology shares this commitment to experience as an analytical starting point—it does not so much take black women’s experience into consideration as it arises out of those experiences. Kelly Delaine Brown-Douglass describes how black theology’s failure to account for black women’s lived experiences directly led to the development of womanist theology: “[B]y linking God to the Black experience Black theology gave Black women access to systematic theological reflection. [But] by ignoring Black women’s experience Black theology forced Black women to develop their own theological perspective.” Womanist theology centers black women’s experience as the analytical framework through which to understand God, Christ, the Bible, and the church. In practice, this framework prioritizes storytelling and conversation; it encourages black women to “dialogue with Black women’s history, with ‘ordinary’ Black women, and with each other.”

Womanist theology’s focus on experience not only tracks the UN’s recommendations, but enriches them by emphasizing how history affects women’s contemporary lived experience. Issues surrounding peace and security are rooted in decades—and often centuries—of antecedent political, social, and religious developments. Women’s histories are every bit as complex as war’s histories, and women’s issues must therefore be addressed with a mind to how those histories impact their experience of conflict and conflict-resolution. Thus, the UN’s peacebuilders must consider not only the immediate experiences of women on the ground, but also how those experiences have been shaped over time.

d. Participation

The UN’s directives concerning women’s peace and security uniformly stress the importance of women’s participation in post-conflict resolution processes. UNSCR 1325 instructs all parties in post-conflict contexts to increase representation of women “at all decision-


making levels in national, regional and international institutions and mechanisms for the prevention, management, and resolution of conflict.” Similarly, UNSCR 1820 calls for the Secretary General and his Special Envoys to “invite women to participate in discussions pertinent to the prevention and resolution of conflict, the maintenance of peace and security, and post-conflict peacebuilding.” Recommendation 30 echoes these directives and adds that women must occupy decision-making roles in the criminal justice system, which will hopefully ensure that women’s voices and experiences preserve women’s bodily peace and security long after conflict has officially ended.

While international law works to increase women’s participation in peacemaking processes moving forward, womanist theology seeks to bring to light the liberatory work black women have been doing – without recognition – throughout history. Alice Walker, who coined the term “womanist,” described a womanist as “traditionally capable, as in: ‘Mama, I’m walking to Canada and I’m taking you and a bunch of slaves with me.’ Reply: ‘It wouldn’t be the first time.’” This definition speaks to both the participation of black women in emancipating themselves and others – “I’m walking to Canada and I’m taking you and a bunch of slaves with me” – and the expectation that black women will do so – “It wouldn’t be the first time.”

Womanist theology’s focus on uncovering the work of black women parallels the UN’s emphasis on women’s participation in conflict resolution, but it also suggests a strategy for UNSCR 1889’s instruction that state and non-state actors must counter “negative societal attitudes about women’s capacity to participate equally.” Black women, perhaps more than any other group in America, know what it is like to have their capabilities questioned and underestimated. Yet womanist theologians counter society’s negative stereotypes by uncovering and documenting the liberatory work of black women throughout history. When cultural forces oppose women’s participation in conflict resolution roles, the womanist approach would be to point to women in that culture’s history who have excelled in similar roles. The development of women’s history is an important tool in a human rights activist’s tool belt. After all, what better

---

28 UNSCR 1325, Art. 1.
29 UNSCR 1820, Art. 12.
30 Rec. 30, Note 42.
32 UNSCR 1889, Art. 1.
way to demonstrate that women are capable now than to show that women have been capable always?

e. Intersectionality

The CEDAW embodies the importance of intersectionality to the protection of women’s rights. It recognizes that poverty, health, education, employment, racism, colonialism, and aggression all interact differently with gender to create unique and context-specific challenges for women. Because these disparate forces all impact women’s experiences, UNSCR 1820 tasks all parties with developing national institutions across many disciplines – including “judicial and health systems” as well as “local civil society networks” – that will provide “sustainable assistance” to women in post-conflict situations.

Intersectionality is fundamental to womanist theology. As described above, womanism developed as a response to the androcentrism of black theology and the racism of feminist theology. It exists at the crossroads of gender and race, but it incorporates all modes of oppression into its analysis. As is only appropriate for a section analyzing intersectionality, the lessons I draw here overlap significantly with those of Experience and Participation, discussed above. In the context of womanist theology, the various forces that interact with gender and race to oppress black women are identified and analyzed through conversations between women about their own experiences. Just as women are not a homogenous group, neither are black women. A full range of voices is required to appreciate the many experiences of black women in America.

The lesson of an intersectional approach to both theology and international law is that diverse needs should be addressed by diverse personnel. So when the UN recommends that women be placed in leadership positions to address the intersectional reality of women’s needs, the UN must also ensure that those women come from a diverse range of backgrounds – politically, geographically, culturally, socioeconomically, and so on. A directive that instructs parties not only to promote women’s participation in post-conflict rebuilding, but also to pursue

---

33 See generally, CEDAW.
34 UNSCR 1820, Art. 13.
35 Stacey M. Floyd-Thomas, Womanist Theology, in LIBERATION THEOLOGIES IN THE UNITED STATES 37, 50 (2010) (“Sin, then had to do with the mistreatment of Black women through racism, sexism, classism, and other modalities of discrimination and oppression.”).
a diversity of female participation, is necessary in order to fully embody the UN’s commitment to an intersectional approach.

f. Universality

The thesis of international human rights law is that there are such things as universal human rights. Despite differences in culture, religion, legal structure, social values, and so on, these rights adhere to every person alive and cannot be denied or diminished by anyone—including sovereign nations. Of course, the reality of international law is that this concept is often contested. Some critics argue that its very premise is a new form of colonialism that seeks to impose western values on eastern and southern countries. Others challenge the rights themselves as either over- or under-inclusive. But in order for international law to be truly international, but must apply everywhere, regardless of borders.

The challenge of this thesis, as discussed in the first section of this essay, is what to do when universal rights conflict. International law addresses this problem by qualifying certain rights. For example, the ECHR permits limitations to the right “to manifest [one's] religion or belief, in worship, teaching, practice and observance”\(^{36}\) whenever such limitations are necessary “in the interest of public safety, for the protection of public order, health or morals, and for the protection of the rights and freedoms of others.”\(^{37}\) Thus, the ECHR permits the limitation of the right to manifest one’s religion or belief whenever necessary to preserve women’s rights to autonomy, bodily integrity, political and economic participation, and so on.

The concept that one right may supersede another is deeply disturbing to many commentators and participants in the international rights framework, and the cognitive dissonance caused by this problem causes some to question the viability of the framework altogether. But womanist theology offers another way of considering the problem of universality that helps to dispel this unease. Instead of thinking about human rights as a collection of many individual rights that bump up against each other, it is also possible to think of human rights as a legal articulation of a single project: to end oppression. When the end of oppression, rather than any particular right, is the project’s focal point, a different analysis emerges.

\(^{36}\) ECHR Art. 9(1)
\(^{37}\) ECHR Art. 9(2)
At this point, it is helpful to take a slight detour through womanist theology’s biblical interpretation. Black liberation theology was the first to draw a parallel between the people of Israel and black Americans; the story of Exodus was identified as the biblical narrative of liberation. But Delores Williams, a prominent womanist theologian, identified a problem with this interpretation: “the end result of the biblical exodus event…was the violent destruction of a whole nation of people, the Canaanites.”\textsuperscript{38} By aligning themselves with the Israelites, black theologians inadvertently accepted that their liberation came with devastating collateral damage. Or, as Williams put it, their analysis failed to recognize “the awful reality of victims making victims in the Bible.”\textsuperscript{39}

Williams’s observation is critical to the universality of human rights broadly and the protection of women’s peace and security specifically. Victims have victims. Religious groups can simultaneously be the victims of religious persecution and the perpetrators of gender-based violence. Since international law is fundamentally about liberation, the fact that a party or group is oppressed can never matter when the question is whether that party or group is itself oppressive. Framed this way, there is no battle between rights that nominally stand on equal footing. Rather, there is only a commitment to liberating the oppressed that uses the language of rights to further that end.

This reframing is helpful because international law’s ability to protect women’s peace and security is dependent on its acceptance by the global community as a legitimate force. Disagreements about what happens when rights conflict delegitimize international law and therefore threaten women’s peace and security. Womanist theology offers an analytic framework that preserves the functional role of international law while dispelling some of the concerns that threaten its viability. In doing so, womanist theology plays a critical role in protecting women’s peace and security.

Conclusion

Finally, all liberation theologies’ commitment to political and social action as a form of religious praxis demonstrates religion’s capacity to be a force for international human rights.

\textsuperscript{38} Delores Williams, SISTERS IN THE WILDERNESS: THE CHALLENGE OF WOMANIST GOD-TALK, 68 (1993)

\textsuperscript{39} Id. at 149.
Here is a theological movement that quite literally practices what it preaches. At this point in time, it is difficult to quantify the impact liberation theology has had on the human rights project. Given the relative youth of the movement and the fact that its proponents are members of oppressed groups who lack the economic and political capital of more dominant religious movements, the probable answer is: very little. But the point of this essay is not to argue that liberation or womanist theology has already shaped international human rights, but rather to demonstrate that religion has the capacity to do so. As I have shown, womanist theology is not only compatible with the UN’s directives on women’s peace and security; it actually identifies opportunities for improvement. If international rights actors wish to capitalize on these opportunities, they must stop looking at religion as a mere obstacle or bystander to the human rights project.

It is my hope that this paper illustrates to international actors – including those at the UN – the ways in which they must not talk to religion, but with religion. As feminist theologian Denise Ackermann observed, no one is “a woman only at home, a Christian only in church, and a person with an ID number only in the polis.” Gender, religion, and politics are constantly in conversation with each other in the lives of everyday women all over the world. It’s time they start talking in the context of international law as well.

40 Ackerman, supra note 6, at 65-66.
TRANSITIONAL JUSTICE AND THE IMPORTANCE OF GIVING PRIMACY TO WOMEN'S REPRESENTATION IN SECURITY FORCES

By Talya Djemal

1. Introduction

Fitting for a paper written for a class on 'Women's Peace and Security', this paper's primary premise is that women's security cannot and should not be sacrificed when pursuing peace. This may seem as a clear and almost unnecessary statement. However, and this is the primary argument set forth in the following pages, not putting women's rights at the frontlines of the discourse on transitional justice means – at least to a certain extent – that their security is being sacrificed in the name of peace.

Indeed, research shows that in times (and places) of transitional justice domestic violence increases. This may be explained by peace processes entailing an inherent "loss" of the previous "outlet" for violence, often violence institutionally encouraged. In most cases, the violence was primarily male dominated.

The paper proposes to acknowledge this and address it in accordance with Resolution 1325; By ensuring women representation not only in peace negotiations generally, but also in security forces – such as armies and police – specifically. Those entrusted with ensuring public safety, should view public safety as inclusive of women's safety, and in order to do so must as an organization be inclusive of women. Only through that will a female point of view be prominent in the treatment of such issues.

Transitional justice, as an approach to systematic violations of human rights, recognizes that in the process of reinforcing peace, democracy and reconciliation, some compromises must be made and some principals must be given lesser priority then others. For the reasons stated above, the premise of this paper is that women's rights have to receive primacy regardless of other necessary compromises. However, they do not always do so within the transitional justice discourse, even though many prominent scholars and international practitioners in this field are women.

The framework for such representation is already set, and because the importance of women representation is generally a consensus within the potential audience of this paper. Therefore, the main recommendation of this paper is that special awareness should be given to the issue of women representation in security forces in times of transition, and its important impact on the security itself. As evidence of the lack of the necessary awareness, the reform in the Northern Ireland policing which occurred at the end of the long term conflict (known as "The Troubles") will be presented below. This case study was chosen as a relevant example because the reform is considered as a successful practice of transitional justice themes. However, not
much thought was put into women's representation in that context, and domestic violence increased at that same time.

The first chapter will serve as a short introduction to basic concepts of transitional justice. The second will portray the rise in domestic violence in times of transition, demonstrating how a nation's security may come at the expense of half of that own nation's security. The following chapter will offer women representation in security forces as a proposed solution within the framework of resolution 1325. Finally, the case of Northern Ireland's police reform will be described.

2. Transitional Justice

According to a report by the UN's Secretary-General, "the notion of 'transitional justice' [...] comprises the full range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation".467 According to the International Center for Transitional Justice (henceforth, 'ICTJ'), "transitional justice refers to the ways countries emerging from periods of conflict and repression address large scale or systematic human rights violations so numerous and so serious that the normal justice system will not be able to provide an adequate response".468

The importance of transitional justice, and the practical necessity of adapting the "ordinary" rule of law's focus to assure stability and continuity are not under question. Transitional justice derives from the notion that when a society is undergoing significant political changes, and transitioning from an era of mass human rights violations, ordinary justice may not be able to "do the trick". In these contexts, practical necessities may sometimes dictate a shift from an ideal outcome. A classic example would be places in which certain perpetrators were not prosecuted and punished themselves, and their crimes were rather dealt with through the platform of truth commissions.

Indeed, when a society is undergoing significant political changes, and transitioning from an era of mass human rights violations, hopefully towards full democracy, "ordinary justice" may not suffice. Transitional justice has an array of judicial and non-judicial mechanisms and tools, generally aimed at finding ways for a society to redress and acknowledge past violations and prevent them from happening again, within the constraints of a fragile time and society. The classic example is that in such times, traditional prosecution — alone or at all — may not be

appropriate. Either because the justice system is not functioning properly, because of the scale of atrocities or because of political constraints.\textsuperscript{469} Though transitional justice is employed differently in varying contexts, a few main tools associated with the field are: prosecutions (domestic or international), truth and reconciliation committees, reparations, institutional reforms, and apologies.\textsuperscript{470} Though many women were and are involved in developing the field of transitional justice, none of these mechanisms are designed to focus specifically on women's rights or experiences.

The importance of transitional justice, and the practical necessity of adapting the "ordinary" rule of law's focus to assure stability and continuity are not under question. However, this paper will claim that especially in this context, primacy should be given to women's rights. Unlike many other values, they cannot and should not be sacrificed at this first stage of transition, in the name of democracy. That is because transitional justice is aimed at providing security to the society as a whole, and not at providing security from "external" enemies to the society, at the expense of almost half of that same society's security. If women's rights are not discussed at the initial stages of a transition, there is a reason for worry that their security status may worsen.

3. General Security and Women's Security

The practical tools used in times of transitional justice, as well as the academic writing on this issue (at least until relatively recently), tend not to focus on a gender-based view. However, though women's rights are important to prioritize in any context, this paper will claim that it is even more so in societies undergoing major change and dealing with vast past violations of human rights.

Whilst any movement for women's rights is fighting to overcome institutional biases and traditions of discrimination, in times of transition there is a potential for furthering inequality and establishing new paths to injustice. Indeed, empirical data has shown a rise in domestic violence against women when the society as a whole moves towards peace.\textsuperscript{471}

The rise is explained in the literature as product of the need for a new outlet for the violent-tendencies which may have been cultivated and encouraged at the time of war. These tendencies do not just disappear in a day, and so instead of finding an outlet to those urges against the "enemy", they are now directed to the only accessible place – the wife and the home.\textsuperscript{472}

4. Women Representation and Resolution 1325

The value of "having women at the table" and of women representation, has been

\textsuperscript{469} Ron Dudai, \textit{A Guide to Transitional Justice} 11-17 (unpublished, Isr.).
\textsuperscript{470} \textit{Id.}, at 7.
\textsuperscript{472} \textit{Id.}, at 1067.
acknowledged in many contexts, including in the context of peace-building. Indeed, the United Nations Security Council Resolution 1325 on 'Women and Peace and Security' addresses this issue directly. It addresses the importance of incorporating women into decision-making generally, but also into peace processes specifically. Even the preamble stresses "the importance of their equal participation and full involvement in all efforts for the maintenance and promotion of peace and security, and the need to increase their role in decision-making with regard to conflict prevention and resolution".

To deal specifically with the tendency for a rise in domestic violence at times of transitional justice, I suggest to note the importance of women representation specifically in the reform of security forces, such as the police and the military. The importance stems from this being a traditionally male-dominated sphere, but also because of the importance of having a gender perspective within the forces charged with dealing with the security of the society; both from the external former-'enemy' and from internal violence – domestic violence. Though this insight may seem self-evident, it seems not to necessarily be incorporated into the mainstream narrative of transitional justice. One example, is the police reform in Northern Ireland, which is generally considered a successful example of institutional reform. However, at the time of the reform, women representation in the new police force was relatively low and the domestic violence rates grew. The next section will elaborate on Northern-Ireland's experience.

5. The Police Reform in Northern Ireland

As one of the most dominant and controversial actors in "the troubles" in Northern Ireland, the police's future was a major issue in the deliberations regarding Northern Ireland's peace agreement.

Indeed, the peace agreement included a section devoted to police reform, but this section only included general principles by which a police force should act (accountability, efficiency

---

473 See for example: Maja Korac Gender, Conflict and Peace-Building: Lessons From the Conflict in the Former Yugoslavia 29(5) WOMEN'S STUDIES INTERNATIONAL FORUM 510 (2006); Isobel Coleman The Payoff from Women's Rights 83(3) FOREIGN AFFAIRS 80 (2004).
475 Id., at the preamble.
and effectiveness, impartialness, etc.). Instead of providing an agreed upon solution with
gards to policing, the peace agreement established a committee that delved into the necessary
reform on the issue. The committee, headed by Christopher Patten, published its conclusions
in September 1999, in a 133 page report which included 175 recommendations. The report,
which served as the basis for the policing reform, dealt with all aspects of policing and included
recommendations in many areas, both operative for police efficiency – such as the police
structure, training, supervision, and ones which were meant to impact the "spirit" of the
organization – such as recommendations regarding the name and symbols of the reformed
force. The latter, seems to have stem out of transitional justice-type views, dealing with how
to build the community's trust in the force and deal with its past perception.

In chapter 14, the report dealt with the police force's personnel. The Royal Ulster
Constabulary (henceforth, "RUC"), at the time of the report, included only 12.6% women officers
and many submissions to the commission noted that as a problem. However, "it is the
imbalance between the number of Catholics/Nationalists and Protestants/Unionists" which the
commission found as "the most striking problem in the composition of the RUC".

Though this is understandable, as the reform was triggered by the peace agreement
between those two groups, it is another indicator of how women's issues may be seen as a
secondary problem in times of transitional justice. And indeed, though the commission gave
some thought to the hurdles that block women from long-term careers and promotions within
the police force, they concluded by saying that a "determined effort needs to be made to attract
women into full time police work, not only in Northern Ireland but in policing worldwide"; in
essence reducing the commission's responsibility to this issue.

In accordance, the chapter dealing with recruitment strategies included few practical
recommendations regarding how to attract more women to the police force, unlike other specific

---

479 The Good Friday Agreement, supra note 12, at 23-24.
480 Id.
481 Ellison & Martin, supra note 11, at 682; Ellison & Smyth, supra note 11, at 177; Mulcahy, supra note 11, at 150.
482 THE REPORT OF THE INDEPENDENT COMMISSION ON POLICING FOR Northern IRELAND, A NEW BEGINNING:
POLICING IN NORTHERN IRELAND (1999) (henceforth, "the Patten Report"); Graham Ellison, A Blueprint for
Democratic Policing Anywhere in the World? – Police Reform, Political Transition and Conflict Resolution in
Northern Ireland, 10(3) POLICE QUARTERLY 243, 157 (2007).
483 The Patten Report, supra note 16, at 69-74 & 91-97; Mulcahy, supra note 11, at 157-158; Ellison, supra note 16,
at 160-163; Ellison & Smyth, supra note 11, at 163 & 185-186.
484 The Patten Report, supra note 16, at 98-100; Mulcahy, supra note 11, at 158-159; Ellison, supra note 16, at 164.
486 Id., at 81.
487 Id.
488 See for example: id., at 82.
489 Id., at 86-90; Ellison, supra note 16, at 164-165.
societal groups. Instead, the commission merely expressed their view that "Every effort should be made to ensure that women are offered as many opportunities for a fulfilling full-time career as men". 491

Most of the Patten Report recommendations were enacted into law in the year 2000, and the police reform was realized. 492

Following this, and although a Gender Action Plan was introduced in 2003, 493 when the official end of the troubles came in 2007, no woman was in the Police Service of Northern Ireland's (henceforth, "PSNI") oversight team 494 and only 21% of PSNI officers were women. 495 The growth of 8% from 2001 was almost half the growth in the number of catholic officers in the same time period, 496 demonstrating where most focus was put.

As stated above, in that period, just like in other transitioning societies, the rates of domestic violence in Northern Ireland increased as well. 497

6. Conclusion

This paper discussed the relationship between women's rights and security in the context of transitional justice. As shown, in times of transition there is an increased risk of domestic violence. Violent tendencies induced (mainly in males) in conflicts, find a new outlet, and instead of "disappearing" altogether with the new and welcome peace, just change their aim to the private sphere.  

This paper argued that this tendency needs to be acknowledged, in order for transitional justice to be able to deal appropriately with women's security at such times. It is not a separate issue to peace, but rather an important part of the process.

Even if, within the readers of this paper there is consensus that the security given in times of transitional justice to a society as a whole, should not come at the expense of the security of half of that society itself – I hope this case study shed light on how necessary it is to affirmatively introduce a broad gender perspective into the discourse on transitional justice.

This is the reason why the case of Northern Ireland was chosen. Its police reform at the end of The Troubles tends to be seen as a good example of a successful transitional justice

491 The Patten Report, supra note 16, at 88.
492 The Police (Northern Ireland) Act, 2000, c. 32.
493 POLICE SERVICE OF NORTHERN IRELAND, EQUALITY IMPACT ASSESSMENT OF THE POLICY FOR RECRUITING PSNI REGULAR TRAINEES REPORT 64 (2005).
494 Ellison, supra note 16, at 263.
496 in 2007 22% of officers were Catholic, a 14% increase from the 8% in 2001 (id., at 112).
process. However, this view ignores the gender perspective. In the first few years of the operation, most focus was put on introducing more Catholics to the force, the police force included low women representation, and numbers of domestic violence rose.
CULTURE IN PRACTICE: INTERNATIONAL POLICY MECHANISMS FOR A GENDERED APPROACH TO CULTURAL EXPRESSION IN TRANSITIONAL JUSTICE

Clark L. Edmond

1. Introduction

This semester, the University of Pennsylvania Law School seminar “Women, Peace and Security: International Human Rights” had the privilege of sitting down with human rights activist and Harvard Law professor Roger Normand to discuss the current state of women’s rights in Myanmar. During the question and answer portion of the class, I asked Professor Normand to recall a time when his International Human Rights Legal Clinic listened to the unprompted testimonies of an entire village. I had read a blog post by one of his students, Courtney Svoboda, about this encounter. I then asked him how many women shared their stories in this public forum. I can vividly remember Normand’s face searching, if not struggling, to summon a memory of one woman who stood up to share her experience during conflict with her village and its visitors. Finally, he responded with the answer that I expected – one.

This predicament begs the questions: whose voices are heard when conflict ends; whose stories are being told; how are these stories being told; and how do those answers impact justice and reconciliation in post-conflict situations? As a woman who has and still uses art to reconcile with internal and external conflict, I truly believe in its transformative power. Further, I believe that the rewards of cultural expression can be even more impactful for women who have lived through conflict. Their voices can and have changed how we view democracy and justice internationally.

Since the 1990s, transitional justice has been the chosen approach to heal societies post-conflict and to prevent future conflict. Transitional justice mechanisms are usually limited to three – trials, truth commissions, and trauma therapy. While it is recognized that transitional justice must take a gendered approach that extends beyond trauma therapy in order to provide justice for women who are victims of sexual violence, we have yet to determine what the best

approach is. In “Women, Art, and Post Conflict Justice,” Rama Mani from the University of Oxford’s Centre for International Studies, takes the bold leap from traditional transitional justice mechanisms to argue for the use of cultural justice to fill this recognized void. Realizing that adding cultural justice to transitional justice is required to achieve justice for women in conflict, this paper takes Mani’s call to action a step further by proposing how to implement cultural justice in the international justice regime. By looking at different conflict areas, specifically examples of local and cultural expression in Timor-Leste and Argentina, we can ascertain why these areas require different approaches to achieving cultural justice and how cultural expression can be maximized to guarantee justice, peace, and security for women.

To achieve a holistic national memory that will allow all of those affected by conflict to reconcile with and heal from the atrocities that occurred in their state, we need a practical strategy that goes beyond funding and resources from non-governmental and state organizations. By joining the United Nations (UN) Security Council’s mission and the United Nations Educational, Scientific and Cultural Organization’s 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expression (UNESCO 2005 Convention), the international security community can address the reality that a gendered approach to cultural justice is not just ethically sound, but legally required.

The goal of this paper is to: 1) elaborate on Rama Mani’s insights on cultural justice for women in post-conflict situations; 2) explain why international law requires this approach; and 3) learn from the use of cultural expression in Timor-Leste and Argentina to explore how efforts towards cultural expression can be best implemented and supported by the international security community.

2. The Power of a Gendered Approach to Transitional Cultural Justice

Mani’s article provides a comprehensive argument for taking a gendered approach to cultural justice that deserves appreciation. She points out the inaccuracy of the international justice community’s past retributive approach to post-conflict situations and acknowledges the strides in transitional justice since its start in the 1990s -- strides that include understanding that the methods used do not provide adequate justice for women. Recognizing that culture is historically often the source of conflict, she notes the obvious importance of culture in

---

500 Id. At 172.
Mani’s paper takes the position of Rwandan cultural agents that the goal is not only reconciliation, but also recreating a national memory that includes women. By doing this, women can accurately portray their experiences, changing the way that society views them and even changing the way that they view themselves within their societies.\textsuperscript{503} To recreate a national memory, taking a gendered approach to transitional justice also requires a shift of women’s experiences during conflict being shared in private therapy groups, judicial testimonies, and truth commissions to the public sphere. It is also true that in all regions, the experiences of women cannot be solely focused on victimization. Peace building through monuments, memorials and other forms of cultural expression that follow these approaches can allow the public to mourn the loss of women’s lives and celebrate the women who played critical roles in their communities during conflict.

The arts and other forms of cultural expression counteract current cultures by bringing to light systematic problems.\textsuperscript{504} Just as women should have voice in judicial proceedings, they should have a voice in the peace process to address stories that are lost after society reverts back to pre-conflict traditional gender norms. The only way that this can be achieved is through a gendered approach to cultural justice.

Mani notes numerous advantages of female cultural agents leading cultural justice initiatives. We can also recognize three additional benefits to gendered approaches to cultural expression. First, women’s involvement in the cultural realm will serve an especially vital role because by focusing on arguably the most marginalized group other lesser-known stories will be encouraged to be told, including those of: children; the disabled; non-citizens; male victims of sexual violence; and members of the LGBTQIA community. Second, enabling those impacted by conflict to craft their own stories or have artists translate them to a medium avoids testimonies being marred by ethnic discrimination.\textsuperscript{505} Third, unlike other transitional justice methods, cultural expression can truly protect the anonymity of victims while allowing their stories to be told to the masses.\textsuperscript{506}

\textsuperscript{503} Id. at 549.
\textsuperscript{504} DeLaet, supra, at 163.
\textsuperscript{505} DeLaet, supra, at 164.; see also Mani, supra, at 547.
\textsuperscript{506} DeLaet, supra, at 172. DeLaet notes that women who have experienced sexual violence require safe spaces to speak. This paper contends that utilizing artistic mediums as a post-conflict mechanism can alleviate privacy issues that arise when speaking publicly.
Of course, arguing for cultural justice is much easier than actual implementation. Therefore, we must go beyond discussion of accounts of women utilizing their creative agency to incorporating international policy. Grounding these critical discussions in international legal doctrine transforms our suggestions into requirements.

3. Cultural Expression in the International Justice Regime

Madeline Albright’s “first justice, then peace,” approach to post-conflict situations wrongly assumes Western ideas of justice are superior and that justice in the Western sense includes all people. This idea has led to monolithic justice reforms that instead hinder democracy. Even in post-World War II Germany, there were mechanisms outside of the Nuremburg Trials, including artistic expression, that helped established a democratic state and the Germany that we know today. Of course, the circumstances in Germany were very different from those in the Global South. The legal regime in Germany enabled free thought (within limits of democratic ideology) and German conflict extended beyond the region. However, the combination of retributive justice and cultural expression helped transform a nation. The international security community should take a similar approach, but it will require cooperation between the UN Security Council and UNESCO.

The international security community has recognized the importance of women’s participation in culture, however it has yet to accept cultural expression as a security mechanism. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which was signed in 1979, notes our “equal right…to enjoy all cultural rights.” This interprets non-discrimination as women’s and men’s equal rights to involvement in society, education, and participation in community activity. CEDAW’s General Recommendation 30 on women in conflict calls for the integration of all women’s experiences into peacebuilding efforts, including non-citizens. Further, it requires a broad “concerted and integrated approach” to peacebuilding in post-conflict situations and recognizes the call to action of the International Covenant on Economic, Social and Cultural Rights, which

508 Alex Allenchey, What We Owe Postwar German Artists, From Joseph Beuys to Gerhard Richter (March 29, 2013), https://www.artspace.com/magazine/art_101/art_market/postwargermany-5924. Artists Joseph Beuys, a member of the Hitler Youth, used art to confront Germany’s past. Note that cultural rebuilding in German was dominated by men.
510 Id. at art. 2, 10, & 14.
was adopted in 1966. Security Council Resolution (SC) 1325 goes even further to emphasize the role of women in peacebuilding, not only the inclusion of their perspectives, while still recognizing the importance of a gendered perspective in post-conflict reconstruction.

To make a concerted and integrated approach to include women in peacebuilding and to protect women and girls from sexual and violent crimes, the UN Security Council should absorb UNESCO’s 2005 Convention into its security and peacebuilding efforts, perhaps even adding it to SC 1325. Signed by former UNESCO Security General, Irina Bokova, the Convention is a substantial development from a focus on restitution of cultural heritage that in fact saves patriarchal elements of cultures. The Convention aims to integrate culture into the 2030 Sustainable Development Goals, but like CEDAW’s General Recommendation 30 and SC 1325 it recognizes the importance of women but does not take the last step of tying the cultural expression of women into international security measures.

Women’s involvement in conflict prevention requires their involvement in cultural expression. Accepting that cultural justice through the cultural expression of women is required by international law, we can extend Kofi Annan’s proposed tactic of leveraging nation focused approaches to justice into the international justice regime to individual communities and individuals. Integrating cultural expression into security mechanisms would enable us to rethink the allocation of resources toward international peace and security and how support is given. This requires understanding the local nuances of international justice more accurately. The international security community can start by learning from local peacebuilding efforts and individual and group movements towards reconciliation post-conflict.

4. Learning from Post-Conflict Local Justice Mechanism and Cultural Expressions

In “The Healing of Nations: The Promise and Limits of Political Forgiveness,” Mark R. Amstutz notes that the success of transitional justice mechanisms could be affected by whether the regime change is voluntary or forced. Accepting this theory, we can infer that the success and implementation of gendered cultural expression in post-conflict regions would too be

---

512 CEDAW/C/GC/30, Number 26.
514 “Success will depend on a number of critical factors, among them the need to ensure a common basis in international norms and standards and to mobilize the necessary resources for a sustainable investment in justice. We must learn as well to eschew one-size-fits-all formulas and the importation of foreign models, and, instead, base our support on national assessments, national participation and national needs and aspirations.”, Kofi Annan’s report, The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies, to the United Nations Security Council, in LOCALISING TRANSITIONAL JUSTICE: INTERVENTIONS AND PRIORITIES AFTER MASS VIOLENCE 5 (R. SHAW AND L. WALDORF EDS., 2010)
515 Amstutz, supra, at 39, 40.
affected by the nature of a regime change. The conflict in Timor-Leste resulted in opposing parties, pro and anti-Independence communities, choosing to reconcile their differences. Alternatively, Argentina saw an entire government collapse, which left a new civil society to pick up the pieces. The differences between the conflict and the regime changes in these states has resulted in transitional justice having different outcomes and different responses from the community.

4.1 Timor-Leste

The process of transitional justice in Timor-Leste exemplifies issues that arise when transitions of power are ambiguous. Following approximately twenty-five years of violence, the UN sponsored 1999 election in Timor-Leste led to a further schism in society as anti-Independence supporters were essentially forced to flee to West Timor. Today, the return to East Timor comes with the threat of attacks by the pro-Independence militia. Therefore, while the country tries to heal from the great number of casualties that occurred following the 1975 civil war, opposing factions are left to attempt reconciliation with the same groups that they are in conflict with today.

In response to the discord, the UN once again intervened and established the UN Transitional Administration in East Timor (UNTAET) to bring justice for violent crimes committed after the civil war in 2002. Four hundred perpetrators were indicted and only eighty-six have been convicted due to lack of government support and lack of the necessary resources to conduct investigations and trials. UNTAET was followed by two other efforts aimed at truth and prevention of violence that ultimately proposed reparations for these abuses. Both were superficially supported by Parliament and led to very little development.

Amstutz argues that if trials are undertaken in states with a similar history of conflict as Timor-Leste that only the most senior decision makers should be prosecuted. However, Timor-Leste’s negative response to the clear failure of the UNTAET and its progeny discredit this position. In the face of failure, we must ask, what if traditional transitional justice mechanism fail? Because of issues with taking a top-down approach in Timor-Leste, reintegration needed to occur at the grassroots level to recognize the involvement of militias and refugees from West Timor.

516 The aim was to mirror the South African Commission for Reception, Truth and Reconciliation (CRTR), which has since been exposed as lacking in its response to violent crimes against women. Dioni sio Babo-Soares, Nahe Bitt: The Philosophy and Process of Grassroots Reconciliation (and Justice) in East Timor, in The Asia Pacific Journal of Anthropology 5-1 20 (2004). See also Harris, supra.

Due to the slow progression of transitional justice in Timor-Leste, local mechanisms of justice have supplemented, if not replaced, traditional mechanisms by taking into account the local concepts of justice that focus on the process of truth-telling rather than the goal of getting a perpetrator to admit to their wrong-doing. A prime example of these types of mechanisms is nahe biti. Through family and community participation in reconciliation, debates, reunions and public welcoming ceremonies, local communities in Timor-Leste have been able to achieve the goal of a stable social order. In these public spaces, perpetrators confess, apologize and accept potential punishment. In a way, the three-step approach to nahe biti, which would not work without one of the steps, is an example of how transitional justice should aim to operate as a holistic process. It is important to note that the textiles used in nahe biti ceremonies are woven by women from the communities. While this critical role has been recognized by the contemporary art community, it is unknown whether local communities realize the woman’s role in the peacebuilding process.

**Women’s Creative Agency in Timor-Leste**

Although women’s agency is may not be highlighted in nahe biti ceremonies, women’s creative agency was showcased by the most famous artists from Timor-Leste, Maria Maderia, in her 2010 exhibition, “Quietly Speaking.”

In this exhibition my main objective is to express the notion of our inner strength, in particularly from my personal perspective as an East Timorese woman; for even though we are often sitting at the back, hiding our opinion and at times not able to express comfortably our ideas, we have contributed enormously and significantly towards the development and rebuilding of our small nation.

Unfortunately, although this exhibition recognized the role of women in re-building a nation, it was shown in the European Union head office in Timor-Leste outside of public view. Also, public memorialization of the conflict in Timor-Leste primarily occurs in Australia, so those directly experiencing conflict, likely those with less economic freedom, do not generally reap the benefits of public recognition outside of their local communities. Therefore, the

---

international memory of Timor-Leste provides a holistic account of peacebuilding that includes women, while the national memory may not.

The voluntary, or democratic, independence in Timor-Leste undermined the effectiveness of traditional transitional justice mechanisms, leaving way for local justice mechanism to flourish. For the international justice community to further support efforts in Timor-Leste, it should take a grassroots approach to cultural justice that emphasizes the women’s experience to fill any void in localized mechanisms like *nahe biti* and to accurately re-create the national memory in view of the public. It must be noted that cultural expression is quieted by the government’s notions of freedom of expression, so international support is even more vital.\(^{521}\) Accepting the importance of women’s perspectives in cultural expression in post-conflict situations, we must avoid taking a monolithic and patriarchal approach. If the women of Timor-Leste wish for their involvement in the peacebuilding process to be public and memorialized, it is up to them to decide how. The international security community should be there to encourage artist activists and support local efforts towards cultural expression when they are ready.

4.2 Argentina

In Argentina, cultural expression can currently play a greater role in recreating the national memory post-conflict because of the domestic political environment. The collapse of a dictatorship called for an entirely new regime, which enabled a more legitimate and impactful transitional justice process. Despite the “success” of transitional justice in Argentina, protests and large-scale feminist movements have been the mechanisms chosen by women to voice their concerns and to reconcile post-conflict.

Before efforts were made to acknowledge the approximately 30,000 people who were disappeared during the 1976 to 1983 “Dirty Wars,”\(^{522}\) the mothers of Plaza de Mayo, (Las Abuelas) took to the streets of Buenos Aires wearing white to demand recognition of their disappeared loved ones. This led to the official presidential decree of the National Commission on the Disappeared (CONADEP) and other types of governmental support to account for the disappeared.\(^{523}\) Still, in the 1984 Report of the National Committee on Disappeared Persons, sexual violence against women was not discussed and subsequent investigations did not involve

---

523 Id.
cases of sexual violence.524

Although, the transitional justice community regards its efforts in Argentina and Latin America as its most successful, the scope of Argentinian justice was in fact decided by men. Because only men were at the table during the transitional justice process, women and their concepts of justice were essentially erased. It can even be argued that these transitional justice mechanisms pushed women even further from justice. By lacking empathy and ignoring sexual violence, the transitional justice process in Argentina led to, “the perpetuation of the idea that the violation of women’s human rights [is] above the law.”525

Today in Argentina, a woman is killed every thirty hours for being a woman and sexual and gender based violence is protested due to the lack of public acknowledgment of women’s experiences during and post-conflict. As of 2015, this activism has extended to the creative realm with women led art communities demanding public recognition of gender parity in cultural institutions.

Protests by the Women’s Art Community, Nosotras Proponemos

Inspired by Ni Una Menos (Not One Less), which was a response to the rampant femicide throughout Argentina,526 Nosotras Proponemos (We Propose) calls for recognition of women through memorials, monuments, gendered art initiatives, and inclusion in art institutions. In Argentina, just as transitional justice was dominated by men, so is the cultural sphere. Using protest through performance art aimed at recognizing women’s experiences, violence against women and the obvious gender parity that is rampant in the Argentinian creative sector, the group aims for the nation to recognize the injustice in women’s voices being missing from public spaces and the affect that that void has on women.527

The women of Nosotras Proponemos are raising awareness by making themselves heard in the most literal sense. On March 9, 2018, on the steps of the Museum of Latin American Art of Buenos Aires they performed Susana Thénon’s poem, “Why is this woman shouting?” which called for the group to shout until they exhausted their voices.528 Nosotras Proponemos’

525 Id. at 60.
527 Five out of forty-seven exhibitions at the National Museum of Fine Arts starred female artists; The National Prize of Honor has had five female winners and ninety-two male winners since 1911. Rottenberg, supra.
528 Nosotras Proponemos just started shouting and they won’t be resting until changes occur in the arts, Rottenberg, supra, ¶ 8.
work and expression like this have encouraged over thirty museums across Argentina to literally shine light on works on display by female artists while turning the light off of works by male artists. It is the lack of light in the galleries that is the most striking to the audience and holds historical cultural institutions accountable for the darkness cast over women’s voices in the cultural sphere. The women of Nosotras Proponemos and their voices enable all women’s voices to be a part of Argentina’s national discussion and national memory.

Male artists in Argentina have also played a role in bringing violence against women in Argentina to light. Also in response to Ni Una Menos’ growth, Marcel Toledo sculpts recreations of female domestic violence victims’ scars to translate the physical and mental trauma of gender-based violence to an artistic medium. With the sculptures, by bringing the scars to a larger medium without the human form as a background he aims to, “channel [women’s] suffering into art,” and show, “the tendency among victims of domestic violence to hide their scars and act like everything is fine.”

Some of his subjects are also open activists who seek justice against domestic violence in the judicial system.

Photograph by Christopher Thomas of a child, female victim of domestic violence whose scars were transformed into sculptures by Marcel Toledo.

529 Tomasz Frymorgen, This artist is creating sculptures out of women’s domestic abuse scars, BBC, https://www.bbc.co.uk/bbcthree/article/224e4328-ca76-4b14-a122-a5e57e91358d (last visited May 4, 2018).
530 Id.
Timor-Leste and Argentina are clearly in different stages of the transitional justice process. As we see in Timor-Leste, grassroots approaches to cultural justice have been most effective when transitional justice mechanisms essentially fail. However, when traditional transitional justice mechanisms do “work”, since they often still neglect the experiences of women, the international justice community should respond by supporting the cultural institutions that struggle to include women’s voices. Grassroots approaches could have a more acute effect in rural Argentina, but a new national memory can best be achieved by providing resources and international support for high-level art institutions in cities. Although the Argentinian government does try to hinder free expression, especially in the media, the mass protests and large-scale support for free expression should have enough power to counter this.

5. Conclusion

Madeline Albright said, “The only way that reconciliation can come is if people have a sense that justice has been done and those who have perpetrated the terrible crimes are punished individually.” While we can agree on her first declaration, that a sense of justice must be achieved, our definition of justice may not always only include punishment of crimes because it may not always be possible. As we see in Timor-Leste and Argentina, punishment is

531 Id.
a starting point, but the success of transitional justice mechanisms will determine how justice as
we define it can be achieved.

The concept of transitional justice allows for flexibility and change, so we should take
that space to use an equally flexible method, cultural expression, to promote integrated
accounts of victims and heroes in conflict. International law calls for the use of any approach,
including cultural expression, to ensure international peace and security for women. To do this,
we must exhaust all avenues and explore untraditional mechanisms. Considering the variety of
demographics of those marginalized during conflict, perhaps gendered cultural justice is not the
end but the beginning of our exploration into achieving holistic justice, peace, and security. As
we continue on this journey, we must remember that this approach is not just about telling
stories. It is about reconciliation and healing. It is about women’s rights to peace and security in
post-conflict areas. The institutional support of the UN Security Council and UNESCO can
give the women who did not stand up in that village in Myanmar and the women who cannot
stand up in public all around the world the justice and recognition, locally and globally, that
they so greatly deserve.
HOW THE SIMILARITIES BETWEEN SAUDI ARABIA’S VISION 2030 AND THE UN SDG GOALS PRESENT AN OPPORTUNITY FOR THE WOMEN, PEACE AND SECURITY AGENDA

By: Shane Fischman

1. Introduction

Crown Prince Mohammed bin Salman has invested considerable effort in an attempt to reinvigorate Saudi Arabia’s ailing economy, navigating it away from its singular focus on oil to a more robust and diverse economic focus on manufacturing and technology. Relaxing social strictures that have kept women on the margins of almost all commercial ventures is integral to the success of the Crown Prince’s economic strategy; by guiding women out of cultural, political and economic segregation, the Crown Prince is integrating the female community into the Saudi workforce, recognizing that an economy cannot be revitalized with fifty percent of the population in shackles. Coinciding yet distinct from these internal developments, the UN has been working to eradicate global poverty with the SDG goals, a roadmap congruent to Saudi Arabia’s Vision 2030. With a shared ambition of dismantling corrupt regimes, increasing government transparency, ensuring education for all populations, catalyzing economic development, and pushing for technological advancements, Saudi Arabia’s economic blueprint dovetails many of the UN’s Sustainable Development Goals’ focal points. These similarities present the UN with the opportunity to monitor the changes unfolding in Saudi Arabia: if Saudi Arabia successfully integrates women into their larger society, they will prove that even the most insulated countries can change their domestic policies and embrace change, clearing the path for similarly sequestered states to implement similar modifications.

The international community has recognized the pivotal role women play in procuring and sustaining peace and security. Yet women continue to be underrepresented in peace


negotiations. From 1990-2017, women comprised two percent of mediators, five percent of witnesses and signatories, and eight percent of negotiators in peace negotiations and agreements. The UN SDG goals are a critical emancipatory tool for women who have been barred from central leadership positions and commercial endeavors, and for women living in poverty or violent conditions. The Secretary-General, in a report on women’s role in peace and security, wrote “The past two decades have produced sufficient, credible evidence that women’s meaningful participation measurably strengthens protection efforts, accelerates economic recovery, deepens peacebuilding efforts and leads to more sustainable peace.”

Specifically, when women are involved in peace settlements, they are sixty-four percent less likely to fail. Given this fact, he further explained how the Women, Peace and Security agenda is a requisite precondition for the achievement of the SDG goals. When women are involved in peace negotiations and are an integral force in politics and social agendas, a State’s infrastructure becomes more stable, the economy is stronger, and jobs are more vibrant, making the SDG goals, a hybrid of social, economics, and political endeavors, more likely to succeed.

Vision 2030 and the SDG goals have an unnerving similarity. Both are hooked on developing the economy and improving education and living standards, and both see women’s involvement in the economy as necessary precursors for the success of the subsequent goals. However, the point of divergence is that in Saudi Arabia, as opposed to the UN, women are not considered to be agents of political or social change—only economic change. By making sure the Saudi goals develop correctly, the UN can help set a climate where Saudi women can propel themselves into real positions of power and decision making, thereby transforming the state’s cultural and political ecosystem, and ensuring Saudi Arabia’s place as an inclusive society with the ability and real potential to reshape the Middle Eastern landscape.

In the following pages, I will discuss the UN SDG platform and the challenges they have faced, causing the program to lag in achieving their benchmarks. I will then discuss Saudi Arabia’s Vision 2030, the motivation for this blueprint, and its shortcomings in the human rights sector. The final section will detail how these two agendas are analogous and the potential Vision 2030 therefore presents for women in Saudi Arabia and for the larger Women, Peace and Security agenda, and through that discussion I will explain why it is therefor critical for the UN to


540 Id.


542 Women in Peace, Supra.

543 S/2017/861, Supra.
monitor how Vision 2030 unfolds.

2. UNDP SDG Goals

The UN Sustainable Development Goals was unveiled by UNDP in September 2015. Through eradicating poverty, conquering inequality, and guaranteeing education for every child— boy and girl— the 2030 Agenda for Sustainable Development set a bold program to eradicate poverty in all its iterations.544

In July 2017 however, UN Secretary General Antonio Guterres proscribed the agenda’s development as lagging, explaining “the rate of progress in many areas is far slower than needed to meet the targets by 2030.”545 A disturbingly high number of children suffer from malnutrition— 5.9 million children under the age of five died in 2015. A further 303,000 women died during pregnancy or childbirth that same year.546 Young adults are three times more likely to be unemployed than adults,547 and nine percent of school aged children and youth are still missing from the classroom, suffering the ramifications of no proper education.548 The SDG goals are additionally a program for the planet, yet nine out of ten urban residents still suffer from air pollution and more than two billion people live in countries suffering from excess water stress.549

The following statistics are the most pertinent to the Women, Peace and Security agenda: In 2017, women representation in parliament was 23.4 percent— only a ten percent increase since 2010.550 The data is equally disappointing in the private sector, where less than a third of managerial positions are held by women.551 Women too continue to spend a disproportionate amount of time on unpaid work as men.552 These issues pale in comparison to the struggles married women face in countless economies where they are legally barred from getting a passport, where they cannot confer citizenship on their children, where they need their husband’s permission to secure a job, or where, by law, they cannot sign a contract, register a

546 Id.
547 Id.
549 Id, at 32.
550 Id, at 31.
551 this data was retrieved from the 67 countries with reported numbers from the 2009-2015 review. Id, at 31.
552 Pace of Progress Must Accelerate, Supra.
business, or open a bank account. As the world attempts to implement the UN’s development agenda, progress continues to stagger. The reason for this is twofold. First, the SDG goals, a global catalog of business of global concern, has been estimated to cost $3 trillion a year. As the agenda articulates, to successfully eradicate poverty there must be an accompanying program promoting education, clean air, government transparency and the primacy of rule of law. Clean air is a prerequisite to a productive workforce and to education—children suffering from respiratory illness cannot attend school. Reducing corruption and increasing transparency is similarly integral to reducing poverty: corrupt governments divert resources from their citizens, reinforcing their economic condition. Therefor the agenda to defeat poverty can only be achieved if all the components of the SDG goals are given the requisite finances. Yet the monetary expense is still compounded by civil war, international military quagmires, corrupt governments, and a multitude of other problems, both natural and manmade, plaguing the world, because these countries, which would benefit the most from the SDG goals, lack the proper regulatory frameworks to raise the funds through taxes and private sector fundraisers. When the pushback outpaces the pressure for improvement, progress is stymied.

Second, women continue to be denied seats at every table, obstructing the potential to achieve the SDG’s end-goal of eradicating poverty and guaranteeing security. As discussed, women are disproportionally underrepresented in government, and are impeded by a legal regime that stifles their rights. But the data from the private sector is just as jarring. Only thirty-two, or 6.4 percent, of Fortune 500 companies are led by female CEOs. The World Bank estimates that seventy percent of formal, women-owned Small and Medium Enterprises

(SMEs) face severe barriers in securing capital for their businesses, ensuring a shocking $300 million annual credit deficit for Women owned SMEs globally. In many developing countries, the legal and regulatory system is gender-neutral, yet SMEs and start-ups often operate in informal sectors, making business growth difficult because women are cut off from technology, and have limited access to public infrastructure and services including water and electricity. 

Additionally, customary law often creates more severe barriers than formal, legal code, obstructing women’s opportunities to own land, which has negative implications on their ability to secure long term credit and cheap capital. In 2015, McKinsey published a report outlining how $28 trillion could be added to the global GDP by 2025 if appropriate measures are taken to advance women’s equality in both society and the workforce. Ending poverty is a collective goal, and gender discrimination is impeding the global GDP as well as developing economies.

Cultural and legal gender discrimination is confounding not only because women, as a basic human right— codified in the CEDAW, the Beijing Declaration, the Millennium Development Goals and the SDG— are entitled to safety and security in their home, to equal education, and to the same financial and professional opportunities as men. There is also definitive statistical proof that when women have the same financial, economic, social and educational rights as men, government is more stable, economies are more developed, and the citizenry is healthier. More specifically:

when states have more gender equality, they are less likely to rely on military force to settle disputes; that having more female leaders is strongly correlated with lower levels of violence in a crisis; that states with high fertility rates are nearly twice as likely to experience internal conflict as states with low fertility rates; and that gender equality is significantly associated with improved respect for human rights and lower corruption. Furthermore, as discussed above, a study by Mckinsey found that gender equality and female empowerment are irrevocably linked to a stronger economy and higher GDP. The McKinsey

562 Id.
564 Michelle, Bachelet, Women on the Frontlines, NATIONAL DEFENSE U. PRESS, Ch. 9. (July, 2009).
Global Institute report focused on the potential of gender equality on global economic growth, and concluded that “In a “full potential” scenario in which women play an identical role in labor markets to that of men, as much as $28 trillion, or 26 percent, could be added to global annual GDP by 2025.”

Safeguarding women’s rights ensures a stronger economy, national security, and a healthier citizenry, yet women are continuously and systematically excluded from every table and conference room. Women are disproportionately affected by health care issues, violence, poverty, and climate change, yet the UN SDG agenda explains women “also possess ideas and leadership to solve” these problems. The world is lagging in implementing the UNDP agenda for sustainable development, but in Saudi Arabia Crown Prince Mohammed bin Salman is unshackling women to demonstrate his country’s departure from traditional Islamic Whabiism while also using women as a stimulus to drive Saudi economic development. The Crown Prince’s determination to upset the status quo presents the opportunity to prove—with Saudi Arabia as the anecdote—that women can catalyze social improvement, spearhead government changes, and promote civil and human rights. The true potential of this karmic Saudi policy shift however is proven in an interview with Roger Cohen. During that interview, the Saudi foreign minister said “when people look at Saudi Arabia, see Mecca and Medina, they want to emulate it…when [the world] see openness and moderation and tolerance and innovation, that’s what they want to be.” With the world watching, Saudi Arabia can revolutionize women’s rights across the region; by liberalizing their legal system, they possess the power to impact peace, security, and economic development across the globe.

3. Saudi Arabia, Vision 2030

In an April 17, 2018 column, the New York Times described Saudi Arabia as “historically known as a place with resistance to anything new”. While Saudi Arabia has long been a traditional society, the Kingdom has more recently experienced significant and noteworthy internal changes to their laws, public policy, and culture. While it would have been improbable

---

566 Id.
if not unbelievable just a short time ago, Saudi Arabia has introduced a series of reforms, relaxing several limiting restrictions on women’s rights—the Kingdom held their first official fashion week in April; they’ve further allowed women to join the military; they’ve liberalized their strict and compulsory religious dress codes; removed the ban forbidding women from visiting sports arenas; granted women the right to drive; encouraged women to expand their professional networks and to apply to typically male jobs.

Though the UN continues to grapple with implementing the SDG goals by 2030 while simultaneously combating human rights abuses in conflict regions and struggling to secure the funds for this agenda, and as many countries around the world continue to ignore the capacity women possess to drive economic growth and national security, an opportunity has unfolded in the Gulf Region with the potential to prove how when women are guaranteed rights, the economy grows and security— both at home, and in the larger community— is guaranteed.

Saudi Arabia is remaking their economy: Crown Prince Mohammed bin Salman is transforming the Saudi economy and working to reposition it as an international hotbed for production and technology. Between 2003 and 2013, the oil price boom boosted Saudi Arabia’s economy, doubling their GDP, multiplying household income, and allowing the citizens to benefit from government handouts. But as the global energy market shifts, and the Saudi workforce dramatically increases as young adults come of age (fifty one percent of the Saudi population is under twenty-five), the economy is no longer in a position to rely on oil revenue and government spending for growth, especially as their budget deficit increases and

571 Id.
oil revenue decreases.\textsuperscript{580}

For these reasons, Mohammed bin Salman unveiled Vision 2030 in 2016, a plan demarcating his goals for the years 2020 to 2030. Vision 2030 is rooted in three pillars: Saudi Arabia’s status as the Arab and Islamic world’s nerve-center, their ambition to be a global investment center, and their intent to capitalize on their geostrategic location on the border of three continents. \textsuperscript{581} Utilizing these three pillars to frame their plan, Crown Prince Mohammed bin Salman has carved out certain critical goals that together will liberate the Saudi economy’s dependence on oil.\textsuperscript{582} Among other things, it includes plans to boost tourism, rebuild their infrastructure, fight government corruption, and localize the defense and energy industries.\textsuperscript{583}

The cornerstone of this plan, however, rests with the female population—a vibrant, educated, and previously largely marginalized community with the ability to help rebuild the Saudi Arabian economy. A 2016 US Department of State report on human rights in Saudi Arabia lamented the “pervasive gender discrimination and lack of equal rights that affected most aspects of women’s lives” in Saudi Arabia.\textsuperscript{584} Among these insidious practices include the prohibition on mixed gender gatherings among non-family members,\textsuperscript{585} systematically barring women from trial sessions because there were no women officers to inspect women entering courtrooms,\textsuperscript{586} and restricting the free-movement of female citizens (courts have ruled that women must abide by their male guardians wishes to stay at home).\textsuperscript{587} Yet despite these legal and cultural barriers that have been curtailing female potential for decades, women in Saudi Arabia make up more than 50 percent of the country’s college graduates, and therefore present a unique prospect for the Saudi economy.\textsuperscript{588}

While the Crown Prince’s economic blueprint presents potential, there are myriad obstacles facing Vision 2030’s implementation. Among these obstacles include opening Saudi Arabia culturally and economically; inspiring the country to embrace entrepreneurship; combatting Mohamed bin Salman’s religious and political rivals; motivating Saudi Arabians to enter the manufacturing and production workforce, which guarantees only low-wage jobs; filling the

\textsuperscript{580} Shmuel Even, Supra.
\textsuperscript{583} Id.
\textsuperscript{585} Id, at 29.
\textsuperscript{586} Id, at 15.
\textsuperscript{587} Id, at 31.
education void which currently only includes academic training but needs vocational training as well. 589

Yet, despite these challenges, and regardless of the success of the agenda’s execution, MBS’s daring economic agenda presents innumerable opportunities for the UN. Through liberalized social laws, including the decision to grant women the right to drive which will allow women to commute to work and attend school without a male escort, Saudi Arabia is working to bolster its economy by expanding the workforce to include both genders in equal proportion.590 The government abolished the ban on segregation in the workplace,591 has mandated that any business with more than fifteen female employees must have child-care centers, and encouraged women to move into traditionally male-dominated industries, including pharmacies, optical stores, sales-associates, and government agencies.592 Saudi women no longer require the support and presence of a male guardian to complete various government procedures and to receive public services. Royal Decree No. 33322 has instructed all government departments not to ask women to obtain approval from a male guardian benefitting from the various services they offer. New laws in Saudi Arabia also protect women’s alimony rights: according to Article 156 of the Labor Law, women can no longer be dismissed from work during pregnancy or post-delivery period.593 The message behind these decisions is collated in Vision 2030, broadcasted on the Vision 2030 website, published in newspapers, and advertised internationally. The Crown Prince has not been shy about his intention to break with decades-old tradition.

Historically resistant to change, Saudi Arabia, under the guidance of their new Crown Prince, has embraced change with all their might. It’s been two years since the Saudi religious police were divested of their arresting power, and without the power to detain people who are not in compliance with Sharia law, adherents of Wahhabism no longer have a state-sponsored regulatory system to force people into submission.594 In February, Dr Tamadur bint Youssef Al Ramah was appointed to Deputy Minister of Labor and Social Development, the highest

591 Ahmed Al Omran, Supra.
cabinet position held by a woman in Saudi Arabia.\textsuperscript{595} Yet, despite these laudable transformations, Vision 2030 is still a cautionary tale. While Saudi Arabia has been working to liberate women from the stronghold of discriminatory laws, this decision was not motivated by a newfound concern for human rights or women’s rights. Arbitrary arrests continue to be the norm in Saudi Arabia.\textsuperscript{596} Saudi journalist continue to be suppressed and detained for criticizing the royal court.\textsuperscript{597} Muslim religious minorities also continue to be victims of religious discrimination.\textsuperscript{598} The UN and international human rights activists have expressed deep concern over the arrest of women’s rights activists who were denied legal representation.\textsuperscript{599}

Crown Prince Mohammed bin Salman is absorbed instead with expanding the Saudi economy, and moving it away from its concentration on oil. The Crown Prince understands the importance of including the entirety of its population in the workforce, and has been working to galvanize the female population, yet commodifying women as economic agents ignores the potential they present for the larger Women, Peace and Security agenda. Saudi women need to be made aware of the full potential they possess. The UN, in monitoring these changes, is uniquely positioned to ensure that women in Saudi Arabia are not objectified as economic drivers, but instead are embraced as people with a right to be equal members of a community. Vision 2030 and the SDG goals have an unnerving similarity in their actions, but the attitudes and underlying factors are not aligned. By making sure three specific goals develop correctly, the UN can help set a climate where Saudi women can propel themselves into real positions of


\textsuperscript{597} In February, a journalist was sentenced to five years in prison by a specialized Saudi court for criticizing the royal court and upon his release he will be subjected to a five-year travel ban. \textit{Saudi Journalists Jailed for Five Years for Insulting Royal Court, COMM. TO PROTECT THE JOURNALISTS, (Feb. 08, 2018), https://cpj.org/2018/02/saudi-journalist-jailed-for-five-years-for-insult.php.}

\textsuperscript{598} “Saudi Arabia does not tolerate public worship by adherents of religions other than Islam and systematically discriminates against Muslim religious minorities, notably Twelver Shia and Ismailis, including in public education, the justice system, religious freedom, and employment. Government-affiliated religious authorities continued to disparage Shia and Sufi interpretations, versions, and understandings of Islam in public statements and documents” \textit{Saudi Arabia Events 2017, Supra.}

power and decision making, thereby transforming the state’s cultural and political ecosystem, and ensuring Saudi Arabia’s place as an inclusive society with the ability and real potential to reshape Saudi Arabia’s human rights record and ensure regional security.

By focusing on the following three goals, 1) Quality education; 2) Peace, Justice and strong institutions; and securing 3) Partnership Goals, the UN can ensure that Saudi women will be endowed with the potential to make decisions with real consequences, to be involved in the peace and security agenda, to work in peace negotiations. When women are at the table, violence is curtailed and peace treaties have a longer lifespan. As discussed, when women have equal rights and opportunity as men, economies are more vibrant, children live longer, healthier lives, governments are more stable, and political accountability is guaranteed. Therefore, by monitoring the development of Vision 2030 in Saudi Arabia and ensuring its successful implementation, the UN is positioned to prove that change is possible in even the most culturally and legally insulated countries.

4. The Convergence of SDG and Vision 2030:

a. Education- SDG 4

Like the UN, MBS sees education and a strong social society and economy as co-dependents. Crown Prince Mohammed has marked education as the pillar of economic growth in Saudi Arabia and is looking to create partnerships with foreign universities, and to incorporate philosophy and politics as well as technology and skill into Saudi Arabian classrooms. His education plan is focused on the “learner”, not the teacher, and is intent on sparking creativity in the students, in an attempt to produce “critical, independent thinkers.” At an international conference for educators and business leaders in December, Dr. Ahmed bin Mohammad Al-Issa, Saudi Arabia’s Education Ministers, told the audience “A tradition of simply transmitting existing knowledge is no longer adequate. We need to rethink education from preschool through graduate schools and we need to do this urgently.”

Like the UN SDG goal, Vision 2030 sees learning as a life-long process. And like the

600 Michelle Bachelet, Supra.
602 Education and Vision 2030, Supra.
UN SDG goal, vision 2030 is hyper-focused on the concept of “Education for all”. With an eye permanently trained on the economy, MBS is committed to using education as a tool to catapult the Saudi community into professional and technical professions, higher education, and research focused jobs—an objective that surpasses the UN SDG goal of securing secondary education for every citizen of the world.

In 2015, Eric A. Hanushek and Ludger Woesman explained how “Expanding quality education is the only feasible way to generate long-term economic growth, which is why a strong and coherent emphasis on education is central to the success of the global development agenda.” However it was this thesis that led them to conclude that the UN SDG education goal is inefficient and insufficient. Vague by definition, the UN SDG goal neglects cognitive skills, focusing on the number of children enrolled in schools instead of on the educational outcomes they receive while being educated.

In comparison, Saudi Arabia has focused on “building an education system aligned with market needs”, a goal that ensures that what students are learning in school will be matched with a job that will in turn generate economic growth. This goal starts at pre-K. Saudi Arabia has historically pumped twenty five percent of their government’s budget into education, but the 2016 Progress in International Reading Literacy Study, and international valuation that assess the reading levels of ten year-olds in fifty countries, placed Saudi fourth graders far below the international average, scoring them at 44 out of the 50 participating countries. Now, they are working to eliminate textbooks in the classroom by 2020, transitioning instead to ipads, and they are working with the National Association for the Education of Young Children in the United States to further improve their classroom instruction for early childhood development. The Minister explained how “Once they leave the school system and participate in the job market, they should be different people. In general, the government looks at education as a driving force.”

Saudi Arabia further vows to achieve a new level of educational transparency, publishing education outcomes and annual improvements, and building a data system that will track students from K-12 into vocational schools and universities, to help improve the

---

606 id
608 Supra, 74.
610 id.
612 Robert Pennington, Supra, 71.
613 Id.
614 Id.
education system and to ensure its students’ success. 615 Saudi Arabia’s plan also focuses on the importance of involving parents in their children’s education, and on constructing an education program that will involve parents in discussion forums and school boards. 616

The goal also includes a focus on educating teachers. 617 Saudi Arabia has a surplus of teachers, with a waitlist for teachers to get hired in the public school system. This predicament has allowed them to raise the educational standards for teachers—they made a commitment to only hiring teachers with a Master’s degree or higher, and added additional training programs and professional development for teachers who are already in the field. An international training program is also being offered, with the prospects for teachers to apply to go abroad to the US, UK, Finland, New Zealand, Canada, Singapore and Australia for additional training opportunities. 618

“Stubborn unemployment” in Saudi Arabia has been attributed to the wedge between educational and vocational programs and economic needs. 619 Vowing to “close the gap” between educational outputs and the job market, their new plan emphasizes the importance of helping students make career choices, helping them transition between different educational pathways, and helping them transition from school to the labor force. The blueprint for achieving this goal includes partnering with the private sector, revamping their literacy and numerical goals, as well as building skillsets and character development. 620 A new strategic partnership between Saudi Arabia and UAE focusses on promoting innovation in technical education, cooperation between universities in both countries which will allow students to enjoy a full range of opportunities that both states have to offer, and introducing a digital education system with an individual file for each student, giving them the opportunity to explore careers in multiple fields. 621

Education is a goal per se, but like gender equality, it is a necessity for achieving every other SDG goal, and a pre-requisite for ensuring the success of Vision 2030. Advocacy Director Kolleen Bouchane explained “Education has a unique power to catalyze gains in other areas. Very few, if any, health or economic interventions will be sustainable without gains in

615 Saudi Arabia, Vision 2030, Supra, 41.
616 Id, at 33.
617 Id.
618 Robert Pennington, Supra, 71; and 25,000 Teachers to be Trained Abroad, ARAB NEWS, (Jan. 05, 2015), http://www.arabnews.com/saudi-arabia/news/684731
619 Id.
620 Saudi Arabia, Vision 2030, Supra, 40.
Thus, as Eric A. Hanushek and Ludger Woesman explain, the world’s education system must be revitalized— it must include more than the empty goal of getting students into the classroom, and focus on keeping them there. It must contain relevant learning objectives and it must be infused with passion and inspiration to stimulate children and young adults to become leaders and innovators, to spur the global economy and mend our broken institutions. In many ways, it must resemble the ambitious plan of Saudi Arabia’s Crown Prince.

More than being a model for global implementation, the UN must monitor Saudi Arabia’s education system because changing policy and the law is not the same as changing culture. While Saudi Arabia’s new education plan is laudable, the UN must ensure that women are being instructed in the same techniques and skills as men, and that women are being encouraged to pursue the same fields and industries as men, including technology, local government, national government, corporate offices, and manufacturing jobs, and that they are positioned to fill the global leadership void. Vision 2030 contains many ambitious formations, but it is guaranteed longevity only if women are treated as truly equal citizens. “Empowering women is a key element of a long-term, sustainable deterrent against radicalization to violent extremism and terrorism… education can be used in myriad ways to enhance resilience and reduce radicalization to violent extremism.” Education not only endows a population with the proper tools for peacebuilding endeavors but is also a deterrent for violent extremism—it helps create a strong, stable society, a strong economy that is less likely to be faced with the threat of extremism and insecurity. Vision 2030’s success starts in the classroom. An ambitious education-revitalization, Vision 2030’s education platform is stronger than the UN’s SDG goal. By monitoring its development, the UN can not only hijack their plan for global implementation, it can also ensure the legal and political changes are dovetailed by a cultural reformation that imbues women, finally, with the same potential as men.

B. Peace, Justice and Strong Institutions- SDG 16

The second goal necessary for ensuring Vision 2030 is properly developed is SDG

---

Peace, Justice and Strong Institutions—SDG Goal 16. Like the UN, MBS understands that for a state to flourish, its institutions cannot be littered with corruption. He’s embraced reform, made a commitment to government accountability, and has taken steps towards stamping out institutional corruption and improving transparency.626 The President of the National Anti-Corruption Commission Dr. Khaled bin Abdulmohsen Al-Muaisen praised Saudi Arabia at the UN General Assembly in May 2018, and explained how the pillars of Saudi Arabia’s Vision 2030 reform plan are transparency, integrity, and anti-corruption measures.627

The goal of stamping out corruption and improving government transparency and accountability is anchored in Saudi Arabia’s commitment to traditional Islamic values.628 Vision 2030 is explicit in how they will achieve this goal: “We will adopt leading international standards and administrative practices, helping us reach the highest levels of transparency and governance in all sectors.”629 The blueprint includes a vow to publish their goal and performance indicators so that the public can monitor their progress, and a declaration that online services will be improved to boost transparency.630 The Center for Performance Management of Government Agencies was established to ensure all efforts are institutionalized, and that performance dashboards are created in an effort to guarantee transparency and accountability in the Saudi government. Though Saudi Arabia is ranked number 62 out of 178 countries in terms of corruption policies, Saudi Arabia’s King Salman issued a royal decree on May 6, 2018 ordering all Saudi Arabian authorities to protect whistleblowers, extolling the role they play in corruption cases.631

The most significant, yet controversial measure to erode corruption was Crown Prince Mohammed bin Salma’s cloak-and-dagger anti-corruption purge which garnered international attention and criticism for its lack of transparency.632 In November, 2017 the Crown Prince locked up 325 people in the Ritz-Carleton, fifty-six of whom were high profile businessmen and members of the Saudi royal family, alleging they were concealing billions from state revenues.633 This single act demonstrated that even members of the royal family are not

626 Saudi Arabia, Vision 2030, Supra.
628 Id., at 65.
629 Id.
immune from the Crown Prince’s new-found commitment to expel corruption at all levels of
the Saudi government.

However, though Saudi Arabia has made strides in their commitment to anti-corruption,
transparency, and accountability measures, the UN SDG goal additionally underscores the
importance of clean human rights records to peaceful and inclusive societies.\textsuperscript{634} UNDP has
championed the principle that strong government institutions do not commit human rights
abuses, and that discriminatory laws, violence, and the denial of fundamental freedoms are
equally detrimental to strong institutions, peace, and justice, as bribery and corruption.\textsuperscript{635} That
is why the UN must monitor this goal’s development, and insure it compliments all aspects of
Goal 16. While Vision 2030 and the SDG platform parallel each other in their ambition, they
diverge in critical areas. As long as Saudi Arabia continues to deny minority religions and
Islamic sects equal rights, to abuse human rights defenders, and to detain and imprison
journalists, this SDG goal will not be achieved.

The Arab Uprising, the tens-of thousands of people who took to the streets in
Romania,\textsuperscript{636} and the Ukrainian “Revolution of Dignity”\textsuperscript{637} are demonstrative that the world’s
citizens are beginning to see anti-corruption as a basic human right. But even more than that,
there is empirical evidence proving that corruption negatively impacts civil, political, social,
and economic human rights, whether corruption is an obstacle to human rights full realization,
or an implicit violation of human rights in the public forum.\textsuperscript{638} Specifically, as women’s rights
are human rights, there is significant literature and data proving how rampant government
corruption is positively correlated with gender inequality: but the inverse is true as well, when
women and men have equal access to power and decision making, corruption decreases.\textsuperscript{639}

Because government corruption is linked to human rights abuses, by targeting
corruption and increasing transparency and government accountability, Saudi Arabia could

\textsuperscript{634} Goal 16: Promote Just, Peaceful, and Inclusive Societies, U.N.,
\textsuperscript{635} Id.
\textsuperscript{636} Tens of Thousands Protest Against Corruption in Romania, THE GUARDIAN, (Jan. 20, 2018),
\textsuperscript{637} Graeme Robertson, Grigore Pop-Eleches, Ukrainians are Protesting Corruption—and Using a New Approach.
\textsuperscript{638} The Negative Impact of Corruption on the Enjoyment of Human Rights, OFFICE OF HIGH COMMISSIONER FOR
HUMAN RIGHTS, https://www.ohchr.org/Documents/HRBodies/HRCouncil/AdvisoryCom/Corruption/OHCHR.pdf, (Last Visited,
July 01, 2018).
\textsuperscript{639} Dr. Naomi Hossain and Dr. Celestine Nyamu Musemb, Corruption, Accountability and Gender: Understanding
the Connections, U.N. DEV. PROGRAMME AND U.N. DEV. FUND FOR WOMEN, (2010),
unknowingly achieve the dual aim of SDG Goal 16, especially if women are elevated into
government and business leadership positions. Research proves that corruption is less severe
when women encompass a larger proportion of the labor force and hold a higher proportion of
parliamentary seats.\textsuperscript{640} When women create policy, “women policymakers…focus more on
legislation dedicated to education and health, with positive implications for human capital, and,
in turn, negative implications for corruption.”\textsuperscript{641} Decreasing gender inequality and helping
women move into decision making stations will ensure institutional reformation in Saudi
Arabia and will go a long way towards ending human rights abuses in this state. While the
global gender issue may be a paradox, Saudi Arabia could have just side-stepped the whole
puzzle— by relaxing the law’s grip on women, and by integrating women into the workforce
and Saudi Arabian society, Saudi Arabia could unknowingly be making strides towards
achieving SDG goal 16. That is why the UN must verify that Saudi Arabia embraces all aspects
of the Peace, Justice and Strong Institutions target.

C. Partnership Goals- SDG 17

The UN Sustainable Development Goal 17 has two focuses: helping countries create an
infrastructure to sustain development, and revitalizing partnerships, between different
industries, different countries, and different regions.\textsuperscript{642} Sustainable development goals and the
ambitions of Vision 2030, are only as successful as their implementation. To achieve change, to
ensure the education platform, and the peace, justice and strong institutions platform, along
with the promises they present for Saudi Arabian women, are achieved, there must be
cooperation between the private and public sectors, the larger state population, and members of
the international community.\textsuperscript{643} It is for this reason that Saudi Arabia wants to boost
international trade, attract international tourism and international investment, partner with
international technology giants, and encourage their citizens to study abroad at foreign
universities.\textsuperscript{644}

Like the SDG goal of building a “multilateral trading system” and “increase[ing] the

\textsuperscript{640} Anand Swamy, \textit{Gender and Corruption}, 64 J. DEV. ECON. 25,

\textsuperscript{641} Gwen K. Young and Kendra Heieman, \textit{Women and Corruption: Perceptions Aside}, WILSON CTR., (May 11,

\textsuperscript{642} Sustainable Development Goal 17, U.N., https://sustainabledevelopment.un.org/sdg17, (Last Visited, July 01,
2018).

\textsuperscript{643} Goal 17 Targets, U.N. DEV. PROGRAMME, http://www.undp.org/content/undp/en/home/sustainable-
development-goals/goal-17-partnerships-for-the-goals/targets/, (Last Visited, July 01, 2018).

\textsuperscript{644} Full Text of Vision 2030 Saudi Arabia, Supra, 48.
exports of developing countries”, 645 Saudi Arabia intends to capitalize on their geographic location, “to build our role as an integral driver of international trade and to connect three continents: Africa, Asia and Europe”. 646 Improving international connectedness through trade is a critical ingredient in promoting an inclusive society: the World Economic Forum boasts how “trade has helped build a more inclusive global economy… it has moved developing countries from marginal to central participants in world trade. These nations now account for approximately one-half of global trade”. 647 Though Saudi Arabia is not a developing country, they are refocusing their economy from a focal point on oil to an emphasis on manufacturing and production. By increasing their role in international trade, they can guarantee economic growth by ensuring their economic shift is a critical contributor to global GDP.

Today, the world is dominated by globalization. Companies are multinational instead of international businesses. Culture has been commodified, traded overseas and between different communities; trade has become a preeminent tool of international relations. The world is progressively becoming more interconnected, largely because of the dominant role technology is playing in breaking down borders and building relationships. With these changes, countries that want to experience economic growth now have a greater dependence on the global economy 648 and cannot rely on a single commodity’s success on the international market. 649 They also must embrace the role technology is playing in transcending boarders and building connections.

SDG goal 17 builds on the commitment to grow an interconnected, international community by emphasizing the roles technology and knowledge play in fostering ideas across borders and spurring creativity. 650 Vision 2030, in addition to increasing their role in the global trade industry and participating in the give-and-take of study abroad programs and international, university partnerships, looks to technology as one of the country’s “promising sectors”, 651 with the potential to become a pillar of their economy. The plan elaborates, “In technology, we will increase our investments in, and lead, the digital economy.” 652 The

645 Goal 17 Targets, Supra 110.
650 Sustainable Development Goal 17, Supra, 109.
651 Saudi Arabia, Vision 2030, Supra.
The economy has always been dynamic, but technological advancements have had a pervasive effect on the global economy, unmatched by previous inventions. It is impossible, as SDG 17 indicates, to effectuate international trade and achieve partnership goals, without similarly participating in the global tech hub.

Technology is powerful: it spreads ideas, culture, and knowledge. It sparks creativity. It facilitates relationships at the human level, connecting people on the ground and managers with their workers. It enables growth at the institutional level, allowing businesses to be more efficiently managed. It allows the public and private sector to more effectively communicate and share ideas. And finally, technology builds relationships at the international level, where information can most effectively cross borders; where technological possessions and intellectual property force the private and public sectors to communicate internationally; where the diffusion of expert systems can occur more seamlessly and multiply personal skillsets across the world, simultaneously allowing citizens of different countries to work together and driving down the price of manufacturing; and alliances and international relations can be redefined as values converge.653

Knowing that a digital foundation will enhance competitiveness in the Saudi economy, Saudi Arabia plans to not only develop the country’s technology framework, but to partner with the private sector as well. The Crown Prince, in his effort to institute a successful tech-ecosystem, has created partnerships with Google and Raytheon. While these partnerships will contribute to Google and Raytheon’s multinational presence and create more manufacturing and production jobs in Saudi Arabia, these partnerships will also contribute to Saudi Arabia’s national cybersecurity infrastructure, and improve their national cloud services.654 During his visit to the U.S., Crown Prince Mohammed bin Salman also met with Amazon founder and CEO Jeff Bezos, Microsoft CEO Satay Nadella, and Google co-founder Sergey Brin. Snapchat, Apple and Amazon are also in the negotiating stages of opening offices in Saudi Arabia. 655 By introducing these technology giants and social-media titans into Saudi Arabia, the Crown Prince is permitting his youthful citizenry to communicate with each other and with strangers in ways previously forbidden by Wahhabi orthodoxy; he is allowing local businesses to market

their products online to potential customers in different cities, different countries, and different regions; he is creating opportunities for his government to remain in contact with his people, thereby improving transparency and establishing accountability—technology is the prerequisite that will allow the previously discussed ambitions to be achieved, and the linchpin that will help women transition into the leadership positions that will fulfill the women, peace and security agenda in Saudi Arabia.

Industrialization is a growth process facilitated by technological innovation. By investing in technology and contributing to its growth and development, Saudi Arabia will be investing in their citizens futures, transforming the role their government plays in international affairs, spurring a manufacturing based economy, and transforming their universities into institutions on the cutting-edge of education. Technology, when embraced by a country with an open mind and open boarders, has the ability to transform a nation and their economy. Like SDG goal 17, Vision 2030 is similarly focused on growing their technology-infrastructure through international partnerships in an effort to further improve their economy, to create jobs, and to strengthen their international relations.

Moving beyond technology, Vision 2030 is also focused on developing the private sector and its relationship with the economy, improving their GDP contribution from 40 percent to 65 percent, and further developing foreign relations, aiming to increase foreign direct investment from 3.8 percent to 5.7 percent of GDP. During his visit to the United States, the Crown Prince signed a memorandum between the Saudi Industrial Development Fund and J.P. Morgan Chase to “explore collaboration in industrial financing in the Saudi Kingdom.” Saudi Arabia has also eased limits on foreign ownership which had previously hindered the potential for international investments.

Vision 2030 has embraced many of the components of SDG 17, which is crucial for embracing gender inclusivity and helping Saudi women achieve their full potential. Though SDG 17’s relation to the women agenda is primarily through its role in ensuring there is an infrastructure for achieving the previous sixteen goals, it also has some unique attributes directly relevant to women. Study abroad specifically is an inimitable opportunity for women and for changing the cultural perception of women in Saudi Arabia. A 2016 study on Saudi Arabian women studying in Canada found that “the King Abdullah Scholarship Program is the gate for each Saudi women to prove that she exists and deserves to be considered a successful student, daughter, wife, and mother. In this study, Saudi women stated that the journey of

---

656 Vision 2030: Thriving Economy Open for Business, Supra.
657 Tom DiChristopher, Supra, 121.
658 Suparna Dutt D’Cunha, Supra, 122.
thousand miles always starts with a first step: their success.”  

For Saudi women, studying overseas creates opportunities for them to further develop intellectually and personally. It introduces them to possibilities that have the potential to change their futures, and with them the course of the country. Vision 2030 has created more formal partnership programs for education that invite foreign students to study in Saudi Arabia in addition to sending Saudi students overseas. These exchange programs help contribute to cultural diffusion, where different values and philosophies have the opportunity to inform Saudi culture. In these ways, it allows Saudi students of both genders to become more open minded and more amendable to change.

Further, Vision 2030, in addition to focusing on broadening global connectedness through education partnerships, has embraced trade, technology, and partnerships in their domestic and international forms, to help strengthen Saudi Arabia’s economic development: studies have found that “finance, fair and equitable trade, technology, capacities, partnerships and data are among the primary tools for achieving gender equality.” UN Women found that SDG goals cannot be successful if countries lack the necessary partnerships to implement change; if countries lack technology to monitor change and to diffuse information into rural areas where women have a tendency to be more constrained, and if countries do not have strong relations— be it through trade, study abroad, or an additional connecting mechanism— that can help expose people to other cultures, open their minds, and expand their horizons, demonstrating the benefit of not only being a local citizen of your country but also a citizen of the world, then other changes become moot.

Saudi Arabia intends to increase women’s participation in the workforce from twenty percent to thirty three percent, a goal that requires investment in every resource, and requires capitalizing on all sectors, with an emphasis on technology, investment and production. This goal is only achievable if the private sector cooperates with the public sector, sharing their pledge to equal employment and embracing the government’s commitment to opening up investment opportunities to other countries. If investments are improved, if trade increases and finances are no longer exclusively government funded, if citizens become engaged in the world

---


661 id.


and study abroad, and technology continues to be a preeminent government investment and a tool open to every citizen, only then can we be confident in the success of SDG 16 and SDG 4, and confident that women will have the potential to be truly equal citizens of Saudi Arabia. The UN therefore must continue to monitor Saudi Arabia’s commitment to achieving the abovementioned targets, because without its success, the previous goals become immaterial, and Saudi Arabia will cease to be the prototype for proving the Women, Peace and Security Agenda.

5. Conclusion

The Women, Peace and Security platform has not only focused on implementing new measures to help sustain peace post conflict, but has also incorporated preventative measures in averting war.\textsuperscript{664} Numbers, data and statistics all point to the incontrovertible fact that when women are at the table, when women play a role in drafting legislation, negotiating peace treaties and implementing these laws, peace is sustainable and national security is more guaranteed.\textsuperscript{665} What we have also seen however is that economic security is irrevocably tied to national security, with the SDG goals and Vision 2030 similarly focused on rebooting depleted economies in the hope of creating stronger societies. Therefore, as Saudi Arabia pushes to integrate women into the workforce as a catalyst for driving economic growth, the Crown Prince’s success is contingent on how well he achieves Vision 2030’s other goals and the SDG agenda: educational improvement, decreasing corruption and increasing transparency and accountability, combatting their poor human rights agenda, and successfully integrating technology into his country, establishing strong partnership goals between the public and private sector, driving international trade, and strengthening the Kingdom’s international relations. By achieving these goals, he will open the door for women to increase their stature in Saudi Arabia, creating space at the table for women to play a role in government and in the private sector. It is only after this is achieved that conflict is more likely to be averted, human rights abuses are more likely to decrease, and Saudi Arabian citizens are more likely to live healthier, longer lives.

There is no doubt that Saudi Arabia is changing. Historically resistant to anything new, MBS’s policies have diverged from his predecessors, but with an eye towards economic expansion, not human rights. Human rights abuses still abound: it is why the UN must monitor

\textsuperscript{665}Michelle Bachelet, Supra.
these developments, and why Saudi Arabia is only a cautionary tale, with the latent ability to be a success story. But because economic security ensures national security, and because in many ways Vision 2030 and the Sustainable Development Goals dovetail each other, the UN can ensure that women in Saudi Arabia become more than pawns for economic reformation; the UN can help Saudi Arabia become a model for global change, proving that while change for changes’ sake does not yield progress,\textsuperscript{666} when done correctly even the most shielded and myopic countries can become global archetypes for economic growth and gender inclusivity.

\textsuperscript{666} Demonstrated by the Arab spring and its effect on human rights in the MENA/MESAS region.
THE ROLE OF WOMEN IN TRANSFORMING NORTH KOREA FROM THE INSIDE AND OUT:
AN UNTOLD STORY OF MARKETIZATION AND DEFECTION
By Carolyn Carpenter

1. Introduction

The discourse around North Korea often centers around its nuclear proliferation and the threat of nuclear war. Strikingly absent from the April 2018 historic meeting between Kim Jong-un and Moon Jae-in was any mention of North Korea’s human rights record. The meeting and upcoming talks to formally end the Korean War marks significant progress in resolving the conflict. Additionally, it is perhaps the greatest symbol of self-determination by Koreans on the Korean Peninsula since before the Japanese Colonial Period. The North Korean nuclear issue is of the upmost importance, if not only for the fact that should the Korean War heat up again the estimated casualties are in the millions. However, letting the nuclear considerations alone overshadow the other dialogue about how an estimated 25 million people are subject to human rights abuses whose scale and nature do not “have a parallel in the contemporary world” not only undermines those human rights concerns but leads to not adequately understanding the mechanics of how North Korea is transforming.

Even though North Korea is far from progressive in terms of gender equality, their fundamental patriarchal structure has paved the way for women to alter the country from both the inside and outside. North Korea is a signatory to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). But when North Korea’s delegation was confronted with the U.N.’s findings of how North Korea has violated its international obligations outlined in the CEDAW, the North Korean delegation maintained that in North Korea equality has been achieved between men and women, that CEDAW’s international standards have been codified in North Korea’s domestic laws, and that there are effective mechanisms in place to protect women.

Yet there is mounting evidence that the situation for gender equality in North Korea is much dire than the North Korean delegation describes. Before the division of the Korean

---

668 Jeffrey Lewis, This is How Nuclear War with N. Kor. Would Unfold, WASHINGTON POST, Dec. 8, 2018, https://www.washingtonpost.com/outlook/this-is-how-nuclear-war-with-north-korea-would-unfold/2017/12/08/4e299a28-db07-11e7-a841-2066fa731ef_story.html?utm_term=.04b2bc0a8736.
671 Id.
Peninsula, the Gender Equality Law was enacted giving equal rights to women in marriage, divorce, child custody and support claims. After the division of the two Koreas, North Korea aimed to increase women’s participation in the labor force. Kim Il-Sung even declared that technological advancement should liberate women from household chores, a sentiment that was later codified in the 1972 Constitution.

Nevertheless, this rhetoric did not reflect the reality of gender equality. In the 1998 Constitution, North Korea subsequently deleted the language that women should be liberated “from the heavy family chores.” According to the UN:

Entrenched traditional patriarchal attitudes and violence against women persist in the Democratic People’s Republic of Korea. The State has imposed blatantly discriminatory restrictions on women in an attempt to maintain the gender stereotype of the pure and innocent Korean woman. Sexual and gender-based violence against women is prevalent throughout all areas of society. Victims are not afforded protection from the State, support services or recourse to justice.

Additionally, women become even more vulnerable to human rights abuses as gender discrimination intersects with other areas, such as violations of the right to food, violations of the right to freedom of movement, and limitations preventing women from collectively advocating for themselves.

Despite the recent peace talks, North Korea and South Korea remain technically at war. The United Nations Security Council Resolution 1325, emphasizes the importance of women’s involvement in the peacemaking process in post-conflict countries. Yet despite the discrimination they face, in many ways North Korean women are already working as overlooked agents of peace in the conflict between the North and South Korea, even before the conflict is resolved. In fact, gender discrimination in North Korea has uniquely positioned North Korean women to be part of the peace process because they have been disproportionately excluded from state activities, which has led them to be disproportionately more involved in market activity and more likely to defect. By participating in defection and marketization North Korean women are already strengthening the connections between North Koreans and the outside world and diminishing the State’s absolute control. In this way, in any post-conflict resolution on the Korean Peninsula, it is imperative that North Korean women play a critical

673 Id. at 4.
674 U.N. General Assembly, supra note 3 at ¶ 35
675 Id. at ¶ 36
role, not only for the reasons expressed in UNSR 1325 but also because North Korean women are already acting as agents ushering in change. Much can be learned from the Sweden’s notion of a feminist foreign policy that considers gender equality as a goal in and of itself but also acknowledges that gender equality is, “essential for the achievement of the Government’s other overall objectives, such as peace, security and sustainable development.”677 It is imperative that the gendered dimension to the conflict on the Korean Peninsula is recognized and understood to develop a robust and realistic resolution.

2. Gender Inequality Positioning Female Involvement in Grassroots Marketization

North Korean women are changing North Korea from the inside through their market participation. Because they have been removed from involvement in state enterprises, North Korean women have developed the markets in North Korea from the ground up, largely by using their familial connections to North Korean elite and to foreign contacts. However, the male-dominated State imposed restrictions on the female-dominated market, in order to maintain control over the North Korean populous.678 While in other settings an increased participation of women in a newly developing market place could serve to liberate women from surveillance in the workplace and traditional gender roles confining them to the household, North Korea has taken a hostile position towards the market, and by extension the women who work as merchants in the market place.679 Nevertheless the marketization, as evidenced by the State’s subsequent crackdown on marketplace activity, is threatening to the North Korean regime of maintaining the status quo of perpetual power over every aspect of its citizens lives, particularly in maintaining a tight grip on the flow of information into and out of North Korea.

A. The Bottom-Up Marketization of North Korea Through a Gendered Episteme

Women have been the driving force behind the marketization of North Korea from the beginning.680 From their inception the markets, or jangmadang, represented a form capitalism that was intrinsically and inextricably at odds with the Kim Dynasty’s absolute control over the economy.681 The gender dynamics of the North Korean market have been described as “an

678 U.N. General Assembly, supra note 3 at ¶ 34
679 See Haggard & Noland, supra note 6, at 2.
increasingly male-dominated state prey[ing] on an increasingly female-dominated market.”682 This dynamic has been present since the beginning of marketization and has continued despite the shift from North Korea explicitly punishing market activity to using other proxies to punish market participants.

North Korean entrepreneurship arose out social disruption caused by the famine in 1996-1999.683 During this period, known as the Arduous March, approximately 200,000 to 350,000 North Koreans died of starvation and more than half of the population suffered from chronic malnutrition.684 The Public Distribution System (PDS) broke down, driving people to scavenge for wild foods like acorns, tree bark, edible grasses, and algae to survive.685 Malnutrition during this period was so rampant that even today North Korean defectors in South Korea are either 2.3 to 4.6 inches shorter than their South Korean counterparts despite their shared genetic ancestry.686 Women motivated by desperation to eat, began to remove and sell valuable parts of plants as well as their own manufacturing goods and household possessions.687

There are two reasons why women and not men became the first demographic of entrepreneurs. First, North Korea has a 10-year mandatory military service for almost all able-bodied men, which prevents men from participating in the market.688 Second, women were more likely to leave their official jobs, either voluntarily or involuntarily, while men were more likely to stay employed in their official capacity. Up until this point, men in North Korea believed it was both useful and prudent for them to keep their official jobs related to state-run enterprises (SOEs). Women were either expelled from SOEs or voluntarily elected to leave SOEs so that they could pursue more lucrative opportunities in the market place.689 The reason many men believed it was wise to keep their official jobs stems from the prevalence of the belief that North Korea would revert back to the way it was under Kim Il Sung. Many believed that because the marketization would not be permanent, and thus engagement in the new

682 See Haggard & Noland, supra note 6, at 15; U.N. General Assembly, supra note 3 at ¶ 34
685 Stephan Haggard & Marcus Noland, WITNESS TO TRANSFORMATION: REFUGEE INSIGHTS INTO N. KOR. 48, (2011).
687 See Lankov, supra note 14.
markets was neither a reliable nor long-lasting sources of income.\(^{690}\) In accordance with the belief that North Korea would again return to its economic state without markets, regular employment with an official SOEs was a male’s responsibility to ensure their family remained eligible for benefits.

Moreover, regardless of this belief, many North Korean men did not have the option to leave their official jobs. During the Arduous March, North Korea required male employees to continue to work at SOEs, despite most SOEs not functioning properly.\(^{691}\) The regime used this to keep track of its male population and dissuade potential political unrest.\(^{692}\) Because women were not required to work at an SOE and any married woman could bypass her obligation to work at an official job by registering as a housewife, women were able to loosen the government’s control over their life by voluntarily leaving their official jobs.\(^{693}\) It became more socially acceptable then for women to have normal jobs that are not directly affiliated with the regime.\(^{694}\) Ironically the very rationalizations that paved the way for women to pioneer marketplace activity were rooted in gender stereotypes about women being weaker and subservient. This is true both for the reasons why the State kept men in SOEs to monitor and control them when they did not do the same for women as well as the reasons why families elected to have their male members remain in SOEs.

Just as women who were married were able to use their status as a housewife to circumvent State control, women with proximity to urban areas had better access to markets and became more active market participants. One study found that urban housewives are the most likely to be involved in market participation because after being shed from employment at state-affiliated institutions, they were able to access the markets because of their geographical proximity to urban areas.\(^{695}\) In this way women, particularly married urban women, were disproportionately removed from SOEs and began to engage in market activity.\(^{696}\)

### B. Female Breadwinners Leveraging of Familial Connections to Succeed in the Marketplace

Just as North Korean women were the original pioneers of market engagement, North Korean women continue to play a larger role in the market today than North Korean men.\(^{697}\)

\(^{690}\) See Lankov & Kim, supra note 23 at 69.

\(^{691}\) See Lankov, supra note 14

\(^{692}\) Id.

\(^{693}\) Id.

\(^{694}\) See Lankov & Kim, supra note 23 at 69.

\(^{695}\) See Haggard & Noland, supra note 6, at 10

\(^{696}\) See Haggard & Noland, supra note 6, at 2

\(^{697}\) See Lankov, supra note 14
This is particularly noteworthy given the scale of the markets. As of 2017, there are 387 legalized consumer markets across North Korea comprised of approximately 612,661 stalls.698 According to defector estimates, female market traders make up approximately 80 percent of North Koreans involved in the market.699 Since the Arduous March, North Koreans assume that women will take on the role as the breadwinner for their families.700 This is because of the sheer discrepancy between what men can earn in their official employment and what women can earn on the market. For example, in 2000 official salaries were equivalent to $1 to $2 a month while the average household income was between $25 and $30 a month.701

However, this discrepancy in pay and female involvement in the workforce, while providing opportunities to women, is not a marker of gender equality. For instance, women make up a clear majority of owners and managers in both small and medium-size businesses but most larger businesses remain controlled by men with official connections.702 One defector describes the gender dynamics at play in the North Korean market economy not as the liberation and creation of equal opportunity for women but rather notes that even in North Korea’s patriarchal society men cannot go against the empowerment of their female because they depend on it for survival. She explains, “It’s the mother who pays for school for the child, who dresses the child and feeds the child. Men want women to obey but when the basis of everything is money and eating, you can't say anything.”703

One way women have been so successful in pursuing marketplace activity is by using their familial relationships to get power and then remain unchecked because of their earning potential for their family. Women have been leveraging their husband’s connections for economic gain even before the Arduous March. Before the marketization, North Korean men with official jobs used their wives as proxies to trade on their behalf to pursue forbidden market activity without putting their official jobs at risk.704 Even today men are more likely to use their wives as proxies to trade than women are to use their husbands. One study found that male respondents are disproportionately more likely to report trading via their female spouses than the female respondents reported doing through their male spouses.705

The extent to which women benefit by leveraging family relationships is further

699 See Lankov & Kim, supra note 23 at 68-69.
700 See Lankov, supra note 14
701 Id.
702 See Lankov, supra note 14
704 See Lankov & Kim, supra note 23 at 69
705 See Haggard & Noland, supra note 6, at 9
evidenced by the difference in market participation between married and unmarried women. Unmarried women must resort to growing or purchasing their own food and have less access to state support through either their workplace or the PDS.706 Additionally, unmarried women do not have the benefit of circumventing some State control by registering as housewives.707

There are several business needs that the families of North Korean entrepreneurs can meet that will position the entrepreneurs to be successful. One of the main challenges for North Korean entrepreneurs is access to capital.708 Official banks in North Korea do not lend money to private individuals.709 Even if someone could convince a private lender to loan them money they would still need to pay interest at rates between 5 percent and 30 percent.710 The average North Korean who wishes to start a business then is not able to get credit through private providers without previous business experience.711 Start-up capital then is typically acquired either through connections with existing government industries or through relatives overseas, typically North Korean defectors living in China.712 In addition to start-up capital, to succeed North Korean entrepreneurs need to have both the power and capacity to escape government control, connections that span across North Korea’s border into China, as well as knowledge of the market.713 Then there are two main groups of female entrepreneurs who are able to capitalize on their familial relationships to succeed: those with official connections and those who have relatives in China.

I. Capitalizing on Songbun

Common methods of accessing start-up capital are intrinsically derived from familial connections. Many connections with existing government industries are rooted in familial connections that date back to the beginning of North Korea. Under Kim Il Sung, North Korean society was divided into a clearly defined hierarchy with membership defined by an individual’s origin, or songbun.714 Under the songbun classification system citizens become part of the core or loyal class, the wavering class, or the hostile class. This caste system functionally divides North Korea’s population of 23 million into a slave labor class comprised of one third of the population and loyal servants out of the other two thirds.715 North Korean’s

706 See Haggard & Noland, supra note 6, at 11
707 See Lankov, supra note 14
708 See Lankov, supra note 17 at 182-183
709 See Lankov & Kim, supra note 23 at 67
710 See Lankov & Kim, supra note 23 at 67
711 See Lankov, supra note 17 at 182-183.
712 See Lankov, supra note 17 at 183
713 See Park, supra note 32 at 65
714 See Lankov, supra note 17 at 183; U.N. General Assembly, supra note 3 at ¶ 23
position in society is defined by their male ancestor’s political behavior in the 1940s and 1950s. In this system the descendants of war heroes and Christian activists were privileged while the descendants of defectors to South Korea, clerks during the Japanese Colonial Period, political dissidents, and criminals are disfavored.

Even today, some women benefit from their songbun class. Numerous low-ranking government officials use their wives as a proxy to conduct business by allowing their wives to leverage their husband’s political and administrative connections, the very connections that are afforded to them by their songbun. For example, officials are able to make sure that their wives’ business can safely occupy a foreign property, help their wives acquire goods through nefarious means, and protect their wives’ businesses from being targeted. This symbiotic relationship between husbands working in an official role and wives working in the market economy is so pervasive that present day conventional wisdom on matchmaking seeks to establish these relationships by paring the sons of officials with the daughters of merchants. North Koreans consider their partner’s songbun because marrying someone of a lesser songbun will restrain their ability to benefit from official connections and thus substantially lower their quality of life.

In the new markets, North Koreans whose families were favored under the songbun system tend to have a serious advantage. There is evidence that young defectors are less likely to see the impact that songbun has on their lives whereas older defectors who have experienced compounded discrimination because of their songbun are more likely to concede how songbun has influenced their livelihoods. Even if the role of songbun itself is diminished the inequitable treatment between North Korea’s elite and everyone else remains such that North Koreans with official connections are better able to access the market because of their access to start-up capital, international connections, as well as ability to thwart the State’s crack down on market behavior.

II. Capitalizing on Familial Connections in China

The markets have allowed for an additional set of women to leverage their family relationships and actively participate in the market: women with connections to China. Even

---

716 See Lankov, supra note 17 at 183
717 Id.
718 See Lankov, supra note 14
719 Id.
720 Id.
721 See Collins, supra note 49 at 84
722 Id., at 4
723 See Lankov, supra note 17 at 184.
if their *songbun* classification is disadvantageous, North Korean families have a better opportunity to succeed in the new market economy, if their families have connections to China.\(^{724}\) The markets have provided an alternate method of survival for those in the lower *songbun* class and not elevated all of the discrimination they face that arises out of their lower *songbun* class.\(^{725}\) Having relatives or connections in China is one way for non-elites to have upward socioeconomic mobility. This is particularly significant given that when the *songbun* caste system was created, those with relatives in China were specifically placed at the bottom of the hierarchy.

Women are able to leverage relationships with their relatives in China not only to access start-up capital but also help with the procurement of goods to be imported to North Korea from China.\(^{726}\) North Korea’s most profitable market vendors frequently involve either the resale of Chinese products in North Korea or purchasing goods in North Korea with high demand in China to be resold in China.\(^{727}\) Major exports to China from North Korea include seafood, medical herbs, and scrap metal.\(^{728}\) Major imports from China to North Korea include consumption and household items, cosmetics, garments, footwear, bicycles, as well as construction materials.\(^{729}\)

C. A Masculine State Preying on the Feminine Market

North Korea’s marketization can also be viewed in terms of the increasing gap between the elite and everyone else in North Korea. Since the beginning of marketization, North Korea has wrestled with how it should respond to it. North Korea began its oscillation between legalizing and criminalizing the markets in 2002 when the State first recognized markets as part of other microeconomic and macroeconomic policy changes.\(^{730}\)

In 2004 and 2005 North Korea tried to reverse the reforms. First, North Korean asserted dominion over the market again by codifying the gender discrepancy, effectively banning men from working the marketplace.\(^{731}\) Then North Korea tried to reinstate the public’s reliance on the PDS by further combating private markets and trade.\(^{732}\) Even though the PDS did not have enough food to feed the average North Korean, North Korea started rejecting food

\(^{724}\) See Lankov, *supra* note 17 at 183.
\(^{725}\) See Collins, *supra* note 49 at 5
\(^{726}\) See Lankov, *supra* note 17 at 184.
\(^{727}\) *Id.*
\(^{728}\) See Lankov, *supra* note 17 at 184; See also Lankov & Kim, *supra* note 23 at 64
\(^{729}\) See Lankov, *supra* note 17 at 185; See also Lankov & Kim, *supra* note 23 at 64
\(^{730}\) See Park, *supra* note 32 at 22; See Haggard & Noland, *supra* note 6, at 4
\(^{731}\) See Haggard & Noland, *supra* note 6, at 6
shipments. This further solidified the North Korean population’s reliance on the market for both food and income. In 2007 and 2008, North Korea increased their hostility towards the market. They promulgated rules restricting market participation to women over the age of 40-50. The government also began cracking down on the marketplace itself through inspections and restrictions on foreign goods, only allowing the markets to open once every 10 days.

North Korea’s hostility towards the market culminated in 2009 with its botched currency reform. North Korea abruptly announced that the North Korean won would be replaced by a new won valued at one-one hundredth of the old won, giving the country only one week to adjust and restricting transactions during that one-week period. The central bank confirmed the intent behind the currency reform was to strengthen the State’s control over the market by dismantling it. As a result, many household’s life savings effectively vanished, spurring public protests. This effort was one way for the State to target non-elite market participants who are more likely to use won instead of foreign currency.

Since 2012, North Korea accepted the market as a de facto reality, acknowledging the State’s dependence on the market, an even instituting polices that promote marketization. Simultaneously, North Korea shifted from overtly trying the suppress the market to trying to control it by maintaining power over market participants. A way North Korea attempts to maintain its power while promoting marketization is by entrenching the power of the elite and State actors. The regime practically no longer has the capacity to crackdown on the market as a whole or all market participants but still can and does crackdown on specific individuals or activities when they desire. In this way, North Korea has started to crackdown on ordinary citizens, or those in lesser songbun classes, for engaging in economic behavior pioneered by the North Korean elite. This trend can be seen not only though market participation generally but also through North Korea’s shift to penalize the drug trade, which was once a state-sponsored enterprise.

733 Id. at 99
734 Id. at 99
735 Id. at 99
736 Id. at 100; Haggard & Noland, supra note 19 at 10.
737 Id. at 100; Haggard & Noland, supra note 19 at 10.
738 Id. at 100
739 Haggard & Noland, supra note 19 at 10.
740 Hastings, supra note 66 at 100
741 See Park, supra note 32 at 22; See Haggard & Noland, supra note 6, at 4.
742 Hastings, supra note 66 at 105
744 Id.; See Lankov & Kim, supra note 23 at 188-189
Gender dynamics are embedded in North Korea’s attempt to strengthen the power of the elite and State actors at both the macro level and the micro level. At the macro level, the male-dominated State can be seen to exercise dominion over the female-dominated marketplace. While in other contexts, this level of female market participation would be empowering, it only arose because of North Korean men’s’ preference for and deference to official state jobs. Despite providing opportunity for women to participate and gain power as the economic breadwinners, the system not only was born out of but is designed to maintain male power over both the State as well as the marketplace through policing women. Essentially, North Korea is replicating the patriarchal power structure imbedded in its society in the relationship between the State and the market economy.

At the micro level however, North Korea is more threatened by male actors than female actors in the market place and thus punish them more harshly. North Korea is likely more threatened by male market participation than female market participation. This is evidenced by North Korea’s propensity to greater punish men than women generally but also in the context of markets. While North Korea’s secrecy leaves onlookers with little understanding of the internal dynamics and reasoning of the regime, it is likely that North Korea’s gender disparity in punishment is rooted in gender stereotypes about women being weaker, less dominant, and thus less threatening.

Overtime, North Korea has moved from explicitly criminalizing market activity to allowing it while simultaneously punishing more heavily activity that market participants engage in so that they can be part of the market place. North Korea has sought to control the market and institutionalize the power and authority of State actors and elites by differentiating between market participants and by selectively criminalizing market behavior, and using political activity and other crimes as a proxy to punish market participation. Implicit in all of these crackdowns and changes are the underlying notions of gender that has formed and worked to reinforce North Korea’s tight control over its citizens. Additionally, the regime wanted to profit from the formerly illegal economic activity.

I. Differentiating Between Elite and Non-Elite Market Participants

North Korea’s market participants can be divided into four separate groups: high-level officials, private operators with connections with foreign-exchange-earning companies, large-scale businessmen who do not front as managers of government enterprises, and small

---

745 See Haggard & Noland, supra note 6, at 11
746 Kim, supra note 18 at 161
747 Hastings, supra note 66 at 104
vendors. In many ways, the North Korean market is a food chain in that groups higher up the food chain prey on those lower than them. This groups can be distinguished based on their decreasing level of involvement with state-sponsored activity as well as the increasing likelihood that they will use won. The first group of high-level officials are often managers or CEOs of state sponsored businesses often foreign-exchange-earning companies (FEEC) which are incorporated into various government and military agencies. The second group are private operators who begin as independent entrepreneurs who after they amass enough capital use bribes and personal connections to secure a managerial position at a FEEC. The third group are large-scale businessmen who are not affiliated with the regime and provide services like private loans and domestic and international money transfers. These groups use as much hard currency as possibly but often use both hard currency and won. The final group of small vendors engage in entrepreneurship to survive and are akin to a classical Marxist bourgeoisie class. This vender class uses the most amount of won and thus was most adversely effected by the 2009 currency reform.

Another way North Korea seeks to deepen the disparity in power between elites and the rest of the population is by only permitting firms with waku licenses to trade with foreign counterparts. Elites have exploited this system by loaning these waku licenses to firms in exchange for money. Thus these licenses are primarily used by the regime to secure loyalty from the elites, who then use the waku licenses to profit from businesses lower down the food pyramid.

II. Selective Criminalization of Market Behavior

Despite accepting the de facto reality that the market has become an unshakable institution in North Korea, North Korea still selectively criminalizes market behavior, especially for those with lower songbun classes or non-elites. One reason behind the criminalization of economic activity is that it promotes extortion by state officials. Both the directly and indirectly through this extortion, the State uses its influence to control the government and strengthen their power. North Korean defectors who reported being punished

---

748 See Lankov, supra note 17 at 181.
749 Hastings, supra note 66 at 105-107
750 Hastings, supra note 66 at 107-108; See Lankov, supra note 17 at 181
751 See Lankov, supra note 17 at 181-182
752 Hastings, supra note 66 at 107-108
753 See Lankov, supra note 17 at 182.
755 Id. at 160
756 Id. at 160
757 See Haggard & Noland, supra note 6, at 14
for market activities have typically been incarcerated in two lower-level facilities called *jipkyulso* and *rodongdanryeondae*.\textsuperscript{758} *Jip-kyul-so* literally means to gathering place. It is a short-term hard-labor detention facility for North Koreans serving up to six month sentences. Prisoners are forced to do hard labor, such as brick-making and construction work, while living on below-subsistence food rations. This causes a large number of prisoners who do not receive “sick-releases” to die.\textsuperscript{759} On the other hand, *rodongdanryeondae* literally translates to labor-training center and is a mobile forced-labor brigade.\textsuperscript{760} Both of these facilities are primarily used to house North Korean refugees who have been forcedly repatriated from China.\textsuperscript{761}

Yet North Koreans who participate in the market are more easily able to skirt some government surveillance. This is because most official surveillance is done in the workplace where merchants do not take part.\textsuperscript{762} In general, surveillance by the regime “permeates the private lives of all citizens to ensure that virtually no expression critical of the political system or of its leadership goes undetected.”\textsuperscript{763} Market vendors typically do not have to attend indoctrination sessions or give obligatory confessions at self-criticism meetings like other North Koreans as part of the regimes’ structure of surveillance and control over the lives of its citizens.\textsuperscript{764}

### III. Punishing Market Participation Through Proxies

North Korea has also shifted from punishing North Korean market participants through other crimes as proxies to subvert their market activities. First, market participants are penalized for the travel they undertake to participate in market activities. North Koreans are not allowed to travel without official authorization even within the country.\textsuperscript{765} This is primarily because the State seeks “maintain disparate living conditions, to limit the flow of information and to maximize State control, at the expense of social and familial ties.”\textsuperscript{766}

Second, North Korea has shifted to use political beliefs as evidenced by access to foreign media as a proxy to penalize market participation. This is a way to further put a wedge between North Korean elites and non-elites as political crimes are punished more harshly than other offenses. Political crimes are generally classified as anti-state and anti-nation crimes

\textsuperscript{758} Id. at 12
\textsuperscript{760} Id.
\textsuperscript{761} Id.
\textsuperscript{762} See Lankov & Kim, supra note 23 at 68
\textsuperscript{763} U.N. General Assembly, supra note 3 at ¶ 28
\textsuperscript{764} See Lankov & Kim, supra note 23 at 68
\textsuperscript{765} U.N. General Assembly, supra note 3 at ¶ 40
\textsuperscript{766} Id.
under North Korea’s Criminal Act.  

The North Korean criminal justice system treats punishment for political offenses in two different ways. First, people may be charged under the Criminal Procedure Act where those convicted get sent to regular prison or kyohwaso. This is usually the way that members of the elite or foreigners are charged.

Alternatively, North Korea sends people accused of political offenses and three generations of their family to a *kwanliso*. A *kwanliso*, literally management place, is a political penal forced-labor facility that collectively houses between 150,000 and 200,000 North Koreans. This is particularly notable given that according to the UN’s description of a *kwanliso* as where, “the inmate population has been gradually eliminated through deliberate starvation, forced labour, executions, torture, rape and the denial of reproductive rights enforced through punishment, forced abortion and infanticide”. Life in a *kwanliso* is marked by “the combination of below-subsistence food rations and extreme hard labor.” Those who try to escape are frequently publicly executed by hanging or firing squad. While sexual relations in the camp are prohibited there is a widespread practice of female prisoners being assigned less demanding labor in exchange for sexual favors. There have also been reports of biomedical experiments being conducted on prisoners. All of these practices grossly deviate from international human rights standards for treatment of prisoners.

Aside from the human rights abuses that occur at each *kwanliso*, which the U.N. has analogized to “the horrors of camps that totalitarian States established during the twentieth century” the lack of due process represents another lawyer of violations under international law. Virtually all prisoners were sent to a *kwanliso* without due process even though North Korea has officially signed on the International Covenant of Civil and Political Rights (ICCPR). In addition to not having any semblance of due process, implicit in the *kwanliso* are notions of collective responsibility or guilt by association where three generations of a family are also sent to the prison camp alongside with an offending political prisoner.

---

767 Tae-Ung Baik, *Nonjudicial Punishments of Political Offenses in N. Kor. – With a Focus on Kwanriso* 64 AM. J. COMP. L. 891, 909 (2016).
768 *Id.* at 909-911
769 Hawk, *supra* note 93 at 27
770 U.N. General Assembly, *supra* note 3 at ¶ 60
771 Hawk, *supra* note 93 at 30
772 Hawk, *supra* note 93 at 33
773 Hawk, *supra* note 93 at 34
774 Baik, *supra* note 101 at 911
775 The Standard Minimum Rules for the Treatment of Prisoners “UN Standard Minimum Rules for the Administration of Juvenile Justice”
776 U.N. General Assembly, *supra* note 3 at ¶ 60
777 Hawk, *supra* note 93 at 37; Baik, *supra* note 101 at 925.
778 Hawk, *supra* note 93 at 29
D. Marketization as a Source of Change

The North Korean women who are responsible for the marketization are already responsible for fundamentally changing North Korea. Even if they individually act out of self-preservation, collectively their efforts are opening up the most isolated regime in the world today. In this way, they are unintentional agents of peace that the State finds threatening as evidenced by their efforts to further drive a wedge between elites and non-elites and cement State control over the market. However, arising out of the development of the marketplace, there have been additional changes to North Korea which are also shifting how North Koreans view the world.

First, contrary to the State’s desires, the grassroots marketization has strengthened communications channels and traditional family ties, which have become safety networks.779 Second, North Korea’s official culture was weakened by the emergence of a comparatively wealthy North Korean class with connections to powerful bureaucrats.780 Third, the marketization also produced social spaces for leisure activities which have shaped an unofficial culture in North Korea.781

However, one of the biggest shifts is the influx of information about the outside world to North Korea. The State denies North Koreans the right to access information unless it is approved by the State, even monitoring phone calls and punishing citizens who listen to or watch foreign broadcasts, including films and soap operas.782 Importing Chinese goods is a central facet of the North Korean market economy and these goods are often accompanied by an influx of information about the outside world.783 North Korean market participants have foreign contacts, largely because their supply networks either start or end in overseas, typically in China.784 There is now a network comprised of foreign NGOs, defectors, smugglers, middlemen, businessmen, briable North Korean officials that connects smuggles illicit cell phones, laptops, USBs, and data drives.785

Accordingly, South Korea’s pop culture is now accessible to North Koreans through smuggled music and dramas that are circulated through MP3 plays, USB, and memory chips in cell phones.786 In fact, one survey of North Koreans found that 33 out of 36 respondents reported to consuming foreign media at least once every month with 21 out of 36 respondents

---

780 Id.
781 Id.
782 U.N. General Assembly, supra note 3 at ¶ 29
783 Lee & Seo, supra note 113 at 204.
784 See Lankov & Kim, supra note 23 at 68
785 See Baek, supra note 15 at 107.
786 Lee & Seo, supra note 113 at 196
reportedly consuming foreign media once a week.\textsuperscript{787} The level of foreign media consumption is not limited to defectors but rather appears to be uniform among age, geographical, and vocational demographics.\textsuperscript{788} However, another study suggested that there is a gender gap in access to foreign media with women having less access to foreign media than men. One explanation of this is that “exposure to the penal system and the political police is statistically correlated with consumption of foreign media and news” and men exhibit both higher propensities of arrest and contact with the political police than do women.\textsuperscript{789}

The influx of foreign media is undermining the State’s indoctrination efforts and changing North Korea from the inside out. North Korea’s marketization has transformed North Korea’s social structure, values, and hierarchies.\textsuperscript{790} Through their foreign contacts, North Korean merchants are now generally aware of China’s prosperity and nearly all know that South Korea is a rich country.\textsuperscript{791} Defectors report that the influx of digital technology is undermining the influence of North Korea’s traditional ideology has on its citizens.\textsuperscript{792}

According to the UN, “[t]he State’s monopoly on information is … being challenged by the increasing flow of outside information into the country and the ensuing curiosity of the people for “truths” other than those provided by State propaganda.”\textsuperscript{793} Those who grew up during the marketization are called the \textit{jangmadang}, or market, generation.\textsuperscript{794} This generation’s outlook in North Korea is fundamentally different from generations before it because they grew up seeing freedom while simultaneously being oppressed by the government, producing a strong desire for freedom.\textsuperscript{795}

Just as the \textit{jangmadang} generation’s view of North Korea is being shaped by the new de facto capitalist realities of the market, there is growing evidence to suggest that involvement in the markets helps defectors resettle in South Korea. Studies on the adjustment of North Korean refugees in South Korea have found that informal economic activities conducted in North Korea have a significant positive influence on adjustment in the south and are correlated with job stability and in some cases household income.\textsuperscript{796} Moreover, human capital accumulated by


\textsuperscript{788} Id.

\textsuperscript{789} See Haggard & Noland, supra note 6, at 17.

\textsuperscript{790} See Lankov & Kim, supra note 23 at 68.

\textsuperscript{791} Id.

\textsuperscript{792} Id.

\textsuperscript{793} See Baek, supra note 15 at 111.

\textsuperscript{794} U.N. General Assembly, supra note 3 at ¶ 30.


North Koreans in North Korea is more important than the human capital they acquire after living in South Korea.\textsuperscript{797}

\section*{3. The Gender Dimension to Defections from North Korea}

Women in North Korea are instrumental in changing North Korea on the inside both because of their importance in developing the market economy, and by extension instrumental in changing the views of North Koreans through exposure to foreign media and contacts in China. In that same vein, North Korean women outside of North Korea are responsible on shifting perceptions on North Korea and shining a light on the interworking of the world’s most isolated regime. As of 2017 over 30,805 North Korean defectors entered South Korea alone, of those 21,410 or nearly 70\% are female.\textsuperscript{798} Yet these women face a new set of vulnerabilities and trauma because of their gender throughout the defection and resettlement process.

\subsection*{A. North Korean Defectors in China}

\paragraph*{I. The Trafficking and Victimization of North Korean Defectors in China}

Many North Korean defectors are victims of human trafficking. Approximately 80 to 90 percent of female North Korean defectors in China are suspected victims of human trafficking and sexual exploitation.\textsuperscript{799} Of those who are trafficked, many are coerced into marriages with a Chinese or other foreign man or into the sex industry after being promised money.\textsuperscript{800} Women are more likely to be trafficked into forced marriages in China, due to China’s strict anti-prostitution laws, but women who exit China to other South East Asian countries are more likely to enter the sex industry.\textsuperscript{801} Additionally, many female defectors in China marry Chinese men or ethnic Koreans to avoid being repatriated to North Korea.\textsuperscript{802} Regardless of where they are trafficked, these women also bear the burden of knowing that it is not only possible that they will not see their relatives again, but it is possible that their relatives be punished for their defections, even executed.\textsuperscript{803}

Women are particularly vulnerable because of the imbalance in the marriage market. There is a demand for wives for rural Chinese men because of the gender imbalance from

\textsuperscript{797} Id.
\textsuperscript{798} Ministry of Unification, \textit{Settlement Support for North Korean Defectors}, http://unikorea.go.kr/eng_unikorea/whatwedo/support
\textsuperscript{799} Kim, \textit{supra} note 18 at 157
\textsuperscript{801} International Crisis Group, \textit{Strangers at Home: North Koreans in the South}, 20 (2011)
\textsuperscript{802} Id. at 20
\textsuperscript{803} Id. at 11
China’s one-child policy and the migration of Chinese women who are leaving Northeast China to work in factories. There is a supply of unmarried women in North Korea because of a shortage of marriageable men in North Korea. Some reasons for this imbalance are that North Korean men have a 10-year mandatory military service during which time a significant number of men die or get injured, criminal punishment is harsher for men than women so many men die or are indefinitely imprisoned in North Korea’s penal system, and many men cannot afford to get married.

North Korean women in China are also vulnerable because they are undocumented and fear repatriation to North Korea. This makes them targets for exploitation as they often have a difficult time finding employment because of their undocumented status and must stay hidden from the Chinese authorities. Additionally, traffickers use forced repatriation as a “coercive lever” against North Korean women who are undocumented.

When these women are repatriated they can be tortured, detained in a concentration camp, or even executed. Upon their repatriation, North Korea determines whether or not there was a political component to their defection and treats those whose defections were political more harshly. This is part of a larger trend of sentencing those charged with political or anti-state crimes more strictly. Along this line, factors in determining whether or not a defection is political include exposure to foreign media or church attendance.

Whether or not a victim of trafficking is sent back to North Korea, pregnancy can lead to more severe human rights violations. There is a propensity to repatriate women back to North Korea when they get pregnant. Upon repatriation, pregnant women, particularly those impregnated by Han Chinese men, are subjected to either forced abortions or racially-motivated infanticide. However, even when they are not repatriated, the children of North Korean women in China are stateless as they are eligible for neither Chinese nor North Korean citizenship. The UN describes these children as “deprived of their rights to birth registration, nationality, education and health care because their birth cannot be registered without exposing the mother to the risk of refoulement by China.”

---

804 Hawk, supra note 93 at 114
805 Kim, supra note 18 at 16; Committee for Human Rights in North Korea, LIVES FOR SALE: PERSONAL ACCOUNTS OF WOMEN FLEEING NORTH KOREA 20-21 (2009).
806 Kim, supra note 18 at 161
807 Gahng, supra note 134 at 374; Kim, supra note 18 at 156
808 Hawk, supra note 93 at 114
809 Kim, supra note 18 at 156
810 Hawk, supra note 93 at 119
811 Id. at 119
812 Id. at 114
813 Id. at 122; International Crisis Group, supra note 135 at 9
814 Hawk, supra note 93 at 114,
815 U.N. General Assembly, supra note 3 at ¶ 44
These victims of trafficking frequently display symptoms of PTDS. According to one study of North Korean defectors living in China, defectors frequently undergo multiple traumatic experiences including but not limited to: starvation in North Korea, life-threatening situations when fleeing from North Korea, and stresses from living in China. All of these traumatic experiences, individually and collectively, have an adverse effect on the mental health and well-being of the defector population. Accordingly, those interviewed experienced a high level of PTSD, anxiety, and depression. A second study of North Korean defectors in South Korea found that North Korean defectors had “higher prevalences of depression, anxiety, and suicidal ideation than did South Korean natives, especially North Korean women, single individuals, and people who had attempted to escape North Korea more than twice, had stayed longer abroad, and had been settled longer in South Korea.” A third study found that although men experienced more traumatic experiences overall women had a higher incidence of PTSD.

II. The Legal Status of North Korean Defectors in China

International actors differ in their legal classification of North Koreans living in China. This discrepancy places North Koreans living in China in a legal limbo and further enhances their probability of being exploited. China classifies this population as economic migrants and not refugees. China’s economic migrant classification has been criticized because China uses it to circumvent their obligations to support this population, instead depriving them of the human rights protections they are entitled to under international law. The economic migrants view also allows China to ignore the human rights abuses North Koreans suffer upon repatriation. Yet these migrants, particularly those trafficked to China, arguably do not fit the standard definition of a refugee. This is because their primary motivation is “primarily economic and the dangers of sexual slavery and abuse in China are unrelated to political persecution—or any persecution-in their country of origin.” However, traditionally, human rights activists have argued that all North Korean migrants are refugees sur place as they have a

817 Id. at 228
818 Id. at 228
819 Id. at 228
821 Woo-Taek Jeon et al., Correlation Between Traumatic Events and Posttraumatic Stress Disorder Among North Korean Defectors in South Korea, 18 J. OF TRAUMATIC STRESS, 147, 152 (2005).
822 Gahng, supra note 134 at 373
823 Id. at 372
824 Id. at 374
well-founded fear of persecution upon return to their country of origin. This would not be difficult to establish given North Korea’s practice of punishing people once they are repatriated. On the other hand, even the refugee sur place argument has been criticized because it presumes that deprivation of economic and social rights warrants less protection than the deprivation of political and civil rights. According to the U.N., many of these migrants should be treated either as refugees fleeing persecution or refugees sur place and thus afforded protection under international law. Even though it may make sense to afford people fleeing political persecution rather than those who are searching for better economic opportunities in general, the line here is blurred. At a certain point, the economic reasons for migrating are inextricably intertwined with the political reasons, given North Korea’s draconian fiscal policy that specifically seeks to starve its people to ensure their power over them.

B. Importance of Defectors in the Peace Process

Just as there is a series of networks that encompass the supply chain of goods sold on the North Korea, there is a series of networks that enable North Koreans to travel to South Korea, usually by way of China and another country. Once resettled in South Korea, these defectors are able to better speak out and shed a light on North Korea. When they first arrive, all defectors are interviewed by the National Intelligence Service, the Defense Security Command, and the Ministry of Unification. While some defectors refrain from actively speaking out about North Korea, for fear of North Korea punishing their family members, many North Korean defectors become activists. Moreover, defectors surveys serve as the basis for many major reports on the interworking of North Korea.

There have also been a number of memoirs depicting life in North Korea, particularly in prison camps. Many of the most popular defector memoirs have been written either by on behalf of male defectors. The demographics of the North Korean defector population living in South Korea more accurately maps on to how defectors are portrayed in South Korea. Female North Korean defectors talking about the plight of defection is now a staple of South Korean variety shows like Now On My Way to Meet You, Moranbong Club, or Let’s Go Hawk, supra note 93 at 116; Gahng, supra note 134 at 375 Hawk, supra note 93 Hawk, supra note 93 Hawk, supra note 134 at 375 Gahng, supra note 134 at 375 U.N. General Assembly, supra note 3 at ¶ 44 International Crisis Group, supra note 135 at 22 Id., supra note 135 at 9 See e.g. Joseph Kim, Under the Same Sky: From Starvation in N. Kor. to Salvation in Am. (2016); Blaine Harden, ESCAPE FROM CAMP 14: ONE MAN’S REMARKABLE ODYSSEY FROM N. KOR. TO FREEDOM IN THE WEST (2012); Hyok Kang, THIS IS PARADISE! MY NORTH KOREAN CHILDHOOD (2004); Kang Chol-Hwan & Pierre Rigoulot, THE AQUARIUMS OF PYONGYANG (2001).
Together, there is even a variety show and dating app that matches North Korean women with South Korean men named after the same Korean phrase Namnampoknyeo, or Southern man Northern woman. In this way, just as North Korean women who participate in the market are promoting peace by connecting North Korea to the outside world from the outside in, North Korean defectors are promoting peace by shedding a light on the most isolated regime on the planet.

4. Policy Recommendations

A. Recognition of the Gendered Dimension of North Korean Peace Process

Amidst archetypical depictions of North Korea and the growing concern over its nuclear proliferation, human rights can be lost from the discussion. Even when North Korean human rights are mentioned, the sheer level of atrocities that are being committed often leaves little discussion for the gender aspects of the human rights violation. Yet in order to understand both how North Korea is changing from the inside out and the extent of the human rights violations it is essential to examine how gender comes into play.

There are several consequentialist reasons why understanding the gender component is essential. First, understanding the gender dimensions of these issues better equips policymakers in coming up with solutions on not only how to treat North Korea but also in better dealing with the North Korean defector population in China and South Korea. Second, North Korea’s treatment of men and women in its society is derivative of gender stereotypes that men are stronger than women and thereby more threatening. Because of this belief, North Korea has underestimated North Korean women as a threat to the regime, creating a place for them to fundamentally transform the economy through the grassroots marketization. While North Korea continues to criminalize market activity and proxies for market activity, it still does not have the capacity to crackdown on everything and will likely to continue to disproportionately punish men, creating an opportunity for women to keep acting as agents for change. Third, gender equality in North Korea is important not only in and off itself but under Sweden’s feminist foreign policy framework it is necessary to achieve peace, security, and sustainable development. In addition to these consequentialist arguments for why looking at North Korean peace through a gendered episteme is important, the sheer level of human rights violations both

in and outside of North Korea that arise out of the issue of Korean peace and security is reason
enough to embrace a perspective informed by gender. The international community should
consider North Korea’s human rights violations, not only because doing so is essential for not
only to providing adequate policies but also for promoting peace and security on the Korean
Peninsula, but also because it is simply the right thing to do.

B. Empowering the Female Market to Fundamentally Challenge the Regime

While it is hyperbolic to suggest that the grassroots marketization is going to inevitably
lead to regime change, it is indubitably a driving force within North Korea that can continue to
cause significant disruption to the status quo. Part of both marketization and defector activism
is that it threatens the regime by strengthening connections between North Koreans and the
outside world. The free flow of information in and out of North Korea is a necessary but not
sufficient condition for regime change.833 One activist notes, “In the end, real peace and
genuine people-to-people dialogue and exchange can only happen when the wall of
totalitarianism is removed. And the starting point for removing this wall is defending North
Korean human rights.”834

One reason North Korea is able to survive is that the elites continue to sufficiently buy
in to the regime and their stability. However, the markets continue to provide livelihoods for
much of the North Korean population, such that they are no longer dependent on the state but
rather on the markets. Just as what happened in Eastern Europe, mass participation in the
informal economy corroded the legitimacy of the state, and so there may come a time where
elites have outgrown their reliance on the State, and thus even the men involved in SOEs no
longer deem it prudent or necessary to keep their official positions.835

Even if the other conditions necessary for regime change are not met, the strengthening
of the market as well as advocacy by North Korean defectors could increasingly limit North
Korea’s economic and political policy choices.836 Some scholars argue that cascading
corruption can manifest in street-level extortion and predatory behavior, which can then impair
the informal sector’s contribution to growth as well as undermine the credibility and allegiance
to the political regime. This instability then in turn shrink the state sector as more and more
state officials are incentivized to enter the market.837 If this process occurs North Korea could

833 Id.
834 Carl Gershman, Advancing Human Rights and the Prospect for Democracy in N. Kor., 36 FLETCHER F. WORLD
AFF. 41 at 44 (2012).
835 Hastings, supra note 66 at 184-185
836 Haggard & Noland, supra note 19 at 124.
837 Id.
reach a tipping point where reform is once again necessary to insure its economic survival. While it is unclear as to what this tipping point could look like in the future it should be noted that movements in South Korea have reached two distinct tipping points in the past year, both of which were unforeseeable even a year ago. First, in the wake of the discovery that South Korea was governed by a shadow cabinet with cult connections, after hundreds of thousands gathered in peaceful protests, Park Geun-hye was impeached and sentenced to 24 years in prison. Second, the #MeToo movement has highlighted sexual assault and sexual harassment in South Korea and has led to the toppling of several prominent men in politics and the entertainment industry as well as greater discussions about gender equality in Korea.

C. Practical Steps for the International Community

Supporting North Korean defectors and the market is necessary regardless of whether or not supporting the market in North Korea and North Korean defectors ultimately leads to changes in the peace process. Even though it is difficult to change North Korea’s behavior, there are several things the international community, armed with an adequate understanding of the gender dimensions to the conflict, can do to help advocate for North Korean human rights. First, we can ensure that proper protections are put in place to support North Korean defectors in China. The current legal framework that partially relies on the question of whether or not North Korean defectors are driven by political motives is undermined by the fact that all North Koreans who are subject to repatriation back to North Korea may be subject to punishment.

Second, the international community can act to support North Korean entrepreneurs and the flow information in and out of North Korea. There are already groups such as the Chosun Exchange that provides training to North Korean entrepreneurs. Moreover, there are also NGOs who seek to spread information to North Korea through balloons or radio broadcasts. Yet these groups can be criticized for not being careful enough of the fact that North Koreans...
may be punished for possessing these balloons. Instead, a better framework is to strengthen and legitimize the informal network that is used to smuggle both goods and people across the North Korean border. Finally, the international community can better support the few groups that North Korea allows to provide humanitarian relief directly without interference or concern that the regime is syphoning off the humanitarian goods or services.⁸⁴⁴

1. Introduction

In the wake of devastation, many women in post-conflict nations have been called upon to step into government representation and replace their male counterparts. This was agonizingly evident in the case of Rwanda. While men were engaged in civil war through military agendas, women became the leaders in their communities, both in formal and in informal capacities. The idea of women in leadership has transitioned from a casual incidence to a regimented formality, and Rwanda now mandates that its government include women in formal governmental leadership. Rwanda’s constitution includes a quota policy that assures that women will fill “at least thirty percent (30%) of posts in decision-making organs.”

Across all countries, research shows that women in government ignites positive change in confronting women’s issues, including equality, education, economic position, childcare, and violence against women. This progression began with the United Nations (“UN”) introducing the Convention on the Elimination of All Forms of Discrimination against Women (“CEDAW”), which addresses the inequalities that women face and affirm that women should be afforded all rights available to their male counterparts. The CEDAW calls for and encourages women to represent their countries in formal governmental capacities:

State Parties shall take appropriate measures to eliminate discrimination against women in the political and public life of the country, and, in particular, shall ensure to women, on equal terms with men, the right… to participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government.

The UN later elaborated on this same idea in Security Resolution 1325. This resolution asserted that women and children make up a significant portion of civilians and need to be considered more thoughtfully by their governments and lawmakers. Specifically, the UN affirmatively said that representation of women would help to generate peace and security in all nations by

---

845 This paper is a case study of Rwanda, but this is also evident in the cases of Argentina and Afghanistan.
847 Rwanda Const. Art. 10 § 4.
850 Id. Art. 7.
giving women an opportunity to hold government positions:

States should ensure increased representation for women at all decision-making levels in national, regional, and international institutions and mechanisms for the prevention, management, and resolution of conflict.\textsuperscript{852}

The resolution further urges nations to increase women’s participation and decision-making in conflict resolution and peace processes and to allow women to participate at the international level.\textsuperscript{853} These suggestions regarding female representation are the first recommendations that the UN makes in this Security Resolution, further demonstrating how significant women’s representation can be on the impact of armed conflict against women and girls and the general security of a nation. The resolution envisions a more peaceful world by creating women as agents of change.

This paper considers whether the higher rates of women in political life in Rwanda have truly created more peaceful communities. In the wake of civil war and as part of the nation’s reconstruction, the Rwandan government implemented a law that called for women to serve their country in elected positions. Since women have come into power in Rwanda, the country has experienced very little conflict within its own country, showing the impact that women have had in maintaining peace in Rwanda.\textsuperscript{854} While the coalition of women in power in Rwanda has helped to generate many laws that benefit the security of women, this improvement has not permeated to the daily lives of the average women living in Rwanda. This disconnect shows that governments need gender perspective in leadership, and that governments need not just the presence of women in government, but the presence of good women in government.

2. Post Conflict in Rwanda and the rise of Women in Power

In the aftermath of the 1994 Genocide, the incoming government in Rwanda led by the liberation forces of the Rwandan Patriotic Front faced a unique set of circumstances regarding the disposition of its population.\textsuperscript{855} The Genocide had claimed the lives of one million people—nearly a tenth of the nation’s population—over the course of three months, and several million others were displaced or had escaped across the borders to neighboring countries.\textsuperscript{856} While the

\textsuperscript{852} Id. ¶ 1.
\textsuperscript{853} Id. ¶¶ 2-3.
\textsuperscript{854} The only military actions that Rwanda has participated in since the genocide were the First and Second Congo Wars. But this conflict had come to an end by 2002, a year before the constitution had been overhauled to include the quota mandate. See Kinshasa Bukavu and Kinsangani Bukavu, Africa’s great war, THE ECONOMIST, Jul. 4, 2002, https://www.economist.com/node/1213296.
\textsuperscript{855} Daley, supra note 2, at 131.
\textsuperscript{856} Id.; see also Elizabeth Powley, Rwanda: The Impact of Women Legislators on Policy Outcomes Affecting
state of Rwanda after the genocide was devastating, gender roles began to shift, and women became important leaders in the era of reconstruction even after all that they had suffered during the conflict.

Sexual violence has become a tactic of warfare to destroy the social fabric of communities, and many women in Rwanda were victims of this kind of violence.857 The women who ultimately survived the Genocide lost children, relatives, friends, and husbands.858 In the immediate aftermath of the genocide, the population of Rwanda was seventy percent female, and this gender imbalance forced women to assume roles as heads of households, financial providers, and community leaders.859 Women also became an active part of the workforce for the first time in history.860 Women were seen managing local shops, working in accounting firms, and conducting work in courthouses.861

As of 2016, women in Rwanda held sixty-four percent of seats in the national legislature, the highest percentage of female representation in the world.862 In 1997, the share of women in parliament was seventeen percent, which at the time was still very high compared to the worldwide average.863 In 2003, when Rwanda overhauled its constitution, the government was one of the first to create a quota mandating the inclusion of women in elected office:

The State of Rwanda commits itself to upholding the following fundamental principles and ensuring… the equality of all Rwandans and between men and women which is affirmed by women occupying at least thirty percent (30%) of positions in decision-making organs.864

The 2003 constitution also reconfigured Rwanda’s parliament into two houses: the chamber of

857 See U.N. Women, Progress of the World’s Women: In Pursuit of Justice, at 83 (2011) (sexual violence was used during the Rwandan genocide to deliberately spread HIV, force impregnation, and displace populations from their homes and communities).
858 Powley, supra note 12, at 3.
859 Id.
860 There was also a communal uprising for the protection of women. See Prosecutor v. Akayesu, ICTR-96-4-A, judgment (Int’l. Crim. Tribunal for Rwanda. Jun. 1, 2001) (holding that rape was an instrument of war and a crime against humanity).
862 Gregory Warner, It’s the No. 1 Country for Women in Politics—But not in Daily Life, N.P.R. (Jul. 27, 2016), https://www.npr.org/sections/goatsandsoda/2016/07/29/487360094/invisibilia-no-one-thought-this-all-womans-debate-team-could-crush-it; see also U.N. Women Progress of the World’s Women: In Pursuit of Justice, at 60 (2011) (Rwanda also has the some of the highest proportions of women judges in the world, including a female chief justice in their highest court).
863 U.N. Women, supra note 13, at 125.
864 Rwanda Const. Art. 10 § 4. Rwanda also adopted UN Security Council Resolution 1325 and the CEDAW.
deputies with eighty seats and the senate with twenty-six seats. Twenty-four seats in the chamber of disputes are reserved for women, and those women are elected by women’s councils at the district level. This system of electing women shows that the women in power are women elected by women. While the senate must be comprised at a minimum of thirty percent women, the constitution does not delineate how this threshold should be achieved. Since the implementation of this constitutional mandate, Rwandan women have exceeded this minimum target in all elections and has many more women in elected office than any other country in the world.

3. The Rise of Women in Rwanda and Laws for Women

Women in parliament have been integral in bringing about legal reform in post-conflict Rwanda. Before 2003, Rwandan women did not have the same rights to land, property, and decision-making that their male counterparts did. Rwandan women are changing the landscape for the lives of Rwandans now that the constitutional gender quota has been in place for fifteen years. But Rwandan women were changing the landscape for their female peers and constituents before the government created the constitutional quota requiring women to hold elected office. The Forum of Women Parliamentarians, a cross-party coalition of women holding parliamentary positions in Rwanda, has become an important aspect of women’s success in parliament. Because this is a cross-party coalition, this Forum is a more diverse group, and because they all have the shared experience of growing up as women during the Rwandan genocide, they share solidarity in creating laws that will better the lives of women.

The Forum of Women Parliamentarians helped Rwandan women draft and pass the Law on Matrimonial Regimes, Liberalities, and Successions in 1999, before the constitutional quota was even put into place. This law established women’s right to inherit land for the first time, a right that women had never seen in Rwanda. It marked a significant first step in countering
women’s unequal rights following the genocide, particularly since it was almost unheard of for women to own land or work in a job outside of the home before the genocide. This law was considered a breakthrough for gender equality in Rwanda, as it mandated that married couples make a joint commitment to shared ownership of marital property, and the law stipulates equal inheritance without reference of whether the survivor is male or female. Additionally, the law states that “all legitimate children… shall inherit equally without any discrimination between male children and female children,” finally giving women equal access to inheritance and property that they deserve.

Since the constitutional mandate came into place, women in Rwandan parliament have advanced these efforts by creating reforms to continue transforming women’s rights to property and inheritance. Specifically, the 2004 National Land Policy and the 2005 Organic Land Law introduced land tilting to help further these rights and stipulated that women and men must have equal access. The National Land Policy notes that this and its accompanying laws will break down the traditional Rwandan custom that land ownership is “the prerogative of men,” thus causing land rights to be inherited from father to son. The Organic Land Law took this message a step further and specifically abolished the “ubukonde” custom that was traditional in Rwanda and allowed—and even encouraged—the patrilineal trend of passing property down through a family’s male lineage. In the wake of this legislation, Rwanda has also made an effort to include women in the implementing these laws and being a part of the land registration process. The government has attempted to undertake widespread training of local land committees across Rwanda to ensure that women understand that they are entitled to these rights.

Additionally, since women have integrated themselves into the political framework, they have also fought for legal protection against violence and rights for women and children. Many women who have stepped into parliamentary positions claim to be motivated by their experiences as mothers, and many claim to be fighting for both their own equality and for the equality of their children. In 2008, Rwanda implemented the Law of Prevention and

874 Daley et al, supra note 2, at 132.
875 U.N. Women, supra note 13, at 41; see also Daley et al, supra note 2, at 134.
876 Rwanda Official Gazette No. 22/1999 Art. 50).
877 U.N. Women, supra note 13, at 24.
878 Id. at 41.
879 Rwanda Nat’l. Land Policy § 3.5.
880 Rwanda Official Gazette No. 08/2005.
881 U.N. Women, supra note 13, at 41.
882 Id.
883 Powley, supra note 12, at 7-8.
Punishment of Gender-Based Violence. The law identifies various types of gender-based violence perpetrated against women and children. Most notably, the law allows for gender-based violence to be a cause of divorce, protects children against gender-based violence, and begins to lay the groundwork for the criminalization of marital rape. As of 2015, Rwandan law now protects women from marital rape, sexual harassment in the workplace, and domestic violence including sexual, physical, emotional, or economic abuse. A person who commits marital rape is now subject to imprisonment and fines.

In addition to laws related to gender, the women in parliament have made great strides for women in the workplace. Women helped draft and promulgate the Labour Law in 2009, which provides equal pay for work of equal value and provides protection for pregnant and nursing mothers. This law entitles women to work in all industries, including those that require a great amount of physical labor. Beyond these specific laws, women in parliament have also had a direct impact on issues including food protection and security, the environment, and settlement powers.

Despite the great strides that Rwandan women have made in the legislature, there continues to be a disconnect between legislative efforts and the effects on women in daily lives. First, many Rwandan women have not been able to benefit from the recently developed land rights because they do not apply retrospectively. Although the government and non-governmental organizations are making strides to educate women on their rights in this area, women still lack a general understanding of the exact nature and legal status of their rights. This is most evident in rural areas. Many women still enter into non-formal partnerships, and without legal marriage, they have no claim to their husband’s property for themselves or for their children.

---

884 This law was particularly notable because it was only the second law that the parliament had both introduced and passed after the 2003 constitutional revisions. See Rwanda Official Gazette No. 59/2008, Ch. II.
885 Rwanda Official Gazette No. 59/2008, Ch. II.
887 Abari, supra note 17.
890 Id.
891 Id. at 129.
892 Powley, supra note 12, at 12.
893 Daley, et. al., supra note 2, at 137.
894 Id.
895 Id. at 140.
896 Powley, supra note 12, at 13.
Additionally, there are still many laws that continue to disadvantage women. For example, according to the Rwandan civil code, in the event of a divorce, mothers have very little power. Child custody is automatically awarded to the “innocent spouse”—the spouse who has been granted the divorce—or to the spouse who can best ensure the interests and education of the child.\textsuperscript{897} Since men are often the major breadwinners in Rwanda and can thus afford their childrens’ educational needs, fathers are awarded custody far more frequently than mothers.\textsuperscript{898} This law is extremely harmful to women not just by separating women from their children, but automatically putting them at a societal disadvantage. This part of the civil code causes women to be treated as second-class citizens, even when they have been the major caretakers of their children for most of their lives. Additionally, as gender-based violence is still prevalent in Rwanda despite the laws that have been put in place, laws like this divorce law will cause women to stay in harmful marriages as opposed to seeking help and breaking away from abusive relationships because they want to stay with their children.

Additionally, although rape, marital rape, and gender-based violence are punishable offenses, women still face many barriers in ensuring that their perpetrators are penalized. In the area of gender-based violence, women still lack proper access to the justice system. The present gender-based violence laws demand forensic proof in order to convict a perpetrator.\textsuperscript{899} This provision acts as an obvious barrier to women, especially in a society where rape continues to be taboo and where women prefer to use informal sources of help as opposed to formal ones.\textsuperscript{900} These kinds of barriers, as well as continued lacking formal resources, dissuade women from reporting crimes such as rape.

The Labour Law also demonstrates some disconnect and a lacking sense of empathy for working Rwandan women. While the Labour Law provided women with equal pay and increased the amount of paid maternity leave required by employers, it also increased the work week from forty to forty-five hours, which has been burdensome for working mothers.\textsuperscript{901} Those five extra hours per week—or one extra hour per day—keep working mothers from their families for that much longer. And since women are the leading caretakers in Rwandan families and society, this law has put a great amount of stress on working mothers to balance both roles as parent and employee. This disconnect further demonstrates that women in parliament are not bringing a fully gendered perspective to legislative conversations and drafting and continue to

\textsuperscript{897} Umubyeyi, \textit{supra} note 44, at 3.
\textsuperscript{898} \textit{Id.}
\textsuperscript{899} \textit{Id.} at 11.
\textsuperscript{900} See \textit{Id.} at 2 (While more formal sources for help exist in Rwanda, many women prefer to seek help from family, in-laws, friends, or neighbors).
\textsuperscript{901} Rwanda Official Gazette No. 13/2009.
be disengaged from their constituents.

Additionally, despite the fact that these laws are supposed to create equality for women throughout Rwandan society, a culture of equality for both men and women has not permeated to most Rwandan communities. These laws have not translated into gains for average Rwandans, and a large gap exists between legislation and implementation. Women continue to be victims of poverty and low literacy rates, and traditional cultural attitudes continue to block women from becoming equal and respected members of society, particularly in rural areas.902

Women in leadership has been hypothesized as a solution to improving daily life. But considering that Rwanda is the only country with a majority of women in political office, daily life has not improved in comparison to other nations. Rwanda is currently ranked 159 out of 188 countries on the United Nations Development Programme’s Human Development Index, which assesses human development through life expectancy, education, and standards of living.903 Even considering all of the changes that have been made in Rwanda, this ranking is incredibly low, further demonstrating how these laws are not translating in greater gains for Rwandan society. Furthermore, Rwanda is ranked eighty-four out of 188 countries in the gender inequality index.904 In 2016, roughly fifty-eight percent of parliament seats were held by women, but only ten percent of women had any level of secondary education.905 Although women are making strides in government, they are still lacking in many areas—most glaringly in the realm of education. Many women and girls continue to be victims of gender-based violence in schools and are abused by male pupils and teachers, which is likely keeping women from pursuing good educations.906

While many of the laws that women have helped promulgate demonstrate a positive trend in Rwandan society, many women believe that some of this legislation only represents the interests of Rwandan elite.907 This again demonstrates that women in leadership need to take extra strides through providing a gendered perspective to make changes in society that will actually benefit their female constituents. Women of higher socioeconomic classes who have access to education, job training, healthcare, and the legal system are more likely to benefit from these laws. Additionally, many average Rwandan women believe that some of this legislation only represents the interests of women in parliament.908 For example, many

902 Powley, supra note 12, at 13.
904 Id.
905 Id.
907 Bauer et al, supra note 21, at 108.
908 Id.
Rwandans reported that the women in parliament only voted on the Labour Law in order to retain their salaried positions in the government and did not consider the interests of other citizens.\textsuperscript{909} Instead of protecting the jobs of their constituents, they were instead protecting their own jobs, further showing a lack of gendered perspective.

This lacking perspective may stem from the fact that Rwanda’s insertion of women in politics was always a top-down approach, as opposed to a grassroots approach. Unlike other countries that have had successful political movements stemming from efforts started by the average constituent, Rwanda’s approach to gender equality started at the government level through a constitutional mandate. And because it started at the government level, people serving in parliament are not necessarily serving the interests of the people and may not be the right people to serve their country. Additionally, the political landscape in Rwanda changed so drastically and quickly, which may be causing the gender quota to be less effective than desired. Rwanda went from being a patriarchal country to creating pro-women policies almost overnight, and what bridged that gap was devastating social upheaval. While the political landscape was changing, the cultural landscape lagged behind, and men still resist treating women as their equals.

The progress that women are making in political leadership in Rwanda has not translated to progress within their homes. Many women are still told that while they need to be patriotic and serve their country through public work, they also still need to serve their husbands.\textsuperscript{910} In fact, in many cases, men are upset about their wives’ increased political involvement because it reduces their time at home.\textsuperscript{911} Despite political safeguards, women are unable to take advantage of these legal protections because of poverty, cultural prevalence of male superiority, and the tendency to keep abuse as a private family matter.\textsuperscript{912} Until average women start to see more progress in every aspect of their lives, the work of Rwandan women in parliament will not be sufficient.

4. **Recommendations for Rwandan Women in Parliament**

The Rwandan government has worked to make gender equality and gender sensitivity a government policy. And as it continues to carry on at the political level, it will hopefully continue to pervade in everyday life. Since Rwanda has implemented its quota system for women holding elected office, Rwanda has enacted numerous laws and regulations that benefit women, as demonstrated through the protections of the rights to inheritances and their right to a

\textsuperscript{909} Id.

\textsuperscript{910} Warner, supra note 18.

\textsuperscript{911} Abari, supra note 17.

\textsuperscript{912} Id.
life free of violence. Moreover, Rwanda has continued to stay strong and peaceful since its reconstruction, revealing at least some correlation between women in office and the maintenance of peaceful communities.

But Rwanda still has work to do. First, Rwanda needs to continue pushing certain legislative reforms. Rwanda should consider legalizing abortion. While this is difficult given the cultural, political, and religious climate in the country, legalizing abortion will help women achieve their personal and professional goals and escape abusive relationships. Many women get caught in abusive relationships because they become pregnant through marital rape and then do not want to leave those relationships because they are afraid about the wellbeing of their future children. Legalizing abortion—at least by starting with those pregnancies that are caused by rape—will help women make great strides towards their own security, freedom, and independence. Additionally, Rwandan parliament should also draft legislative measures to further secure protection against gendered violence and to safeguard women’s health. This can be initiated by eliminating any barriers that keep women from seeking care or taking legal action, such as the unfair divorce laws that heavily favor men.

Furthermore, the Rwandan government and the Forum of Women Parliamentarians need to make a greater effort to draft legislative reform and efforts that specifically target women’s education and job training. Despite the fact that more women in Rwanda are active members of the workforce since the genocide, women are still, for the most part, financially dependent on their husbands. This, in turn, causes women to be less likely to leave abusive relationships because they worry that they won’t be able to take care of themselves. Thus, women’s education and employment opportunities should be improved to make marriages more equal and, hopefully, less violent. Education and job training will help women achieve better employment opportunities and ultimately help them take care of themselves and their children if their relationships become abusive. Additionally, even though women are starting to take on bigger roles in the workplace, they are also still responsible for taking care of the household and their children. Job training could thus also be beneficial in helping women understand how best to balance both of these roles.

Lastly, women in parliament and the Forum of Women Parliamentarians need to adopt a more engaging and effective gender perspective. Rwanda is an example where having women present in legislative drafting and reform is not enough. Women need to engage with men in parliament and with their constituents to create legal reform that will make a difference throughout all of Rwandan society, not just for the Rwandan elite. In order to achieve this, women parliamentarians need to better engage with their constituents and stop playing into the politics that accompany government leadership. The Forum of Women Parliamentarians can
work to achieve this together. As one of the only cross-party caucuses in Rwandan government, the women in the Forum can work to cross party lines and effectively generate laws for the sake of women as opposed to for the sake of their parties. Peace and security for women will only be achieved if women in power start working for those women who are vulnerable. Women in parliament will be effective if they work for their constituents and bring an empathetic gender perspective to every legislative discussion.
LEVERAGING NATIONAL ACTION PLANS TO FORTIFY PEACE ACCORDS: A CASE STUDY ON THE MINDANAO PEACE PROCESS

Allyson Reynolds

1. Introduction

Over the course of several decades, the armed conflict between the Philippine government and rebel Moro factions ravaged the island of Mindanao, displacing millions of civilians in the process. In 2014, the parties finally reached a peace agreement, and Miriam Coronel-Ferrer became the first (and remains the only) female chief negotiator in world history to sign a major peace accord. Throughout the Mindanao peace process, women played crucial roles in both formal and informal peace talks, brought experience to the negotiating table, and sought input from civil society organizations to cultivate a more intersectional understanding of what peace requires. The resulting agreement guarantees women’s inclusion in transitional bodies and promotes women’s economic participation as a critical national growth strategy. On this historic achievement, Irene Santiago, one of the Philippine government’s official negotiators, once remarked that the audacity required to push a gender agenda in male-dominated peace negotiations “came from knowing you have women beside you and women behind you.”

Women’s mere presence at the negotiating table increases the likelihood for lasting peace. Research shows that when women are able to participate in peace processes, the resulting agreement is thirty-five percent more likely to last at least fifteen years. Moreover, the participation of civil society organizations, including women’s organizations, makes peace agreements sixty-four percent less likely to fail. From 1990-2000, however, only eleven percent of peace agreements globally referenced women at all.

In light of this data, the signing of the Comprehensive Agreement on the Bangsamoro is a significant milestone for women in the Philippines and worldwide. Women’s meaningful inclusion in the Mindanao peace process owed its success, in part, to the international dialogue sparked by the landmark passage of UN Security Council Resolution (UNSCR) 1325 and

917 Id.
918 Id. at 14.
subsequent resolutions on women’s issues (UNSCRs 1820, 1889, and 1960). These frameworks shaped the international gender discourse, bestowing member states with a set of core principles on women’s rights as well as a common vernacular to discuss, deconstruct, and interpret them.

The imprint of UNSCR 1325 and its progeny appears on a number of domestic legal reforms preceding the Mindanao peace talks, most noticeably on the Philippine National Action Plan, which was created to implement UNSCRs 1325 by empowering women in situations of armed conflict and ensuring their full and meaningful participation in peacebuilding. Without this substantial body international and domestic documents calling for women’s inclusion, it is possible that the peace talks between the Philippine government and the Muslim separatists would still be ongoing. As such, the Mindanao case study yields valuable lessons on how other conflict-afflicted areas can leverage national action plans and domestic reforms to meaningfully infuse women into their peace efforts.

2. Background

2.1 Pre-Colonial and Colonial Origins

The Philippine government has been locked in an armed struggle with various Moro rebel factions in the Mindanao region for almost half a century. Since the late 1960s, the conflict has displaced over 3.5 million people and resulted in over 100,000 deaths. Many forms of violence are interwoven into the fabric of the conflict including disputes over ancestral land, ideologically-driven criminal banditry, and politically-motivated bloodshed. The most recent peace agreement between the Government of the Republic of the Philippines (GRP) and the Moro Islamic Liberation Front (MILF), however, provides the country with a historic opportunity to cease decades of violence and human rights abuses.

The conflict cannot be understood without acknowledging the former Muslim-majority region’s long history of systematic marginalization and minoritization by Christian imperialists. Mindanao is located in the southernmost part of the Philippine archipelago and contains the largest concentration of ethnic minorities in the country. Arab traders introduced Islam to the indigenous population in the late 13th century. In addition to religion, the Muslim settlers installed a political system comprised of sultanates in the Southern Philippines which

facilitated the rapid spread of Islam throughout the region. When Spanish colonists arrived approximately 200 years later, they initiated a series of attacks intended to suppress Islam and convert the region’s inhabitants to Roman Catholicism. Having recently expelled the Moors from Spain in the Reconquista, the Spanish used the term “Moros,” a pejorative distortion of “Moors” borne of racial and religious animus, to refer to the people from Sulu, Mindanao, and Palawan who shared a common Islamic faith. As their neighbors to the north were colonized and assimilated into Spanish colonial life, the Moros in the Mindanao region successfully resisted territorial encroachment despite many attempts by the Spanish to establish dominance.

By the time Spain ceded the Philippines to the United States at the close of the Spanish-American War in 1898, the Muslims in the southern islands still retained significant political and religious independence. The United States initially adopted a policy of legal hybridity whereby the Americans promised not to interfere with Sulu religion or law in exchange for the Sultan’s acknowledgement of the United States’ sovereignty. This structure collapsed within a few short years as the United States abandoned legal pluralism in favor of integration by ceasing to recognize both the sultanates and any remaining indigenous legal systems. In the process, a subsequent pacification campaign, led by General Pershing, cost the region upwards of 15,000 Muslim lives.

Meanwhile, the United States began to implement colonial land grabbing policies, which dramatically altered the face of Moro land ownership. As the Americans gained control of Mindanao, they were able to realize the goals of the Spanish Regalian doctrine, which nullified the Moro tradition of communal land ownership, removed communal access to water and other natural resources, and invalidated prior occupancy rights. The new American legal regime began to enact discriminatory laws such as the Land Registration Act of 1902, which, in restricting land ownership to individuals and corporations, legally disenfranchised the Moros, whose ties to land were ancestral and communal and who lacked the requisite literacy and legal expertise to understand the new land ownership laws. Resettlement programs, beginning in 1911 and carried out post-independence through the 1960s, further intensified Moro

---

923 Id.
924 Holbrook, supra at 412-413.
927 Id. at 90.
928 Id.
930 Astrid S. Tuminez, This Land is Our Land: Moro Ancestral Domain and its Implications for Peace and Development in the Southern Philippines, 27 SAIS REV. OF INT’L AFFAIRS 77, 78-79 (2007).
931 Id. at 79.
displacement by bringing Christian settlers to Mindanao for various purposes: to implement land reform policies, to increase agricultural production, and to mitigate “peace and order” issues with the Moros.932

Following the displacement of the Moros and other indigenous groups, the descendants of the Christian migrants now constitute the majority in Mindanao.933 In response, factions of the remaining Moros in the region have taken up arms to insist that this “historical injustice” must be rectified through the creation of an autonomous Bangsamoro (or “Moro homeland”). However, the Moros have utilized violent means to achieve their ends—the hostilities displaced half a million women and children in 2000 alone.934

2.2 The Muslim Separatist Movement & Peace Talks

The modern movement for Muslim separatism originated from a small subset of intellectuals in the 1960s and later gained support following a series of violent skirmishes between the Philippine military and the local Muslim population. These tensions culminated in the 1968 Jabidah Massacre, a seminal event where at least fourteen Muslim members of the military were executed by Filipino Christian officers for allegedly protesting the conditions of their training.935 The deaths of these Muslim military trainees caused an outcry from within the Muslim community. In direct response to the bloodshed, Muslim Filipinos organized into a separatist movement that led to the formation of the militant Moro National Liberation Front (MNLF), an armed guerilla group which aimed to liberate the Bangsamoro.936 As sectarian violence erupted throughout the region, President Marcos enacted martial law in 1972, which only served to exacerbate the conflict between the Philippine military and the Islamic resistance groups.937

By 1976, the civilian death toll, financial cost of the conflict, and mounting international pressure brought the Philippine government and the MNLF to the negotiating table.938 By November, the two parties signed the Tripoli Agreement, a tentative peace agreement declaring a ceasefire, granting greater regional autonomy to the Southern

932 Id. at 79-80.
935 Holbrook, supra at 418.
Philippines, and providing for the establishment of Sharia courts. However, when the promise of political and legal independence failed to materialize, violence ensued resulting in over a thousand Moro civilian deaths and the MNLF splintered into a more fundamentalist separatist organization—the Moro Islamic Liberation Front (MILF).

By 1989, a series of dialogues that the Aquino administration initiated with the Muslim separatists led to the establishment of the Autonomous Region in Muslim Mindanao (ARMM). Less than ten years later, in 1996, the Philippine government crafted the Final Peace Agreement with the MNLF which created transitional bodies intended to oversee development in Mindanao. Yet, ARMM received little support from the national government—it heavily relied on irregular grants (in amount and timing) to function which fueled MILF discontentment with the governance of the ARMM.

Official peace talks, facilitated by Malaysia, began in 2001 and focused on three agenda items: (1) security, (2) rehabilitation, and (3) ancestral domain. A new framework was adopted in 2012 and aimed to govern the enabling law for the Moro homeland while creating “genuine Moro autonomy.” This culminated in the creation of the Comprehensive Agreement on the Bangsamoro (CAB), which the Philippine government and the MILF signed on March 27, 2014, bringing an end to decades of hostilities. The adopted text most notably, however, includes several groundbreaking clauses promoting gender equality and women’s participation in the public sphere.

### 2.3 Bringing Women to the Negotiating Table

The most recent peace agreement drew attention from the international community for both its meaningful inclusion of women in the peacebuilding and its resulting provisions on gender equality. Throughout the Mindanao peace process, women played active roles in both formal and informal peace negotiations. Standing in stark contrast to pre-colonial times where women occupied high positions in society and occupied leadership positions, women were

---

939 Id.
940 Gatmaytan, supra at 51.
942 Gatmaytan, supra at 51-52.
944 Gatmaytan, supra at 52.
947 Anthony Reid, Female Roles in Pre-Colonial Southeast Asia, 22 MODERN ASIAN STUDIES, 629, 639 (1988).
conspicuously absent at the signing of the 1976 Tripoli Agreement and the 1996 Final Peace Agreement. Yet, during the commencement of the peace talks with the MILF, President Ramos broke with tradition and appointed civilians to the negotiating panel instead of retired military officials. As such, Emily Marohombsar, the first female president of the Mindanao State University, became the first woman and civilian appointed as a peace negotiator as a full member of the government delegation. After President Arroyo, the country’s second female president, resolved to form an all-civilian panel to facilitate the peace negotiations, subsequent government panels would have at least one female member.

In the 2012 negotiations, women formed a strong presence on both sides of the formal peace talks. Irene Santiago and Emily Marohombsar constituted two of the five delegates from the Philippine government. Yasmin Busran-Lao, a female Muslim civil society member, served as the panel’s undersecretary. By the time of the final peace agreement in March 2014, women comprised twenty-five percent of the signatories. Miriam Coronel-Ferrer, who chaired the negotiations on behalf of the Philippine government, became the first female chief negotiator in world history to sign a major peace accord. These women were selected for their past peacebuilding efforts in Mindanao, their technical expertise, and their past work with civil society organizations. The MILF panels were entirely composed of men until two females were appointed as technical advisers in 2010. Raissa Jajurie—the negotiations’ only lawyer—brought knowledge of key constitutional issues to the table in 2013 when she served as a legal adviser from the MILF panel. This iteration of peace negotiations included women with “both technical qualifications and extensive experience as civil society advocates who led mass action groups and campaigns,” allowing them to secure more gender equality guarantees in the final agreement.

By appointing women with diverse backgrounds to the Mindanao negotiation panels, women were able to serve as conduits for civil society organizations, which in turn fostered more inclusive and intersectional conversations. Santiago, for instance, founded the Mindanao

---

949 Id.
950 Id.
951 Id.
953 Santiago, supra.
955 Philippines, supra.
956 O’Reilly, supra at 22.
957 Id.
958 Id.
959 Powell, supra.
Commission on Women in 2001, one of the first civil society organizations to champion interfaith peace initiatives which was comprised of Christian, Muslim, and indigenous women leaders.\textsuperscript{960} Coronel-Ferrer was a leading disarmament advocate and previously co-founded a network of NGOs to monitor compliance with human rights and humanitarian law.\textsuperscript{961} Drawing on past leadership experience and pre-existing networks, these negotiators were able to achieve something their male predecessors had not: the ability to form a gender inclusive platform while advocating for increased roles for women throughout the peace process.

Having women participate in the formal peace negotiations helped to ensure that input from civil society groups was not reduced to symbolism. Instead, the negotiators on both sides of the table translated women’s interests into political, social, and economic guarantees to be included in the final agreement. Interestingly, a study found that Moro women were better equipped than men to preserve interethnic alliances when tensions between the two parties escalated—an added safeguard for peace owing to the new gender balance.\textsuperscript{962} Following the creation of the 2012 framework, Santiago consulted with Bangsmoro women to understand their conception of “meaningful political participation” and their other priorities.\textsuperscript{963} This resulted in the creation of several clauses that promote gender equality and women’s inclusion. For instance, the “right of women to meaningful political participation and protection from all forms of violence” is set forth as a basic right in the Bangsamoro.\textsuperscript{964} In addition, the Annex on Revenue Generation and Wealth Sharing includes a sub-section on “Gender and Development” which “set[s] aside at least five percent of the official development funds [the Bangsamoro] receives for support programs and activities for women in accordance with a gender and development plan” in order to “ensure that the needs of women and men are adequately addressed.”\textsuperscript{965}

3. Discussion

Given the limited inclusion of women in formal peace negotiations globally, how can we understand and contextualize the meaningful participation of women in Mindanao? To do so, the Philippine case study must be analyzed in conjunction with the broader international gender discourse. The pre-existing international legal framework on women’s rights—namely,\

\textsuperscript{960} O’Reilly, supra at 23.
\textsuperscript{961} Id.
\textsuperscript{963} Id.
\textsuperscript{965} Id.
UNSCR 1325 and its progeny—served to elevate the peacebuilding process in Mindanao by calling for a more holistic understanding of women as not just political stakeholders, but also as community members with distinct social and economic rights deserving of recognition, affirmation, and protection.

### 3.1 UNSCR 1325 and the Evolution of Peace and Security Discourse

The women of the Mindanao peace process benefitted from fourteen years of international conversation around women’s rights; this discourse not only helped secure their formal participation, but also heavily influenced the content of the final agreement’s provisions. The link between sustainable peace and women’s equal and meaningful participation in peace and security efforts has only solidified in the time following the passage of UN Security Council Resolution (UNSCR) 1325. Unanimously passed in 2000, UNSCR 1325 is the first UN Security Council Resolution to recognize the pernicious effects of gender-based violence against women and girls, particularly in the context of armed conflict. It also is the first to emphasize the importance of women’s participation in decision-making in peace processes.

Subsequent documents reiterate UNSCR 1325’s call to action including UNSCRs 1820, 1889, and 1960; General Recommendation 30 to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW); and in UN Sustainable Development Goals 5 and 16. These international texts, read together, recognize the disproportionate way in which armed conflicts negatively impact women and highlight the palpable absence of women in formal peace negotiations and stabilization efforts. They call for the prevention of sexual violence and demand accountability. Together, UNSCR 1325 and its progeny form the international women’s peace and security agenda and have elevated the discourse on the meaning of the “full and equal” inclusion of women.

A qualitative comparison of the Northern Ireland negotiations to the Mindanao peace talks illustrates that a more one-dimensional approach to women’s inclusion was taken prior to the adoption of UNSCR 1325. Women had to maneuver informal channels to gain access to the negotiating table in Belfast after being told that only leaders of the top ten political parties—of course, all men—could attend the peace talks. With only six weeks to organize, Catholic and Protestant women’s groups collaborated across the aisle and mobilized over 200 women’s organizations to create a new party. The resulting Northern Ireland Women’s

967 Id. at ¶ 2.
Coalition won two seats in the popular election. During the negotiations, the NIWC conducted regular consultations with civil society organizations to inform their priorities while drafting clauses to be included into the Good Friday Agreement. While the NIWC incorporated key provisions on housing and the needs of young people, references to women were scant. Only mentioned twice throughout the agreement, the main provision on women is an affirmation of “the right of women to full and equal political participation” as a human right.

The achievements of the Good Friday Agreement, which were revolutionary at the time, almost feel primitive when compared to the level of women’s inclusion in Mindanao just sixteen years later. The women of Northern Ireland fought tooth and nail to get a seat at the negotiating table by taking a backdoor approach that involved coalescing groups of women from disparate religious and political backgrounds to advance a united agenda. However, the final agreement only contemplates the rights of women in the political realm. Unlike the Comprehensive Agreement on the Bangsamoro, the Good Friday Agreement lacks any substantive acknowledgement of women in the social and economic spheres and fails to reference gender-based violence. This transformation is owed, in part, to the adoption of UNSCR 1325 and its progeny which served to re-conceptualize the role of women in society (particularly during armed conflict) and formulate a more holistic understanding of women’s rights. While these core gender resolutions are frequently criticized for their lack of legal force, the Mindanao case study, when analyzed against the peace process in Northern Ireland, illustrates that domestic approaches to women’s inclusion in conflict resolution are arguably evolving, albeit incrementally.

3.2 Philippine Domestic Legal Reforms

A thorough understanding of the factors that precipitated women’s inclusion in Mindanao requires a consideration of the top-down effects of the international gender dialogue on domestic lawmaking in the Philippines. The adoption of UNSCR 1325 spurred a cascade of domestic reforms designed to reaffirm the centrality of women in all aspects of society. Although some measures highlighting women’s issues pre-dated it (such as the 1987

972 Id.
Constitution, the 1995 Philippine Plan for Gender Responsive Development, and the Anti-Rape Act of 1997), many landmark instruments and policies emerged in the early 2000s to build upon the extensive body of international legal gender-based norms set forth in UNSCR 1325.

The Anti-Violence Against Women Act of 2004, for instance, was signed into law by President Gloria Macapagal-Arroyo and criminalizes “violence against women and their children.”\footnote{An Act Defining Violence Against Women and their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefore, and for Other Purposes, Rep. Act No. 9262 § 3 (Mar. 2, 2004) (Phil.).} It covers a wide range of offenses that historically evaded prosecution and punishment, recognizes “battered women’s syndrome,” and extends to protect women in dating relationships.\footnote{Id.} In a later effort to implement UNSCR 1325 and increase the status of women, the legislature drafted and passed the Magna Carta of Women (MCW) in 2009, a comprehensive women’s human rights law that seeks to recognize, protect, and promote the rights of Filipino women.\footnote{An Act Providing for the Magna Carta of Women, Rep. Act No. 9710 (Aug. 14, 2009) (Phil.).} It notably provides for the increased participation of women in peacebuilding and includes provisions for their protection from gender-based violence in armed conflict.\footnote{Id.} This piece of legislation also strengthened the Philippine Commission on Women (formerly the National Commission on the Role of Filipino Women) from a policy advisory body to a full-fledged policy-making agency.\footnote{PHILIPPINE NATIONAL ACTION PLAN, supra.}

Perhaps the most significant of these women-centric mandates is the Philippine National Action Plan (NAP) for its contributions to the participation rates of women in the peace talks. The Philippines officially adopted its National Action Plan (NAP) in 2010 to implement UNSCRs 1325 and 1820, and was the first country in Asia to do so.\footnote{Sahana Dharmapuri, Implementing UN Security Council Resolution 1325: Putting the Responsibility to Protect into Practice, 4 GLOBAL RESPONSIBILITY TO PROTECT 241, 247 n.16 (2012).} National women’s organizations, in partnership with the Office of the Presidential Adviser on the Peace Process (OPAPP) and regional civil society organizations, consulted key stakeholders across the country in drafting the NAP. The final document largely mirrors the themes of 1325: Protection and Prevention, Empowerment and Participation, Promotion and Mainstreaming, and Capacity Development, Monitoring, & Reporting.\footnote{The Philippines launched a second NAP in 2017; however, this document is not yet accessible to the public.}

As human rights legal instruments frequently are, these mechanisms are often criticized for lack of enforceability. According to OPAPP (which also oversees the implementation of the NAP), the NAP’s legal basis is anchored in the MCW.\footnote{Remarks by Teresita Quintos Deles, High-Level Review on UNSC Resolution 1325 on Women, Peace, and Security, PERMANENT MISSION OF THE PHILIPPINES TO THE UNITED NATIONS (Oct. 13, 2015),} However, as a legal document,
the MCW is essentially toothless. The language fails to impose binding duties upon the
government, with the usage of the word “shall” (669 mentions) in the document vastly
outnumbering words that traditionally create legal obligations such as “will” (33 mentions) and
“must” (4 mentions).\textsuperscript{982} Similarly, NAPs are critiqued for lacking concrete reporting and
accountability mechanisms. While the Philippine NAP identifies clear priority areas, it does
not provide for specific monitoring bodies nor budgetary allocations, which may pose obstacles
to long-term implementation.

4. Conclusion

How, then, did the women of the Mindanao peace process make their way to the
negotiating table? How did their participation transcend mere representation and how were
they able to secure multiple gender provisions in the final agreement? In no small part, the
sizeable body of Philippine legislation clearly delineating the rights of women (and the NAP, in
particular) enabled this historic achievement. Had it not been for UNSCRs 1325, 1820, and the
groundwork laid by the international community at large, this triumph may not have been
realized. Qualitative research suggests that the codification of norms into a legal framework
does, in fact, alter state behavior—even sans legal force.\textsuperscript{983} Mapping the evolution of the
international legal discourse on women’s rights parallel to the development of the Philippines’
gender-based legislation seems to confirm this. Therefore, the act of articulating and localizing
these shared principles into domestic legal reforms is essential. Specifically, the development
of a detailed National Action Plan to implement UNSCR 1325 is a critical tool to crystalize
women’s rights and promote women’s participation in peacebuilding.

Teresita Quintos Deles, the President Adviser on the Peace Process, invoked a
traditional mat-weaving metaphor to emphasize the importance of the Philippine NAP—the
Philippine NAP would not have been possible without years of gender-focused domestic
reforms and international gender dialogue, which “enabled [the Philippine government] to
weave a meticulous overlay of legal frameworks, implementing structures, institutional
mandates...[with] inclusive and inter-generational intentions” for the purpose of “bringing all
Philippine armed conflicts to a peaceful end.”\textsuperscript{984}

\textsuperscript{982} Magna Carta of Women, \textit{supra}.
\textsuperscript{983} David Sloss, \textit{Do International Norms Influence State Behavior?}, 38 GEO. WASH. INT’L. L. REV. 159, 161
\textsuperscript{984} Teresita Quintos Deles, \textit{supra}.

\url{https://www.un.int/philippines/statements_speeches/high-level-review-unsc-resolution-1325-women-peace-and-
security}.
4. Recommendations

4.1 Specific

- Develop a centralized database within the Office of the Presidential Adviser on the Peace Process to track the implementation of the gender provisions outlined in the Comprehensive Agreement on the Bangsamoro.

- Amend Philippine National Action Plan Action Point 2.11 to strive for a “proportionate” number of women in peacebuilding efforts and peacekeeping operations, not merely an “increase.”

4.2 General

- Encourage UN member states, particularly conflict-affected countries such as Yemen, to develop or revise National Action Plans to incorporate detailed measures targeted at improving gender inclusivity in conflict resolution processes.

- Extend UN Sustainable Development Goal 5 to include an indicator tracking women’s full and effective participation in peace negotiations.
THE CONTINUING STATELESSNESS OF ROHINGYA WOMEN
Karin Shmulevich

1. Introduction to the Crisis in Myanmar

Beginning as early as 1978, over 200,000 Rohingya men, women, and children fled Burma to Bangladesh. In what the Burmese government deemed “Operation King Dragon,” the Rohingya people, a minority Sunni Muslim population, faced military oppression, mass murder, rape, and irreparable damage to Muslim religious landmarks. The government masked this operation under the veil of weeding out foreigners prior to conducting a national consensus. However, given that the Rohingya did not have an official legal status in Burma due to the country’s discriminatory citizenship laws, the government essentially forced the Rohingya people out of state lines. A more subtle reason for the government’s actions in the late 1970s was an engrained dissatisfaction for the Rohingya population stemming from a 1947 extremist attack. In 1947, the Mujahid Party – made up of extremist Rohingya – came together with the goal of overturning the government and creating an autonomous Muslim state. However, the Mujahid Party was unsuccessful in their plans, which further heightened the government’s discontent with the Rohingya and fueled the government with a “justification” for their future actions. Undeniably, this has caused the Rohingya to flee Burma, present-day Myanmar, ever since.

Indeed, in 1991 and 1992, and again more recently in 2012 to present day, hundreds of thousands of Rohingya continue to flee Myanmar due to mass murder, oppression, forced labor and sexual violence, religious persecution, and the destruction of their land and homes by the government. The High Commissioner of Human Rights has deemed the situation in Rohingya to be a “textbook example of ethnic cleansing.” Especially where ethnicity and

985 Although notable that tensions between the Rohingya people and the government of Burma (currently known as Myanmar) pre-dated this.
987 Id.
991 Id.
992 Id.
gender intersect, this cleansing has resulted in a disproportionate impact on women and children who, upon fleeing, remain stateless and have difficulty seeking refuge more generally in countries such as Thailand, Malaysia, and Indonesia.

A major force behind this struggle is the 1982 Citizenship Law, which creates three classes of citizens (full, associate, and naturalized), and effectively denies the Rohingya people nationality altogether because they are not believed to have lived in the country on or before 1823, nor do they belong to one of the 130 ethnic groups recognized by the government. Consequently, Rohingya women and children are discriminatorily denied access to education, health care, social security, safe employment, and other securities, and continue to face issues of rape, human trafficking, violence, and even murder. Moreover, women fleeing to Indonesia in particular, a state with a very large Muslim population, face further obstacles in being granted equal rights to their male counterparts, and are further denied citizenship rights there. Accordingly, the Rohingya story emphasizes that citizenship goes to the very heart of peace and security, not just identity. In other words, not being recognized as having citizenship is one of the most powerful weapons in conflict, which continues to grow all around the world.

Given this crisis, Part II of this paper will discuss the legal framework within which countries such as Myanmar operate, and will pay close attention to the international norms and obligations that focus on the rights of women and children for overall gender equality and empowerment, at the center of which is Sustainable Development Goal No. 5 (SDG 5). Additionally, international norms surrounding nationality and citizenship will be discussed since conflict can be both a cause and a consequence of statelessness, especially as women flee to bordering countries such as Bangladesh, Thailand, Malaysia, and Indonesia. Following, Part III will analyze the crisis in Myanmar and focus on the violence and oppression that is occurring against Rohingya women and children, with a particular focus on how the statelessness of the Rohingya women exacerbates their vulnerable situations. This section will also highlight the early warning indicators of conflict that are present in Myanmar, the main one being the lack of citizenship rights for Rohingya individuals. An application of the international legal principles set out in Part II will be done throughout. Next, Part IV will focus on Indonesia due to its large Muslim population, and will analyze how there is a continuation of human rights violations against women there even when they flee and hope for a life without such hardship. Additionally, the Citizenship Law of Indonesia will be discussed with regard to

---

996 *Id.*
how it fails to address the statelessness issue of Rohingya women who come seeking refuge, leaving these women just as stateless as they were when they arrived. Last, Indonesia’s Code of Law will be examined in terms of its treatment of women and will be juxtaposed to the religious texts of the Qur’an and Hadith, which suggest a more egalitarian treatment of women in Islamic society. Thus, the dichotomy between local laws and religious laws under which Islamic law operates will be unraveled, in turn exposing the reality that women who flee to Indonesia do not end up reaping the benefits of citizenship rights and gender equality that they aspire to achieve. Finally, the culmination of this paper in Part V will provide recommendations to the UN and to Myanmar and Indonesia, suggesting that the Myanmar crisis is not just a local issue; rather, it is quickly becoming an international problem for peace and security that must be promptly addressed.

2. Legal Framework

The international legal framework within which countries like Myanmar operate includes several key conventions and treaties, each with pertinent articles addressing issues of gender equality and citizenship rights. These provisions, in the context of peace and security, are paramount to ensuring that women’s rights and liberties are neither erased nor ignored.

To begin, the Committee on the Elimination of Discrimination Against Women (CEDAW) is the international bill of rights for women, seeking to end discrimination against women, which is defined as “any distinction, exclusion or restriction made on the basis of sex…” Specific to the crisis in Myanmar, Articles 9, 10, 12, and 16 are particularly important. Article 9 states that women shall be treated equally compared to their male counterparts when retaining or changing their nationality, and that a woman’s nationality should remain independent of her husband’s. Moreover, women shall be granted “equal rights with men with respect to the nationality of their children.”

Next, Articles 10 and 12 address issues of equal access to education and healthcare, which stateless Rohingya women and children are deprived of both in Myanmar and in the countries to which they flee. Article 10 discusses that women shall be granted the same rights as men in “career and vocational guidance,” and that gender stereotypes shall be eliminated in the educational environment. Article 12 emphasizes equal access to health

999 CEDAW, supra note 14, art. 9.
1000 Id.
1001 CEDAW, supra note 14, art. 10, art. 12.
1002 CEDAW, supra note 14, art. 10.
care services for men and women alike. In fact, both articles are concerned about the future impact of education and healthcare as it relates to the well-being of families and family planning. This is of heightened importance in Myanmar because the statelessness of the Rohingya people make such services and securities impossible to attain, and when coupled with the fact that women are more prone to discrimination in the context of education and healthcare to begin with, this elevates the complexity of the issues.

Equally important, Article 16 of the CEDAW addresses marriage and family life, where both men and women shall share the same right to enter into marriage with “free and full consent.” Notably, Article 16(d) states that men and women must have “The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount.” If read in connection with Article 9, which addresses nationality, men and women should thus have equal rights in relation to conferring their citizenship onto their children, which unfortunately has not been case in countries such as Myanmar, nor is it the case in Indonesia.

Moving on, General Recommendation No. 30 under the CEDAW [hereafter GR 30] integrates Security Council Resolutions 1325, 1820, and 1889 into itself. With regard to 1325, GR 30 urges states to ensure that women are represented at the table, and to “guarantee women’s meaningful participation in processes relating to the prevention, management and resolution of conflicts.” In other words, 1325 re-imagines women’s role as agents of peace, rather than victims of war, and creates a paradigm shift where women are recognized as drivers behind decision-making and peace negotiations. Similarly, GR 30 incorporates the language of Security Council Resolution 1820 by stating that “women and girls are primarily and increasingly targeted by the use of sexual violence… as a tactic of war.” This resolution condemns the use of sexual violence as a tool of war, where women’s bodies are used as a platform for conflict proliferation. Last, Security Council Resolution 1889 is also interwoven into the fabric of GR 30, and speaks to the importance of women’s engagement in post-conflict environments, as a progeny of 1325. By incorporating these three Security Council Resolutions into its very essence, GR 30 seeks to remind countries just how critical women’s participation in decision-making is for national peace and security.

1003 CEDAW, supra note 14, art. 12.
1004 CEDAW, supra note 14, art. 10, art. 12.
1005 CEDAW, supra note 14, art. 16(b).
1006 CEDAW, supra note 14, art. 16(d).
1007 CEDAW General Recommendation No. 30, ¶45 (2013) [hereafter GR 30].
1008 S.C. Res. 1325.
1009 GR 30, supra note 23, ¶ 35.
1010 S.C. Res. 1820, Preamble.
1011 S.C. Res. 1889.
Particularly relevant to the crisis in Myanmar is GR 30’s emphasis on the negative impacts of women who are stateless. GR 30 deems conflict as “both a cause and a consequence of statelessness.”\(^{1012}\) Indeed, conflict between various ethnic and religious groups in Myanmar has caused the statelessness of the Rohingya women we see today, and the statelessness of the Rohingya women has resulted in more conflict, as these women and children flee to neighboring countries and retain their stateless status. Moreover, GR 30 recognizes that statelessness and displacement of women and children causes an increased risk of sexual violence,\(^{1013}\) sexual trafficking, rape, and prostitution.\(^{1014}\) Undeniably, citizenship offers many securities, such as access to healthcare, education, social security, and other resources that stateless Rohingya women and their children cannot attain, neither in their current state nor in the state to which they flee as they remain stateless.\(^{1015}\) GR 30 reminds all states that their obligations under the CEDAW “continue to apply during conflict or states of emergency without discrimination between citizens and non-citizens within their territory or effective control.”\(^{1016}\)

Equally pertinent is CEDAW General Recommendation 32 [hereafter GR 32], which applies a gender perspective to issues of “refugee status, asylum, nationality, and statelessness of women.”\(^{1017}\) GR 32 incorporates the 1951 Convention Relating to the Status of Refugees\(^{1018}\) into its discussion, and recognizes the seriousness of displacement, seeking asylum, refugee status, and the impact these stages have on women.\(^{1019}\) As a result, it calls upon the 1951 Convention to include gender-based prosecution as an additional factor by which women may obtain refugee status.\(^{1020}\) Currently, the 1951 Convention only recognizes five factors through which to obtain refugee status, including race, religion, nationality, membership of a particular social group, or political opinion.\(^{1021}\) Additionally, GR 32 is concerned that many countries continue to treat claims of women who seek refugee status or eventual nationality through a male lens.\(^{1022}\) As a result, claims by women are either not properly handled or rejected altogether, which leaves stateless women like the Rohingya stateless for perpetuity.\(^{1023}\)

Moreover, GR 32 calls upon states to ensure that women’s rights are not discriminated against

---

1012 GR 30, supra note 23, ¶58.
1013 GR 30, supra note 23, ¶60.
1014 GR 30, supra note 23, ¶23, ¶60.
1015 GR 30, supra note 23, ¶60.
1016 GR 30, supra note 23, ¶2.
1017 CEDAW General Recommendation No. 32, Preamble (2014) [hereafter GR 32].
1018 Neither Myanmar nor Indonesia are state parties to the 1951 Convention Relating to the Status of Refugees.
1019 GR 32, supra note 23, at 5.
1020 GR 32, supra note 23, ¶13
1021 Id.
1022 GR 32, supra note 23, ¶16.
1023 Id.
or violated during all parts of the displacement cycle, “beginning from the moment of arrival at
the borders.” Human Rights Council report A/HRC/23/23 further hones in on the notion that
stateless individuals are in an “extremely vulnerable situation,” and that stateless women are at
a particularly high risk of violence overall, including but not limited to domestic abuse and
trafficking, and facing the loss of their children. Additionally, A/HRC/23/23 states that there
are many negative consequences to discriminatory nationality laws for women in countries to
which they flee, one of which is statelessness itself. As such, receiving states must also help
women with the process of reintegration into society as soon as they arrive, in order to help
them secure nationality for the further enjoyment of basic human rights, which is undeniably
important in crises such as this.

Notably, “nationality is frequently a prerequisite for the enjoyment of basic human
rights” such as the right to healthcare, education, and other securities, which suggests that the
lack of access to nationality is a clear early warning indicator of conflict. Thus, it is
imperative that receiving states work towards ensuring that women who flee from countries
such as Myanmar have the means to reintegrate into society, which would include also having
the proper tools to obtain access to nationality rights so that basic human rights can then follow.
In the Rohingya context, where many stateless women are fleeing with their children, states
that recognize “derivative status” would enable children to derive either nationality or refugee
status from the recognition of a parent as a national or refugee, and vice-versa. From a
broader perspective, this has the potential of saving hundreds of thousands of lives.

In addition to the CEDAW, the Universal Declaration of Human Rights (UDHR), the
Convention on the Rights of the Child (CRC), the International Covenant on Civil and Political
Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights
(ICESCR), and the 1954 Convention Relating to the Status of Stateless Persons in conjunction
with the 1961 Convention on the Reduction of Statelessness are also integral components of the
legal framework under which countries like Myanmar operate. Specifically, Article 15 of the
UDHR states that, “Everyone has the right to a nationality,” and that “No one shall be
arbitrarily deprived of his nationality nor denied the right to change his nationality.”
Particularly with regard to children and to those who are born stateless, Article 7 of the CRC

---

1024 GR 32, supra note 23, ¶24.
1025 REPORT ON DISCRIMINATION AGAINST WOMEN ON NATIONALITY RELATED MATTERS, INCLUDING THE IMPACT
ON CHILDREN, H.R.C. OFFICE OF THE UN HIGH COMMISSIONER FOR HUMAN RIGHTS, DOC. NO. 23-23, ¶3, ¶53 (23rd
1026 Id. at ¶7.
1027 Id.
1028 GR 32, supra note 23, ¶51.
1029 GR 32, supra note 33, ¶42.
states that children have a right to nationality at birth.  

Moreover, Article 18 of the CRC states that both parents have a common responsibility for upbringing their children, and if such equality is recognized, both parents should therefore also have an equal right confer their citizenship onto their children.

Next, ICCPR Article 23, which encompasses family and marriage life, reiterates fundamental principles of the CEDAW, such as the necessity of “free and full consent” of both parties for a marriage to be valid. Article 23 further emphasizes that states “shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage,” and that if the marriage dissolves, “provision[s] shall be made for the necessary protection of any children.” ICESCR Articles 9, 10, and 14 are also critical in that they advocate for the right to social security, that children shall not be discriminated against on the basis of parentage or other conditions, and that everyone shall have the right to education, respectively. Last, the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness work in tandem to ensure that stateless individuals, defined as those “who [are] not considered as a national by any State under the operation of its law,” have a right to education, employment, and housing. In addition, Article 4(1) of the 1961 Convention on the Reduction of Statelessness is important because it addresses the issues of the nationality of a child who is born to parents of different nationality, and leaves it up to the law of the state in question to determine the child’s nationality. Article 4(2)(d) of the 1961 Convention recognizes that a state may grant nationality to an individual who “has always been stateless.” Finally, Article 6 is especially important in migratory situations such as in Myanmar where if an individual loses his/her nationality due to the loss of nationality by a spouse or parent, the individual shall be able to obtain another nationality. Taken together, both conventions on statelessness seek to protect those in conflict situations by ensuring a right to nationality and the securities that accompany this right, especially when the ability to obtain nationality is not guaranteed.

---

1030 Convention on the Rights of the Child, art. 7 (entered into force Sept. 2, 1990) [hereafter CRC].
1031 CRC, supra note 44, art. 8.
1032 CRC, supra note 44, art. 18.
1033 International Covenant on Civil and Political Rights, art. 23(3) (entered into force Mar. 23, 1976) [hereafter ICCPR].
1034 ICCPR, supra note 47, art. 23(4).
1037 1954 Convention, supra note 50, art. 17, 21-22, 24.
1039 1961 Convention, supra note 52, art. 4(2)(d).
1040 1961 Convention, supra note 52, art. 6.
Finally, Sustainable Development Goal No. 5 (SDG 5) speaks directly to the international standard for women’s rights and goes to the very core of the issues involved in this crisis. SDG 5 aims to achieve equality among men and women and to empower women.\textsuperscript{1041} Its targets include, but are not limited to: “(5.1) end all forms of discrimination against all women and girls everywhere; (5.2) eliminate all forms of violence against all women and girls in the public and private spheres, including trafficking and sexual and other types of exploitation; (5.3) eliminate all harmful practices, such as child, early, and forced marriage and female genital mutilation; (5.5) ensure women’s full and effective participation and equal opportunities for leadership at all levels of decision-making in political, economic and public life; (5C) adopt and strengthen sound policies and enforceable legislation for the promotion of gender equality and the empowerment of all women and girls at all levels.”\textsuperscript{1042} Some key indicators laid out in SDG 5 include: a lack of legal frameworks in countries that seek to promote and enforce equality, a high proportion of women who were married before age 15 and before age 18, a high proportion of women and girls aged 15 years and older who have been a victim to sexual violence, and a low proportion of women in leadership positions, among others.\textsuperscript{1043} Notably, none of Myanmar’s SDG reports, filed in 2017, 2016, 2015, 2012, and 2002, make any reference to SDG 5, which is problematic given that Myanmar has many of these early warning indicators as will be described in more detail in the next section.\textsuperscript{1044}

3. The Crisis – Myanmar

“I wouldn’t have to live this life if I wasn’t a Muslim.” Anwar Sardad, a ten-year-old child laborer in Myanmar, October 2013.\textsuperscript{1045}

Given the legal skeleton governing the international community within which countries like Myanmar operate, it is remarkable how Myanmar’s grave situation continues to persist. Indeed, Myanmar is a member of the UN Charter and has signed on to the Universal Declaration of Human Rights (UDHR), thereby making Security Council Resolutions 1325, 1820, and 1889 applicable.\textsuperscript{1046} Additionally, Myanmar has signed the Committee on the Elimination of Discrimination Against Women (CEDAW) (1997), the Convention on the Rights of the Child (CRC) (1991), the International Covenant on Economic, Social and Cultural

\textsuperscript{1041} Sustainable Development Goal No. 5, https://sustainabledevelopment.un.org/sdg5 [hereafter SDG 5].
\textsuperscript{1042} Id.
\textsuperscript{1043} SDG 5, supra note 55.
\textsuperscript{1044} SDG 5, supra note 55; https://sustainabledevelopment.un.org/memberstates/myanmar.
\textsuperscript{1046} U.N. Charter, ¶ Member States.
Rights (ICESCR) (2017), and is a member of the Sustainable Development Goals. However, despite these international obligations, there are several early warning indicators that are prevalent, perhaps the most consequential being the 1982 Citizenship Law.

The 1982 Citizenship Law, as previously explained, has undoubtedly led to the stateless status of the Rohingya by making it impossible for this minority Sunni Muslim population to ever obtain citizenship status. Children born to Rohingya parents are rendered stateless at birth, which violates CEDAW Article 9 on the right to nationality, UDHR Article 15 on the right to nationality, CRC Article 7 on the right to nationality at birth, and both the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. Moreover, statelessness escalates the inability of women and children to obtain access to education, healthcare, social security, and other resources. Recently, “in the days leading up to 25 August 2017, security forces imposed further restrictions on Rohingya access to markets, medical facilities, schools and religious sites.” The situation in Rohingya thus very clearly conflicts with CEDAW Articles 10 and 12 on the right to education and healthcare, ICESCR Articles 9 and 14 on the right to social security and education, and CRC Articles 16, 34, and 30 on the right to social security, education, and enjoyment of these rights even for minority groups, respectively. Additionally, the Rohingya crisis goes against the very core of GR 30 and GR 32, which expose the negative impacts of statelessness and refugee status as pertaining to national peace and security and individual human rights violations of both women and children.

Next, the 1982 Citizenship Law has escalated the sexual violence and instability that Rohingya women and children face on a daily basis because they are more vulnerable to insecurity and high-risk situations due to their status. The UN Special Representative on sexual violence in conflict referred to the gang rape against the Rohingya as “a calculated tool of terror aimed at the extermination and removal of the Rohingya as a group.” Additionally, the

1048 Universal Declaration on Human Rights, art. 15 (1948) [hereafter UDHR]; CEDAW, supra note 14, art. 9; CRC, supra note 44, art. 7, 1954 Convention, supra note 50; 1961 Convention, supra note 52.
1049 REPORT OF THE SPECIAL RAPPORTEUR ON THE SITUATION OF HUMAN RIGHTS IN MYANMAR, H.R.C. DOC. NO. 37-70, at 11 (37th Sess. 2018); see also GR. 32, supra note 33, ¶51, 53 (claiming that nationality is a fundamental prerequisite for the enjoyment of basic human rights).
1051 CEDAW, supra note 14, art. 10, 12; ICESCR, supra note 49, art. 9, 14; CRC, supra note 44, art. 16, 34, 30.
CEDAW Concluding Observations for Myanmar recognized the 1982 Citizenship Law as a major source of the violence that follows, urging Myanmar to revise this law and implement legislation to protect the rights of women against sexual abuse, rape, and trafficking. In addition, Myanmar currently has no laws on domestic violence, which heightens the risk women face and is a clear early warning indicator of brewing conflict. SDG 5 also establishes as a main target the elimination of violence again women and girls in public and private spheres, which is clearly being violated here. Unfortunately, the violence and abuse women experience is perpetrated by both military and armed groups outside, as well as by other Rohingya men inside. Violence in the home (i.e., in the private sphere) has been shown to be a serious indicator of violence and assault outside of the home (i.e, in the public sphere).

To humanize this phenomenon, the story of Rahima, a 15-year-old Rohingya girl who fled to Bangladesh, is described below:

Growing up, Rahima’s father would beat all of the women in her private household (including her sister, her mother, and herself) if either of the two sisters left the house on their own. Her father claimed that he had a “duty to protect” the sisters from the “bad men” out there. One day, Myanmar troops burned Rahima’s village. In an attempt to flee, Rahima’s mother’s “throat was sliced by the blade of a Buddhist vigilante.” Her sister also did not make it out alive, which left Rahima on her own. Consequently, Rahima attempted to flee to Bangladesh, where two Myanmar troops captured her and gang-raped her in the jungle at the border. Miraculously, Rahima survived, but she must now live alone in Kutupalong, a refugee camp in Bangladesh, with the psychological trauma of the events that occurred.

Rahima’s story is one of thousands of those who survived. Unfortunately, many women and children do not make it as far as Rahima did. For those who do make it to refugee camps, however, domestic abuse persists, carrying this early warning indicator into those countries to which Rohingya women flee. In fact, during a six-day period in October 2017, UN staff recorded 306 incidents of gender-based violence in the camps, of which 96% required emergency medical attention. The engrained abusive mindset that dominates the private

---

1053 CEDAW Concluding Observations on the Combined Fourth and Fifth Concluding Reports of Myanmar, at 4-5, 7, 9 (July 25, 2016) [hereafter CEDAW Concluding Observations Myanmar].
1054 Id. at 201.
1056 SDG 5, supra note 55, Target 5.2.
1059 Id.
sphere, and carries over to the public sphere, is exemplified by the testimony of a Rohingya male who is currently in a Bangladesh refugee camp: “I beat my wife to keep her on track… I beat her if she doesn’t listen to me. There are many reasons to beat her.” This example cuts directly against GR 32, which signals to states that they have an obligation to ensure women’s rights throughout the entire displacement process, which includes their presence in refugee camps.

Other early warning indicators are prevalent as well. First, there has been an increase in female-headed households among the Rohingya, which is a key marker of conflict. According to the UN High Commissioner for Refugees, due to a substantial increase in Rohingya men who have gone missing, women are now heading 17% of Rohingya households in refugee camps in Bangladesh alone. As a result, in order to feed their families many of these women (who are now single mothers) must resort to dangerous jobs, such as working as prostitutes, which highlights the use of women’s bodies in conflict. Others fear for their lives when they have to go out to collect firewood on their own in order to sustain their families. Moreover, there is a large increase in the number of forced marriages between young girls in their early teens and older men. According to Professor Yasmin of the University of Dhaka, there is a prevailing Rohingya mindset that this marriage is a strategic way to prevent women from being raped by Myanmar troops, since if they marry young and get pregnant early, they have a lower risk of being targeted. This justification is, in and of itself, very troubling, and undeniably violates international norms such as the CEDAW, ICCPR, and the CRC, among others. In particular, there is a violation of CEDAW Article 16 and the ICCPR Article 23, which necessitate that marriage involves the “free and full” consent of both parties since this marriage is forced. Additionally, this violates CRC Article 34, which covers the sexual exploitation and abuse of children, since the aim here seems to be to impregnate girls at a young age. Moreover, SDG 5 is violated, particularly Target 5.3 which seeks to “eliminate

---

1060 Id.
1061 GR 32, supra note 33, ¶ 24.
1064 Id. Ms. Khatun, age 21, describes her work as a prostitute in order to feed her son, where she can earn up to $25 a day – much more than her previous jobs in food markets.
1066 Id.
1067 Id.
1068 CEDAW, supra note 14, art. 16, ICCPR, supra note 47, art. 23.
1069 CRC, supra note 44, art. 34.
all harmful practices, such as child, early, and forced marriage…” Sex trafficking is another big issue among girls who flee, which violates CRC Articles 34 and 35 governing sexual exploitation and trafficking of children, as well as SDG 5 Targets 5.1, 5.2, and 5.3.1070 Sadly, even if surviving rape victims eventually get to refugee camps, they are seen as “damaged goods” and are thus more susceptible to sex trafficking.1071

Equally worrisome are other abuses of women’s bodies as they are being used to propagate conflict. In order to instigate nationalist attitudes, false rumors of sexual abuse are being increasingly used to start riots in Myanmar.1072 This is particularly significant because nationalist groups are not using political leverage to achieve their aims; rather, they are using women’s bodies deliberately as contested sites of violence. This directly conflicts with the aim of Security Council Resolution 1820, which renders sexual violence as a tool of war and elevates it to a national security issue.1073 Additionally, 1820 equates inaction by a state with regard to issues of sexual abuse and violence with action by the state that must be condemned.1074

There is also a severe lack of women in positions of decision-making and leadership who cannot contribute in discussions surrounding the process towards peace, which violates the very core of Security Council Resolution 1325 and 1889, as well as SDG 5. As noted in the Concluding Observations for Myanmar, there is no National Action Plan to implement Security Council Resolution 1325 or SDG 5 in order to bring more women to the forefront of decision-making.1075 Specifically, the Concluding Observations note that Myanmar has no statutory quotas, not even temporary ones, that aim to include more women from minority groups in legislative process, which is a significant barrier to ever getting women a seat at the table.1076 In addition, although Myanmar has created The National Committee for Women’s Affairs as part of the women’s movement, this committee significantly lacks adequate resources to effectively operate, thereby creating a mirage of progress, so to speak.1077 Interestingly, the current State Counsellor, Aung San Suu Kyi, is a woman. However, under her watch, mass atrocities of women are continuing to occur. Perhaps one reason for this is because of groups like the National Committee for Women’s Affairs, which exist, but do not have enough resources and

---

1070 CRC, supra note 44, art. 34-35; SDG 5, supra note 55.
1073 S.C. Res. 1820.
1074 Id.
1075 CEDAW Concluding Observations Myanmar, supra note 68, at 3.
1076 CEDAW Concluding Observations Myanmar, supra note 68, at 6.
1077 Id.
support to get their mission off the ground.

Therefore, the crisis in Myanmar, which stems from a historically discriminatory Citizenship Law, is gravely effecting women and children who identify as part of the Rohingya people. In turn, the government of Myanmar uses the statelessness of the Rohingya as a driver for conflict in order to eliminate them as a people – a conflict that translates directly onto the bodies of women via sexual violence and exploitation. Thus, citizenship goes to the very heart of peace and security of both Myanmar and the region at large, as Rohingya women and children continue to flee to neighboring countries such as Bangladesh, Thailand, Malaysia, and Indonesia.

4. The Crisis Travels – A Focus on Indonesia

Between August 2017 and February 2018, an estimated 671,000 Rohingya have fled from Myanmar to Bangladesh alone.1078 When considering how many more Rohingya have fled to Thailand, Malaysia, and Indonesia, among other countries, the numbers become unfathomable. Undoubtedly, the Myanmar crisis is no longer a regional issue – it has taken on an international persona and will continue to spread and threaten states’ peace and security if prompt action is not taken. This part will focus on the Rohingya women’s migration to Indonesia – a country with the largest Muslim population, though not technically an “Islamic state” per se.1079 Indonesia, as a case study, highlights the very essence of the continuing struggle that Rohingya women face – that is, by fleeing Myanmar, Rohingya women hope to obtain greater freedoms and gender equality, particularly with regard to citizenship rights and the ability to confer their citizenship onto their children. However, the reality that Rohingya women must crudely face upon their arrival to Indonesia is that the national laws prohibit women from attaining such rights, thereby leaving the Rohingya both stateless and powerless.

To begin, Indonesia’s international obligations include the CEDAW, the CRC, the ICCPR, the ICESCR, and it is a member of the Sustainable Development Goals as well. On a local level, the 1991 Islamic Code of Law and the 1958 Citizenship Law are critical legal frameworks around which women’s rights are governed, particularly in the marital and familial contexts.1080 Indonesia falls within the category of countries that have tried to reform such laws, but still rely on fundamental principles of the Qur’an and the Hadith, making reform a

---

very slow and polarizing process. This is not surprising, however, because traditional Islamic law theory rests on the notion that tradition and custom are the law, and thus any attempt to reform the law is seen as an attempt to go against tradition and religion.

Scholars such as Dr. Siti Mushdah Mulia argue that law reform in Indonesia is absolutely necessary to increase the status of women due to several critical issues that Indonesia’s Code of Law entails. In particular, these issues include, but are not limited to: “…the minimum age requirement for marriage, the role of father or male relative legally responsible for the bride (waliy), marriage registration, financial capability in marriage, polygamy, household income, limitation of a husband’s right to divorce, the rights and obligations of husbands and wives after divorce, pregnancy and its implications, parents’ ijbar right, distribution and allocation of inheritance...” Additionally, the State Department’s Human Rights Report on Indonesia notes several other key issues that women in Indonesia face, including but not limited to: violence against women, trafficking of both women and children, rape and lenient laws on punishing perpetrators, child prostitution, underage marriage, and male domination in the private household sphere. In 2001, the Ministry of Women’s Empowerment conducted a study and found that 11.4% of total female population, which is about 24 million women, experienced violence that is mainly perpetrated in the domestic realm. Given the number of women who have migrated to Indonesia due to the crisis in Myanmar, as well as for other reasons, this number is undoubtedly much more staggering and is in clear violation of international norms such as the CEDAW, UDHR, CRC, and SDG 5.

Moreover, with regard to citizenship, the Indonesian Citizenship Law “stipulates that a child’s citizenship is derived solely from his father. Children of citizen mothers and foreign fathers are considered foreigners…These children are prohibited from attending public schools.” Article 8(1) of the Citizenship Law states, “A woman, a citizen of the Republic of Indonesia, married to a foreigner loses her citizenship of the Republic of Indonesia, if and when she makes a statement as to that effect within one year after her marriage has been contracted except if, with the loss of the citizenship of the Republic of Indonesia, she becomes stateless.” This provision clearly reinforces the presence of a male authority over the

1081 Id. at 112.
1082 Id. at 111-112.
1083 Id. at 111.
1084 Id. (citing Tahir Mahmood, Personal Law in Islamic Countries (History, Text and Comparative Analysis), ACADEMY OF LAW AND RELIGION, NEW DELHI, 11-12 (1987)).
woman’s citizenship rights, and goes against GR 32 which highlights the importance of nationality in the further security of other basic human rights. Thus, stateless Rohingya women who flee Myanmar in hopes of obtaining citizenship in Indonesia and passing it on to their children are unfortunately far away from having this become a reality. However, Indonesia’s Citizenship Law seems to be in contradiction with the Qur’an, which, although it does not explicitly mention citizenship, suggests that “religion and domicile are the basic requirements of citizenship.” Thus, if this is the case, then Rohingya women, who are Muslim, should be granted citizenship in Indonesia rather than having to remain stateless. In fact, according to Islamic scholar Abdul Malik Al-Sayed, “No Muslim could [thus] be an alien in any Muslim land.” Scholar Mohammed Kumali incorporates this interpretation and further argues that “[full] and immediate community membership was acquired by any Muslim who took up residence in a Muslim community other than his original domicile without any formalities.”

Accordingly, Rohingya women and children who flee to Indonesia in hopes of a better life are faced with the harsh reality that there, too, they are again subject to statelessness and deprived of fundamental human rights such as the access to healthcare and education as a result of their status. This directly contradicts Indonesia’s responsibilities under the CEDAW and the CRC, as well as under the UDHR, ICCPR, ICESCR, and SDG 5 as was the case in Myanmar.

“Gender-based discrimination persists in Indonesian law, even though men and women play an equally critical role in establishing a family and, in the eyes of Allah, are equally appreciated for their hard work.” – Dr. Siti Mushdah Mulia

Similarly, the Indonesian Code of Law, which should seemingly be based on the Qur’an and Hadith, also goes against the fundamental principles of both. It is not a surprise, therefore, that Rohingya women who aspire to flee to Indonesia have very positive views about how they will be treated there under the law. For example, the Qur’an refers to marriage as a contract between two equal parties, where a man and a woman are on the same level playing field and there must be an agreement on both sides for the marriage to be valid. Furthermore, the

---

1089 GR 32, supra note 33, ¶51.
1091 Id.
1092 Id. at 126 (citing ABDUL MALIK A. AL-SAYED, SOCIAL ETHICS OF ISLAM: CLASSICAL ISLAMIC ARABIC POLITICAL THEORY AND PRACTICE 220 (1982)).
1093 Id. at 126.
1095 Id. at 119.
Hadith of Bukhari Muslim states, “every one of you is a leader and each of you will be asked about your leadership. A labourer is a leader for looking after his/her master’s possession, and will be asked for his/her work.” This notion, that both men and women may be “leaders,” can be interpreted to apply to both the private and public spheres. However, this notion fundamentally goes against the Code of Law of Indonesia which explicitly denotes men as heads of the household and women as “homemakers.” The language of Article 79 of 1991 Code of Law states, “(1) the husband is the head of the family and the wife is the homemaker.” Additionally, Article 83 states, “(1) The primary obligation of the wife is to serve her husband devotedly within the parameters permitted by Islamic Law; (2) a wife manages and arranges the daily needs of a household to the best of her ability.” Clearly, private sphere discrimination also translates into the public sphere, which violates Security Council Resolutions 1325 and 1889, as well as SG 5, all which seek to place women at the forefront of decision-making in order to promote peace. Thus, taken together, there is a clear air of male dominance in Indonesia’s local law that reinforces discriminatory practices, lack of leadership, and violence against women in both the private and public spheres despite the opposite treatment of these issues by the Qur’an and Hadith.

In sum, not only are the Rohingya women and children deemed stateless in their originating country of Myanmar, the statelessness and discrimination travels with them as they flee to bordering countries such as Indonesia. Thus, these women cannot reap the benefits of citizenship in the same way that their male counterparts can, and further cannot confer their citizenship to their children even if they do eventually attain citizenship status. This directly contradicts Article 9 and Article 16(d) of the CEDAW, which states that men and women must have “[t]he same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount.” This also contradicts GR 32 which states that receiving states must help facilitate the reintegration of stateless women seeking refuge, which would include not denying them of their basic human rights and ceasing any forms of discrimination and violence.

Indonesia also does not seem to follow Article 4(2)(d) of the 1961 Convention on the Reduction of Statelessness, which states that a state may grant nationality to an individual who has always been stateless. Although this may solve many of the citizenship issues that

1096 Id. at 132.
1097 Id. at 130.
1098 Id. at 130-131
1099 S.C. Res. 1325; S.C. Res. 1889.
1100 CEDAW, supra note 14, art. 16(d).
1101 GR 32, supra note 33, ¶24.
1102 1961 Convention, supra note 51, art. 4(2)(d).
women and children face, more must still be done in terms of gender equality and female empowerment as per SDG 5. To this point, the juxtaposition of governing religious texts such as the Qur’an and the Hadith with the 1991 Code of Law and the Indonesian Citizenship Law exposes a significant clash of principles that reinforces discriminatory practices against women and children, and thus must be addressed.

Ultimately, the issues as laid out in Indonesia undermine the very heart of GR 32 and SDG 5, which have strong aims of eliminating discriminatory practices between men and women and empowering women, especially those who are stateless and seek refuge in other countries. Furthermore, this elevates the issue of women’s rights to an international peace and security issue because stateless women fleeing to countries like Indonesia end up back at square one where violence, abuse, and deprivation of fundamental human rights continues. Once again, the notion that citizenship goes to the very heart of peace and security is reaffirmed, and GR 30’s notion that conflict is both a cause and a consequence of statelessness is also reinforced.

5. Recommendations

Undoubtedly, both nations as well as the UN must implement short-term and long-term initiatives in order to halt the proliferation of the Myanmar crisis as soon as possible. First and foremost, foreign aid must oversee operations that will put an immediate end to the ethnic cleansing that is occurring in Myanmar. As per the recommendation of the Special Rapporteur, Myanmar should “immediately allow unfettered access for humanitarian actions, national and international media and independent monitors.”¹¹⁰³ In conjunction with this, I also call upon Myanmar to create more crisis centers for victims of gender-based violence so that they can obtain immediate help, and these centers should be open to all individuals residing in Myanmar regardless of their citizenship status. In the same vein, I call upon both Myanmar and Indonesia to immediately ratify or accede to the 1951 Convention Relating to the Status of Refugees.

Furthermore, another short-term goal for Myanmar involves reforming or repealing its 1982 Citizenship Law such that it does not continue to discriminate against specific groups such as the Rohingya. This law should be reformed so that it becomes compliant with international norms such as the CEDAW, UDHR, CRC, both Conventions on Statelessness, and SDG 5. Given the large numbers of stateless Rohingya still in Myanmar, I call upon the nation to implement provisions in its Citizenship Law that would provide these individuals with unfettered access to healthcare and education regardless of their status in the near future. I also

call upon Indonesia to reform its Citizenship Law so that it is in compliance with GR 32 as well as Article 4(2)(d) of the 1961 Convention on the Reduction of Statelessness, which gives the state authority to grant nationality to an individual “who has always been stateless.”\footnote{1104} In doing so, Indonesia should further implement legislation that enables women who are stateless but are now also heads of their households to have access to the necessary resources in order to apply for citizenship, attain it, and pass it along to their children. This would place it in greater compliance with GR 32, which deems the receiving state as the responsible party in facilitating the reintegration of women and children once they cross the border.\footnote{1105} Moreover, for this to be effective, Indonesia should remove any and all discriminatory language in its Citizenship Law, such as language that grants men the ultimate authority over their spouse’s and children’s citizenship.\footnote{1106} These steps would make Article 4(1) of the 1961 Convention on the Reduction of Statelessness more effective since this provision leaves it up to the law of the state to determine a child’s nationality if the child is born to parents of different nationalities.\footnote{1107}

In conjunction with this, I also call upon the CEDAW Committee to ask questions of Rohingya migration reports in Indonesia, Bangladesh, and Malaysia. In fact, there is no mention of “Rohingya” anywhere in the Myanmar CEDAW report (June 1999) nor the Indonesia CEDAW report (February 1997). I ask the CEDAW Committee as to why this is the case in order to uncover potential gaps in the process.

Additionally, in order to target the cause of a large portion of the violence that has occurred and will continue to occur if no immediate action is taken, I call upon Myanmar to implement domestic laws against sexual abuse in the private sphere as soon as possible. Similarly, I call upon Indonesia to implement stricter laws on domestic violence and rape, particularly with regard to punishment of perpetrators. In order to reconcile the present tension between the Code of Law and the religious texts of the Qur’an and the Hadith, which is a major obstacle in this regard, I call upon Indonesia to obtain more Islamic scholars to be involved in the discourse surrounding the Qur’an and Hadith, and to help foster a greater understanding of why the Code of Law goes against the fundamental principles imbedded in these texts. These scholars may employ the normative power of the CEDAW and ICCPR to “overcom[e] the ideological barrier of traditionalist culture and religion to women’s equality...predicating a hierarchy of values in which women’s right to equality prevails over discriminatory traditionalist rules or practices.”\footnote{1108}

\footnote{1104} 1961 Convention, \textit{supra} note 52, art. 4(2)(d).
\footnote{1105} GR 32, \textit{supra} note 33, ¶24.
\footnote{1106} Citizenship Law of Indonesia, Art. 8.
\footnote{1107} 1961 Convention, \textit{supra} note 52, art. 4(1).
\footnote{1108} Frances Raday, \textit{Gender and Democratic Citizenship: The Impact of CEDAW}, 10 \textit{INT’L J. OF CONST. L.} (Mar. 30
Both nations must also seek stricter implementation of the Sustainable Development Goals, particularly SDG 5, and strive to increase their transparency with regard to reporting on their progress and enforcement of this goal. In order effectuate this, Myanmar and Indonesia should implement non-discriminatory legislation on the right to healthcare, education, and other services for all, and to provide more egalitarian provisions in their marital and familiar laws. Moreover, I call upon both nations to implement statutory quotas for women in legislative positions and management boards, especially for minority women, so that they too can contribute to the very decision-making process that will affect them for years to come. In addition, both nations can provide more funding and resources for women’s movements and groups such as the National Committee for Women’s Affairs so that these groups can be more than just names on annual reports, and become leaders in action. Overall, these measures would help both nations to come into compliance with the CEDAW, GR 30 and 32, SDG 5, and Security Council Resolutions 1325 and 1889.

Finally, I call upon the UN to create a protocol for reintegration when minority groups such as the Rohingya flee. I further urge both Myanmar and Indonesia, as well as other nations in the region, to create a joint response plan to deal with the influx of refugees so that they are not left vulnerable at nations’ borders. This joint plan may be supervised by the UN, particularly the UN High Commissioner for Refugees. Equally important, and as recommended by the Special Rapporteur, refugees shall be allowed to “return to their place of origin, not to camps, restore citizenship and recognize full rights, freedom of movement; and provide compensation to refugees for burned, damaged or looted property and goods.” In 2016, the Human Rights Council called upon the Office of the High Commissioner on Human Rights and the UN High Commissioner for Refugees to work together to execute a workshop on best practices “to promote women’s equal nationality rights in law and in practice, including the ability of women to confer their nationality on their spouse…” This workshop was aimed at reinforcing the OHCHR’s report (A/HRC/23/23), which analysed the issue of nationality-based discrimination against women and the effect of nationality-related matters on children. Using this workshop as a framework, I urge both Myanmar and Indonesia to implement similar workshops once they have reformed or repealed their citizenship laws in order to initiate what

111 Id.
would be the beginning of a paradigm shift regarding the way in which women’s nationality rights are approached and understood.

Overall, an international effort is necessary to respond to the ever-growing crisis that is continuing to violate human rights norms in order to stop it in its tracks. By addressing the very root of the problem – citizenship – there is a greater potential for future conflict to stop before it begins, and for the consequences of current conflict, specifically gender-based violence and discrimination, to be mitigated as well. Indeed, citizenship does not only go to the heart of identity, it goes to the very core of peace and security, and must be dealt with as a serious component in narratives such as the one in Myanmar.
LAND GRABBING AND THE IMPACT ON WOMEN’S PEACE AND SECURITY

By Justine Chiu

1. Introduction: Land Grabbing as a Women’s Issue

Land grabbing is a serious problem plaguing many developing countries; with three out of four people living in rural areas in the developing world and depending on agriculture to provide for themselves and their families, land security is a necessity to both the development of these countries and to the livelihoods of rural people. However, when land is “grabbed” by companies or powerful individuals, families are displaced from their homes and faced with insecurity of land tenure. Land security is necessary in a developing country; it is intimately linked with food security and is a necessary factor in lifting people out of poverty. Indeed, land insecurity leads to long-term social and environmental upheaval, as those displaced from their land become part of an underclass with “no stake in society and nothing to lose.”

Land grabbing not only displaces people from their homes and robs them of their livelihoods; it also disproportionately affects women. In many countries, women are the traditional keepers of the land and are responsible for providing for their families through the land. Without access to land, they bear the brunt of any negative consequences that result, including the responsibility of having to find alternative means to provide for their families and taking the fall if they are unable to do so. For example, land grabbing has led to increased rates of domestic violence as husbands blame their wives for their inability to provide for their families.

At the same time, governments of developing countries are often the culprits behind land grabbing. Governments strike lucrative land deals with foreign countries or well-connected individuals, giving away occupied land even when there are domestic laws in place that are intended to protect citizens’ claims on their land. In order to help prevent the loss of land security within developing countries, the United Nations (U.N.) Security Council should work to hold governments accountable for their role in land grabbing. If this can be accomplished, the U.N. Security Council can help battle the economic and resource instability that often leads to a loss of women’s peace and security.

2. Cambodia as a Case Study for Land Grabbing

1113 Id.
1114 Id.
1116 Cambodia’s Women in Land Conflict, infra note 1124.
1117 Id.
In order to demonstrate the destructive effects land grabbing can have on a country and its women, I would like to focus on Cambodia as a case study. By examining land grabbing data and domestic and international laws, I hope to demonstrate how land security is integral to women’s peace and security and ultimately offer recommendations on how the U.N. Security Council can support Cambodian women, and women in all countries affected by land grabbing, amidst land conflicts.

Cambodia has abundant natural resources, with one of the highest per capita rates of agricultural and forest land in all of Asia.\textsuperscript{1119} However, the distribution of land is extremely unequal, with approximately 75 to 80\% of all land in the country held by the Royal Government of Cambodia (RGC) as state land, and as much as 30\% of the remaining land held by 1\% of the population.\textsuperscript{1120} In addition, approximately 80\% of Cambodia’s population lives in rural areas.\textsuperscript{1121}

In 2001, the government passed the Land Law, which allows it to convert state public land to state private land; state private land can be granted as Economic Land Concessions (ELCs) to “Cambodian business tycoons, political elites and foreign investors, mostly for agro-industrial plantations” in the name of development.\textsuperscript{1122} The problem, however, is that the land held by the government often includes land that is already occupied and cultivated by Cambodian citizens. Oftentimes, these residents only discover that their land has been deeded to a foreign company when bulldozers show up on their front step.

Although the Cambodian government argues that the ELCs were implemented in the name of economic development, without a grounding human rights framework, this economic development has become discriminatory and brutal. Land grabbing has pushed thousands of Cambodians into exile and poverty. According to human rights lawyers at the International Criminal Court in The Hague, approximately 770,000 Cambodians have been affected by land conflicts between 2000 and 2014.\textsuperscript{1123}

Cambodian women are disproportionately affected in these land grabs. Cambodian

\textsuperscript{1120} Id.
\textsuperscript{1121} Id.
\textsuperscript{1123} Id.

society is governed by deeply engrained cultural beliefs and traditions regarding the roles of men and women that promote the “dichotomy between powerful masculinity and weak femininity.”

Women are considered emotional and weak and are expected to serve as the primary caregiver and protector of the household. This responsibility, which includes providing food and shelter for their families, requires security of tenure, which Cambodian women have been deprived of due to land conflicts.

To fully illustrate the effect of land grabbing on Cambodian women, one can look to the Boeung Kak Lake conflict in Phenom Penh. Beginning in 2007, more than four thousand families around Boeung Kak Lake in central Phenom Penh were forcibly evicted so that the land could be leased to Shukaku Inc., a private company owned in part by Cambodian People’s Party senator Lao Meng Khin. The land was leased to Shukaku for a period of ninety-nine years to build a luxury development. The families lacked legal title, but according to the Land Law, these families were entitled to legal ownership of their land, as they had occupied the land for the requisite amount of time. The Boeung Kak families could apply to the government to obtain legal title, but at the time of the evictions, many had yet to do so, as the process was known to be very expensive and slow. The government took advantage of the situation and evicted the families, often giving only one week’s notice for the families to clear their homes.

This conflict has mostly affected the women of these families. In a bid to avoid violence, the Boeung Kak women decided that they should protest instead of the men. As one protester explained, “We are mostly women because we are more gentle [sic] so we face less violence. This is our strategy.” However, this means that the Boeung Kak women were the ones who were kicked, manhandled, threatened, and jailed. During a peaceful protest,

---


1125 Cambodia’s Women in Land Conflict, supra note 1124, at 3.


1130 Id.


1132 Id.

1133 Id.
thirteen women, known as the Boeung Kak Thirteen, were arrested and sentenced to thirty months in prison for illegally occupying land.1134 After domestic and international pressure, the thirteen women were released; however, more than three years later, Tep Vanny, the most prominent of the Boeung Kak protesters, was sentenced to two and half years for “inciting violence and assaulting security guards” while attempting to deliver a petition to Prime Minister Hun Sen regarding the issue.1135 Another woman, Song Sreyleap, who was with Tep Vanny during the protest, described the situation: “Again and again, we are injured on the streets by guards and yet Vanny is the one falsely described as violent and sent to prison.”1136

Cambodian women involved in land conflicts continue to bear the brunt of both physical violence during protests and the injustices of a corrupt court system. But these women also face disproportionately negative effects to their emotional, mental, and psychological health, along with a sharp increase in rates of domestic violence.1137 The Cambodia Center for Human Rights (CCHR) released a report titled Cambodia’s Women in Land Conflict in September 2016 that quantified the impact of land grabbing on Cambodian women.1138 CCHR interviewed six hundred and twelve women from twelve provinces across Cambodia; the women were from five different ethnic groups, and were all involved in land conflicts with either the government, private companies, or powerful individuals.1139

The report revealed disturbing trends. 91.3% of those surveyed stated that they were finding it difficult to buy enough food to feed their family, as most rural Cambodians rely on access to land to produce food.1140 98.2% of the women reported that their mental health had been affected by land conflict, with 46.2% of the surveyed women stating that they had considered suicide.1141 23% of the women surveyed self-identified as victims of domestic abuse, with 53.9% of those women experiencing domestic violence for the first time since being involved in land conflicts.1142 The women reported increased stress due to their insecurity of land tenure, as well as stress from ensuing consequences of land grabbing, such as having to take out bank loans in order to meet financial needs.1143 Cambodian women are suffering from

1134 International Accountability Project, supra note 1127.
1138 Cambodia’s Women in Land Conflict, supra note 1124.
1139 Id. at 9.
1140 Id. at 14.
1141 Id. at 17-18.
1142 Id.
1143 Id. at 14-15.
the land conflicts across the country, and are suffering disproportionately.

The land conflicts have also led to negative effects on Cambodian children. Nearly half of the women surveyed stated that they have had to pull their children out of school due to the economic hardships imposed on them from their loss of land. In one particular region where families were evicted to make way for a sugar plantation, children as young as thirteen were pulled out of school and sent to Phnom Penh to work in garment factories in order to supplement family incomes. Land grabbing has led to children being “deprived of their education”; they are “instead enduring child labor.”

3. Existing Legal Structure in Cambodia

Ironically, Cambodia has adopted laws, both domestic and international, that would outlaw the majority of the land grabbing occurring. Cambodia has adopted international treaties and passed domestic laws that promote the equality and safety of Cambodian women, as well as their access to land. However, the government has continued leasing swaths of land and evicting people despite the protections in place.


Cambodia’s Land Law was passed in 2001 to address the lack of official documentation of land title, providing a way for citizens to obtain legal title to land that they have occupied and cultivated for years. However, it also accomplished the purpose of creating ELCs. Article 49 of the Land Law states that ELCs “allow the beneficiaries to clear the land for industrial agricultural exploitation of land in the territory of the Kingdom of Cambodia.” Article 58 provides that land concessions can only be “granted on lands that are part of the private property of the State.” These two provisions seem harmless, but because the government owns 75 to 80% of the land in Cambodia and because the vast majority of Cambodians do not have legal title to their land due to the destruction of records during the Khmer Rouge genocide, these two provisions effectively give the government the ability to grant land concessions on the vast majority of land in the country. Furthermore, Articles 53 works directly against citizens who have occupied the land for years without legal title.

Id. at 16.
Id. at 16-17.
Id.
Id. at 16.
The Cambodian government has ratified both the Convention on the Rights of the Child and the International Labour Organization’s Convention concerning Minimum Age for Admission to Employment, which enforce a minimum working age of 14 years in developing countries. Minimum Age Convention, ILO (June 19, 1976).
Id.
Id., art. 49.
Id., art. 58.
Id., art. 53.
states that a land concession can never result from de facto occupation of land, but must be based on a “specific legal document, issued prior to the occupation of the land by the competent authority, such as the State or a public territorial collectives or a public institution that is the owner of the land on which the concession is being granted.” This provision ensures that families who occupy the land have no legal right over that land, as they do not have any “specific legal document” showing their title.

Although the Land Law also allows the government to grant Social Land Concessions (SLCs) to “poor families to establish residences for themselves and/or to develop subsistence cultivation,” the government has not utilized this feature nearly as much as the ELCs. While the government has granted tens of thousands of hectares to citizens via SLCs, it has granted more than 1.2 million hectares as ELCs. Furthermore, the government is granting SLCs of land that is oftentimes already occupied, further fueling land conflicts across the country.

5. Domestic Laws Regarding Women’s Rights

It is also interesting to explore the current state of domestic laws regarding women’s rights and how these laws should work to prevent land grabbing. Both the Constitution of the Kingdom of Cambodia (the “Constitution”) and the 2005 Law on The Prevention of Domestic Violence and The Protection of Victims (“Domestic Violence Law”) guarantee protections that the ELCs are violating.

The Constitution contains several provisions promoting women’s rights and protecting women’s well-being. Article 45 states that, “All forms of discrimination against women shall be abolished…Men and women have equal rights in all fields.” In addition, the Constitution also includes Article 46, which protects women’s economic wellbeing: “The State and the society shall provide women, especially those underprivileged living in rural areas, with opportunities to benefit from assistance for a profession, for medical cares, for their children schooling and for decent living conditions.” ELCs and the Land Law are completely contrary to what Articles 45 and 46 protect; the State is taking away land from underprivileged
women living in rural areas. Land grabbing is creating situations where women are suffering disproportionately; the land is the only resource that these women have to maintain “decent living conditions” for themselves and their families, and the ELCs are depriving women of it.

The Domestic Violence Law was intended to prevent domestic violence and protect victims. The law provides that authorities shall offer “the appropriate assistance to the victims in accordance with their circumstances”; but the government, through land concessions, is instead creating circumstances of land conflict that is enabling domestic violence, as evidenced in the CCHR report.

One can easily conclude that even with these laws in place, they are mere words because the government is not enforcing them. There are no systems in place to allow Cambodians to fight for their rights and corruption in the court system works against ordinary citizens.

6. International Treaties Regarding Women’s Rights

Under Article 31 of the Constitution, all international human rights laws are incorporated directly into Cambodian domestic law: “The Kingdom of Cambodia recognizes and respects human rights as enshrined in...all the treaties and conventions related to human rights, women’s rights and children’s rights.” Thus, Cambodia has incorporated many international treaties as domestic law, including the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the United Declaration of Human Rights (UDHR). Cambodia has also committed to the Sustainable Development Goals. Cambodia, however, has not adopted U.N. Security Council Resolution 1325, even as a post-conflict nation. Overall, the government’s actions in passing the Land Law and implementing the ELCs directly contradicts these treaties.

The UDHR and CEDAW contain clear language and provisions that protect women’s rights. Article 17 of the UDHR provides that “everyone has the right to own property alone as...

---

1163 Id. at art. 13.
1164 Cambodia’s court system seems to work for the Royal Government as evidence in Tep Vanny’s case. Tang, supra note 1135.
1165 Id. at art. 31.
1167 U.N. Sustainable Development Goals, https://www.un.org/sustainabledevelopment/gender-equality/. Cambodia has also committed to meeting the U.N.’s Sustainable Development Goals. Goal number 5 calls for gender equality: “Gender equality is not only a fundamental human right, but a necessary foundation for a peaceful, prosperous and sustainable world.”
well as in association with others...[and] no one shall be arbitrarily deprived of his property.1169
With this provision incorporated into domestic law, the Cambodian government’s actions
directly contradict its own law, as it has pushed people off their land arbitrarily and with
impunity. In addition, the CEDAW specifically protects rural women.1170 Article 14 provides
that:

State Parties shall take into account the particular problems faced by rural women and
the significant roles which rural women play in the economic survival of their families,
including their work in the non-monetized sectors of the economy, and shall take all
appropriate measures to ensure the application of the provisions of [the CEDAW] to
women in rural areas.1171

The land concessions contradict the protections guaranteed to women in both the UDHR and
the CEDAW. These conventions obligate the government to empower and protect women’s
rights; yet, the government is instead fueling a decline of women’s peace and security through
land grabbing.

Cambodia has complied with CEDAW reporting and has submitted a combined fourth
and fifth reports to the CEDAW Committee in 2013. In addition, the government adopted an
updated National Action Plan to Prevent Violence Against Women in 2014 at the urging of the
CEDAW Committee. However, even when the CEDAW committee urged Cambodia to
incorporate additional CEDAW provisions, as Cambodia’s National Action Plan is limited to
domestic violence, Cambodia did not comply.1172 The protection of women’s rights in
Cambodia “have essentially been confined to the socio-cultural areas,” which are “addressed
separately from political and security concerns. This is ironic considering women suffer
disproportionately in the event of political upheavals and conflicts.”1173

The CEDAW Committee also urged Cambodia to incorporate Security Council
Resolution 1325 provisions into the National Action Plan, which Cambodia also failed to do.
Adoption and implementation of Resolution 1325 would give Cambodian women a greater
voice to speak up against the land grabbing that is affecting their peace and security, as conflict
is “any form of disruption to human lives...Peace is not only an absence of conflict but an

1169 G.A. Res. 217, supra, note 1166, ¶ 17.
1170 Id.
1171 G.A. Res. 34/180, supra, note 1166, ¶ 41.
1172 CEDAW Comm., Concluding observations on the combined fourth and fifth periodic reports of Cambodia, at
1173 Tamar Nair, Women, Peace and Security in ASEAN: the Need for a Distinct Action Plan, KHMER TIMES, Jan. 5,
distinct-action-plan/;
absence from want, and security should include all aspects of security as any form of human insecurity is a form of ‘violence.’”

Cambodia is also a post-conflict nation. Land grabbing in Cambodia is a problem that has its roots in the genocide and civil war under the Khmer Rouge and Pol Pot. The Khmer Rouge, in a bid to create an agrarian utopia, destroyed all property records and made all land state property. Even after the conflict ended and families returned to the land that they had cultivated for generations, property records were not reinstated until 1989, when Prime Minister Hun Sen began to privatize land and drive up property values, resulting in land grabbing by companies, the state, and well-connected individuals.

The U.N. Security Council has recognized in Resolution 1325 the integral and important role women play “in the prevention and resolution of conflicts and in peace-building” which requires women’s “equal participation and full involvement in all efforts for the maintenance and promotion of peace and security.” Resolution 1325 urges all Member States, which includes Cambodia, to “ensure increased representation of women at all decision-making levels in national, regional and international institutions and mechanisms for the prevention, management, and resolution of conflict.” However, not only was Cambodia’s Land Law passed with only 7.4% women in national parliament. Whether formally or informally, women are not included in the process of rebuilding. If women were involved in the drafting and ratification of the 2001 Land Law, the women would most likely have recognized its inevitable adverse impact on women’s peace and security.

7. Women’s Activism

Despite the many adverse effects women are facing, land grabbing has had one silver lining: it has given women a reason to speak out. Women have been at the forefront of combatting land grabbing, and now many women are beginning to run for office. Local leaders often support land grabs and Cambodian women are running to oust these leaders from power in hopes that they can fight back and help victims of evictions. Women are severely underrepresented in politics, with only 18% of local government seats held by women, but land

---

1174 Nair, supra note 1173.
1176 Id.
1177 Women on the Frontlines of Cambodia Land Fight, supra note 1131.
1178 S.C. Res. 1325, supra note 1168.
1179 Id.
1180 Proportion of seats held by women in national parliaments (%), WORLD BANK, https://data.worldbank.org/indicator/SG.GEN.PARL.ZS?locations=KH.
1182 Id.
grabbing has pushed many women to step up as candidates. In 2017, 27% of the local election candidates were women, and although this is still a far cry from the 50% that Cambodia has committed to under the Sustainable Development Goals, it is still an increase from previous elections.

Outside of politics, women have organized and led their communities to fight evictions and seek redress from land grabs. Prior to their participation in activism, many of these women identified themselves as housewives, but through their new roles in society, women are not only opposing forced evictions, they are also “challeng[ing] the place of modern women in Cambodian society.” This women’s movement will make it “easier for the younger generation of men and women to accept that women can fulfil a variety of roles and participate more widely in decision-making in the home and in the public sphere.”

8. Conclusion

Certainly, there is no easy answer to land grabbing in Cambodia. There are many different interests at play, and there is no certainty that having women at the table will guarantee an end to land grabbing and ensure that Cambodia’s economic development occurs within a human rights framework. However, having women present to advocate on behalf of all Cambodian women means that their voices will at least be heard.

Land security is not a problem limited to Cambodia. Land grabbing is an increasing problem in many developing countries and has led to the loss of women’s peace and security all over the world. The U.N. Security Council must take a stronger stance on land grabbing and hold complicit governments accountable for their actions. Similar to Cambodia, many countries where land grabbing is occurring have also adopted international treaties, including the CEDAW, UDHR, and U.N. Security Council Resolution 1325. The U.N. Security Council can lean on the CEDAW Committee to exert pressure on these countries to hold them accountable for their participation in these treaties.

Furthermore, the U.N. Security Council must visibly support women’s movements. Looking to Cambodia, land grabbing galvanized a women’s movement. With little support and
while facing domestic violence in the home, Cambodian women organized to fight for their land. They took up the cause, even when they knew they could face physical violence and even imprisonment. If these women were able to do these things with little support from the international community, they would likely be able to accomplish so much more if they knew that they had the support of people and organizations outside of the country who were watching out for them. If the U.N. Security Council were to support women’s movements fighting land grabbing throughout the developing world, perhaps local governments would not operate with as much impunity as they move to crush these movements. If women could be ensured that there would be no backlash against them for advocating for their rights, these women’s movements could take a stand against land grabbing.

And we know that international pressure does work in helping prevent land grabbing. In Cambodia in the Boeung Kak Lake conflict, the government ordered the return of approximately thirty acres of confiscated land to nine hundred families who were evicted after the World Bank suspended loans to Cambodia.\textsuperscript{1188} When international organizations placed pressure on the Cambodian government, they were able to enact change. International organizations can help effect change throughout the developing world and have an important role to play in advocating for women’s land rights.

\begin{footnotesize}
\footnote{1188 Sochua, \textit{supra} note 1128.}
\end{footnotesize}
LADIES FIRST- INDIA’S ACCOUNTABILITY UNDER UNSCR 1325: THE NEED FOR A
NATIONAL ACTION PLAN
By Aleesha Jadhaw

Introduction

As someone not working in the field of Human Rights and Women’s Rights in particular, complementarily from the outside - it always seemed puzzling. Post this course by Professor Rangita de Silva de Alwis, I must admit the complementarity is indeed a very complex grey conundrum. The engaging discussions held in class not only made me aware of the current situations with respect to women’s peace and security but also ignited the already existing spark of being a female advocate within me. It was an overall great experience to be amongst such diverse group of female activists who I believe would bring about pivotal changes in this field on a global scale.

‘Too often the great decisions are originated and given shape in bodies made up wholly of men, or so completely dominated by them that whatever of special value women have to offer is shunted aside without expression’.¹

Women in every part of the world continue to be largely marginalized from all spheres of life and India is no exception. Indian society is patriarchal, placing men and boys at the centre of all relationships and power equations.

While the UNSC resolution was adopted by India seventeen years back, Indian women continue to struggle against the patriarchal reign and state violence. Societal norms and state-controlled laws have further contributed to discrimination against women posing complex hurdles in the process of equal participation.

This paper is a small but determined initiative towards the objective of making a meaningful contribution to the emerging global movement for equal gender participation and women empowerment.

It discusses the correlation between equal participation or representation and the economic development of a country as a whole. Against this background, this paper analyses the current global situation in this regard through the prism of India.

Further, this paper aims to suggest a framework exploring different provisions in the form of specific recommendations to be included in the National Action Plan for India to

¹Eleanor Franklin Roosevelt, UNITED NATIONS GENERAL ASSEMBLY (1952).
empower women in decision-making and action regarding all peace and security issues in their local communities.

1. BACKGROUND

India is the largest democracy\(^2\) and the second most populated country in the world.\(^3\) Women comprise 48.5\% of the population.\(^4\) Yet, they have a negligible presence in key decision-making positions be it governance, law enforcement or corporate leadership. After seventy years of independence and of women’s rights being enshrined in the democratic fabric, India is yet to fully honor its constitutional commitments.\(^5\)

Globally, India ranks fifth among all nations with the most skewed ratio of girls to boys at birth due to cultural preference for a son\(^6\) and occupies 108th position out of 145 countries.\(^7\)

It is rather ironic that in a country where people worship goddesses - women are not given adequate representation. Socialization, negative role images, stereotypes and the lack of accessibility to networks for women increase the tendency for men to continue to be left to reach decisions.\(^8\)

Women bear a disproportionate burden of unpaid care work, depriving them of opportunities to earn an income, start their own businesses and participate in public life; therefore, depriving economies of their talents and contributions.\(^9\)

In tune with constitutional aspiration of gender equality, various laws have been enacted relating to prohibition of female infanticide, dowry, exposure of women in

year_high_desc=true
\(^{4}\) Statistical Yearbook India 2016 ”Table 2.1 Area and Population by States (Census 2011),” (2016)
\(^{5}\) PRESS RELEASE, CONTROL ARMS FOUNDATION OF INDIA (2018)
\(^{6}\) USAID, INDIA PARTNERSHIP FOR GENDER EQUALITY (2018)
\(^{7}\) WORLD ECONOMIC FORUM, THE GLOBAL GENDER GAP REPORT (2017)
\(^{8}\) HEINRICH BOLL STIFTUNG GUNDA WERNER INSTITUTE, BEIJING +20 – WOMEN IN POWER AND DECISION-MAKING https://www.gwi-boell.de/en/women-power-and-decision-making
\(^{9}\) JESSICA FAIETA, THE WORLD IS BETTER OFF WITH MORE WOMEN BUSINESS LEADERS (2018)
advertisements and films, female child marriage, atrocities and molestation, abduction and rape, maternity benefits, medical termination of pregnancy and prohibition of prostitution and trafficking in women.\textsuperscript{10} For the legislature to enact several new laws or to bring about the changes in the existing ones with a view to afford better protection to women is a demand of the time wherein there is emphasis upon women’s empowerment.

While men and women, boys and girls are today competing in every sector and sphere, the stories of equality and empowerment are selective and few\textsuperscript{11} - which I will highlight by discussing the following instances:

A. In the Parliament:

As of 2017, a mere 11.8 % of legislators are women\textsuperscript{12} occupying just 64 out of 543 seats in the Lower House and 27 of 245 seats in the Upper House.\textsuperscript{13}

A constitutional amendment bill proposing thirty-three percent reservation for women in the Parliament was first proposed in 1996 which still remains to be passed.\textsuperscript{14}

In the quest of giving “equal representation”, women are shunted to risk averse portfolios typically limited to social, family and cultural affairs such as External Affairs, Textiles, Women and Child Development, Food Processing industries, Health and Family welfare, Drinking water and Sanitation to name a few.\textsuperscript{15}

Any proposal to make gender just policies in the government requires a strong presence of women in decision making processes. In the alternative, having reservations or quota system could speed up the process of achieving equality.

Equal representation in positions of power is a fundamental precondition for truly effective and accountable democracy.\textsuperscript{16}

\textsuperscript{10} A SINGH, JUDICIARY AS A HARBINGER FOR WOMEN EMPOWERMENT (2015)
\textsuperscript{11} USAID, INDIA PARTNERSHIP FOR GENDER EQUALITY (2018)
\textsuperscript{12} PRESS RELEASE, CONTROL ARMS FOUNDATION OF INDIA (2018)
\textsuperscript{13} INTER-PARLIAMENTARY UNION AND UN WOMEN, WOMEN IN POLITICS 2017 MAP (2017)
\textsuperscript{14} WIKIPEDIA, WOMEN’S RESERVATION BILL
\textsuperscript{15} NATIONAL PORTAL OF INDIA, COUNCIL OF MINISTERS
\textsuperscript{16} PRESS RELEASE, NEW IPU AND UN WOMEN MAP SHOWS WOMEN’S REPRESENTATION IN POLITICS STAGNATING (2017)
However, equal representation is not just limited to the extent of having women at the table, the herculean task remains to determine the right woman who would best represent the interests of women, who would eloquently put forth the issues relating to women and lastly, who would endeavour to effectively address and solve these issues.

B. Women in corporates:

According to a Grant Thornton survey - India ranked third lowest in having women in leadership roles. The survey also noted that only seven per cent of the senior management (CEO/ Managing Director) roles were held by women in India. The most common roles held by women in India are Human Resources Director (25 per cent) and Corporate Controller (18 per cent).\(^\text{17}\)

The Indian Companies Act [Section 149 (1) read with Rule 3] provides for appointment of at least one woman director as a board member in a listed company or a company having a paid-up capital of one hundred crores or more, turnover of three hundred crores or more.\(^\text{18}\) Even though compliance is mandatory under this section, most companies appoint woman on paper giving them no real powers and in certain cases, there are not even aware of the Company’s daily affairs.

Many companies now have a diversity and inclusion mandate which makes them look to hire more women. Few women actually get hired on a salary and position commensurate with their education and experience, notwithstanding whether they took a break or not.\(^\text{19}\)

A McKinsey report dealing with the same issue identifies two clear arguments working against working women which revolve around, ‘When a mother works for pay, the child suffers’, and ‘When jobs are scarce, men should have more right to a job than women’.\(^\text{20}\)

There has been a lack of role models and mentors for women. The question of safety after working till late hours also arise in some metro cities. Unfortunately, most corporations,

\(^{18}\) INDIAN COMPANIES ACT OF 2013 § 149
including those in the service sector, balk at the idea of flexible working hours or the option to work from home.\textsuperscript{21}  

Any preposterous restriction on the basis of pregnancy contravenes Article 14 of the Constitution of India as witnessed in the landmark case of \textit{Air India v. Nargesh Meerza}\textsuperscript{22}. Some provisions of Air India Employees Service Regulations and of Indian-Airlines (Flying Crew) Service Regulations were declared against the spirit of Article which prescribed several restrictions for women employees. The judges in this particular case were constrained to observe that such a course of action is extremely detestable and abhorrent to the notion of a civilized society. Justice Fazal Ali, while declaring the pregnancy clause of the above provisions relating to termination of the services on the first pregnancy as violative, observed that, “It seems to us that the termination of the services of an Air Hostess under such circumstances is not only a callous and cruel act but an open insult to womanhood – the most sacrosanct and cherished institution.” Apart from being grossly unethical, such provision was also held to be manifestly unreasonable and arbitrary containing the quality of unfairness and exhibiting naked despotisms.\textsuperscript{23}

Government has begun to insist that organisations create spaces for creches inside their premises, in the hope that this step may lead to a more productive female manager. However, I believe gender parity, equal opportunity or the requirement for having creches at workplaces does not need to be mandated by the Government.\textsuperscript{24}

\textbf{C. Political inequalities:}

It is a matter of hot controversy whether anti-discrimination provisions enumerated under Article 15 (3) of the Indian Constitution\textsuperscript{25} can be invoked for securing political rights of women. The Supreme Court of India at the very beginning ruled that the prohibition against

\textsuperscript{21} HARINI CALAMUR, CORPORATE INDIA ISN’T AS MUCH SEXIST AS ITS LAST (2017)  
\textsuperscript{22} AIR INDIA V. NARGESH MEERZA, AIR 1981 SC 1829  
\textsuperscript{23} \textit{Id.}\textsuperscript{24} HARINI CALAMUR, CORPORATE INDIA ISN’T AS MUCH SEXIST AS ITS LAST (2017)  
\textsuperscript{25} INDIAN CONST. Art. 15 cl. 3
discrimination in the aforesaid article also extends to political rights and therefore, the umbrella of protective discrimination can be used to secure political rights to the women.26

An important question arises here as to why political empowerment of women and that too through reservation of seats in Legislatures has assumed emphasis? The justification being firstly, only a few women voluntarily are politically active which is rendered tough and filthy. Secondly, the social and political set up is dominated by the men.27

This is mainly due to reasons such as lack of finance for campaigns, stereotyping, bullying online and physically, harassment and hostile treatment by the media as well as their male counterparts.28 Such tactics act as a deterrent to those women who want to actively participate in politics. The ones who are active in politics, continue to face a lot of oppression from their male counterparts and the male family members alike - mainly due to a common belief that women should not be given or are not capable of handling power or freedom of expression.

In 1993, a constitutional amendment was passed in India that called for a random one third of village council leader, or pradhan, positions in gram panchayat to be reserved for women.29

Research shows that in places with quotas, more women ran for office and more women won. The increase in female elected leaders also resulted in better outcomes: More funds were spent on public goods and services that benefit women and women were more likely to speak out about acts of violence and the economy benefited too as more women took out business loans in villages that had a quota.30

D. Labour and wages:

The principle of “equal pay for equal work” as enshrined in Article 39 (a) is implicit in Article 14 and 16 of the Indian Constitution.31

26 A SINGH, JUDICIARY AS A HARBINGER FOR WOMEN EMPOWERMENT (2015)
27 Id.
29 AMBASSADOR ANWARUL K. CHOWDHURY, FORWARD TO OPENINGS FOR PEACE: UNSCR 1325, WOMEN AND SECURITY IN INDIA (2015)
30 GRANT THORNTON, INDIA RANKS THIRD LOWEST IN HAVING WOMEN IN LEADERSHIP ROLES FOR THE THIRD CONSECUTIVE YEAR
31 INDIAN CONST. Art. 14 and Art. 16
However, in reality, women earn 57% of what their male colleagues earn for performing the same work\textsuperscript{32}, perform 75% of unpaid domestic work and 54% work in informal contexts, with unstable incomes and little social protection.\textsuperscript{33} Therefore, it results in depriving businesses as well as society as a whole, of their talent and financial contribution to the family economy and that of their communities and the country altogether.

The more educated a woman is, the wider the gender pay gap.\textsuperscript{34}

As per McKinsey’s report - If India can increase women's labour force participation by 10 percentage points (68 million more women) by 2025, India could increase its GDP 16%.\textsuperscript{35}

World Bank report states that India has amongst the lowest female labour force participation rates (LFPR) in the world. LFPR is a drag on the GDP growth and an obstacle towards reaching a higher growth path. Incentives, safe and conducive environment besides a level playing field were critical to boost women participation in the Indian workforce, the World Bank said.\textsuperscript{36}

E. Access to credit:

India should work towards empowering women economically — through microfinance programs — and also encourage greater participation of women leaders in panchayats, or village councils.\textsuperscript{37}

In rural areas, due to lack of funding provided to women by the village banks, many women groups have reconciliated to form their own Mahila Bachat gats (Women self-help groups with their own incomes with minimal interest rates).

In urban areas, single women find it difficult to secure loan from a credible financial institution.

\textsuperscript{32} WORLD ECONOMIC FORUM, “INDIA” (2016)
\textsuperscript{33} JESSICA FAIETA, MORE WOMEN IN DECISION-MAKING POSITIONS IN BUSINESS BENEFITS ALL (2018)
\textsuperscript{34} PAYCHECK INDIA, GENDER PAY GAP IN THE FORMAL SECTOR: (2006-2013)
\textsuperscript{35} MCKINSEY GLOBAL INSTITUTE, “THE POWER OF PARITY: ADVANCING WOMEN’S EQUALITY IN INDIA” (2015)
\textsuperscript{36} WORLD BANK REPORT ON UNLOCKING WOMEN’S POTENTIAL (2017)
\textsuperscript{37} SHOBA NARAYAN, WHAT IS THE ROLE OF WOMEN IN INDIAN POLITICS? GROWING STRONGER (2009)
2. The Need For National Action Plan For India

The adoption of 1325 has opened a much-awaited door of opportunity for women.\textsuperscript{38} The members of the UNSC recognise that peace is inextricably linked with equality between women and men and affirmed the value of full and equal participation of women in all decision-making levels.\textsuperscript{39} However, achieving real gender equality requires ‘transformative change’. Merely providing equal access to resources and options is not enough.

The driving force behind 1325 is ‘participation’ in which women can contribute to decision-making and ultimately help shape societies where violence in general\textsuperscript{40}, more so against women, participation of women in economics could significantly boost the Indian economy.

In 2004, Security Council called on member States to implement 1325 through the adoption of National Action Plans (NAP) – a platform for member States to articulate their priorities, set targets and outline strategies for implementing resolutions. NAP is the primary instrument for implementation of 1325.\textsuperscript{41}

As of December 2013, 50 member States have drafted or adopted NAPs for implementation of UNSCR 1325 at the country-level. These documents have been the result of close engagement between the governmental agencies and civil society organisations. There has been a general trend of policy makers accepting the demands of civil society organisations but not taking concrete steps to implement the same.\textsuperscript{42}

Creation of NAP provides an opportunity to initiate strategic actions, identify priorities and resources and determine the responsibilities and timeframes. It also aids in raising awareness and capacity building in order to overcome gaps and challenges to the full implementation of 1325. NAP ensures country-level commitment to implement 1325 and can hold governments accountable. \textsuperscript{43}

\textsuperscript{38} Ambassador Anwarul K. Chowdhary, 10 years on, the promises to women need to be kept (2000) https://www.nato.int/docu/review/2010/Women-Security/Women-resolution-1325/EN/index.htm
\textsuperscript{39} AMBASSADOR ANWARUL KARIM CHOWDHURY, UN PRESS RELEASE SC/6816(2000)
\textsuperscript{40} AMBASSADOR ANWARUL K. CHOWDHURY, FORWARD TO OPENINGS FOR PEACE: UNSCR 1325, WOMEN AND SECURITY IN INDIA (2015)
\textsuperscript{41} NATO, THE 1325 SCORECARD - PRELIMINARY FINDINGS (2015)
\textsuperscript{42} FALCH, ASHILD, WOMEN’S POLITICAL PARTICIPATION AND INFLUENCE IN POST-CONFLICT BURUNDI AND NEPAL (2010)
\textsuperscript{43} INTER-AGENCY NETWORK ON WOMEN AND GENDER EQUALITY, NATIONAL IMPLEMENTATION OF SECURITY COUNCIL RESOLUTION 1325 (2000)
NAPs should be designed in order to coordinate and strengthen implementation of 1325. Should contain a catalogue of measures and clear targets and benchmarks for full and meaningful implementation.\textsuperscript{44}

NAPs are considered as a public commitment to implement 1325 and adapt global ideas to local contexts. They are expected to describe what has been accomplished and to detail what it hopes to do within clear time frames. Further, they facilitate and clarify coordination between government agencies.\textsuperscript{45}

In case of India, the formulation of NAP is particularly important for the government as well as the civil society. NGOs should persistently continue to pressure and demand that the government develops the country’s NAP for the implementation of 1325.

Several efforts have been initiated in the past by different womens’ groups in India to persuade the Government of India to implement NAP on women’s peace and security by suggesting several frameworks on the basis of which the Government can draft the NAP.

Sansristi – an Indian gender resource centre also organised two meetings in 2011 and 2013.

A. The 2011 conference:

The 2011 conference was centred on brainstorming NAP to implement UNSC 1325 but rather ended up including discussions which focusing on the limitations of the 1325 framework for India.\textsuperscript{46} The conference decided that to achieve this there would be a need to: (a) initiate a discourse on NAP and its process, (b) create awareness on UNSCR 1325 in the country, (c) require a disclosure on a regional action plan, taking into account the high level of inter-state conflict in this part of the region and (d) develop a people’s action plan. The issue first and foremost is to assess women’s expectations of the plan in India.\textsuperscript{47}

\textsuperscript{44}PEACEWOMEN – A PROGRAMME OF WOMEN’S INTERNATIONAL LEAGUE FOR PEACE AND FREEDOM, WOMEN, PEACE AND SECURITY NATIONAL ACTION PLAN DEVELOPMENT TOOLKIT http://www.peacewomen.org/assets/file/national_action_plan_development_toolkit.pdf

\textsuperscript{45}AMBASSADOR ANWARUL K. CHOWDHURY, FORWARD TO OPENINGS FOR PEACE: UNSCR 1325, WOMEN AND SECURITY IN INDIA (2015)

\textsuperscript{46}SWARNA RAJAGOPALAN, Introduction to OPENINGS FOR PEACE: UNSCR 1325, WOMEN AND SECURITY IN INDIA (2015)

\textsuperscript{47}ASHA HANS, GENDER PEACE AND SECURITY, in OPENINGS FOR PEACE: UNSCR1325, WOMEN AND SECURITY IN INDIA (2015)
B. The 2013 conference:

The 2013 conference brought the focus squarely to a critical appraisal of 1325 as well as constructive conversation about alternative strategies of adoption and adaptation. 48

C. The 2015 conference:

In 2015, the women leaders of Northeast India met at an international conference where a draft National Action Plan on Women Peace and Security of India was resolved.49

D. The 2018 Memorandum:

Speaking about the most recent times, in January 2018, Control Arms Foundation of India (CAFI) along with Multiple Action Research Group (MARG) submitted a memorandum to the President of India suggesting formulation of anti-racial laws, development of a National Diversity Policy and adopting a NAP on Women Peace and Security.50

Speakers at such conferences also called for acceleration of the empowerment of women at all levels of peace processes; adequate services for displaced women and rehabilitation of victims of gender based violence; and zero tolerance of sexual abuse by peacekeepers. During discussions all stressed to the importance of highlighting women’s role as actors and change agents, not just as victim, and stated “Without the inclusion of women in all aspects of life, whether political or in the economy, there can be no sustainable peace and no sustainable development”.51

However, it can be seen that all the efforts by several civil society organisations as mentioned earlier towards implementing a NAP have been proved to be futile.

48 SWARNA RAJAGOPALAN, Introduction to OPENINGS FOR PEACE: UNSCR 1325, WOMEN AND SECURITY IN INDIA (2015)
49 SOUTH ASIAN WOMEN’S PEACE AND SECURITY, CONFERENCE ON FORMULATING NATIONAL ACTION PLANS & THE WAY FORWARD (2015)
50 CAFI AND MARG, INPUTS FOR ‘DEVELOPING A NATIONAL ACTION PLAN AGAINST RACIAL DISCRIMINATION IN INDIA AND ‘FORGING A WAY AHEAD: COLLATING INPUTS AND FRAMING ACTION POINTS.’ (2018)
51 REFLECTION GROUP, SPOTLIGHT ON SUSTAINABLE DEVELOPMENT: A REPORT ON THE 2030 AGENDA FOR SUSTAINABLE DEVELOPMENT (2016)
3. Recommendations For India’s Nap

The following recommendations are offered to suggest some provisions to consider as content in my capacity as an Indian citizen, practising lawyer and a female advocate - addressing only the particular area of gender participation or representation:

1. Inclusion of more women in electoral processes, judiciary, police forces, economic and other decision-making processes for a more gender balanced equitable society.52

2. Empowering women economically - through microfinance programs and encouraging greater participation of women leaders in village councils.53

3. Providing for women’s participation in decision making with regard to all peace and security matters in the community for ensuring better gender perspective as decision makers in peace negotiations and present and post conflict reconstructions by both the Central as well as State Governments.54

4. Adequate protection for women human right defenders.55

5. Reformation of Customary Law for inclusion of more women in decision making56

6. Recognition and honoring the contribution of women in cultural and social processes57

7. Propose appropriate programs for peace and gender education in all public and private schools.

8. Due to lack of accountable mechanism, women and gender issues are not seen at the central policy level to include women in peace and security process, therefore, unless

52 SOUTH ASIAN WOMEN’S PEACE AND SECURITY CONFERENCE: FORMULATING NATIONAL ACTION PLANS & THE WAY FORWARD (2015)
53 SHOBA NARAYAN, WHAT IS THE ROLE OF WOMEN IN INDIAN POLITICS? GROWING STRONGER (2009)
54 SOUTH ASIAN WOMEN’S PEACE AND SECURITY CONFERENCE: FORMULATING NATIONAL ACTION PLANS & THE WAY FORWARD (2015)
55 Id.
56 Id.
57 Id.
a positive approach is adopted to regard someone accountable towards these issues, the situation will not change.


10. Stringent steps to be taken to prevent sexual violence at workplace.


12. Evaluation and assessment of implementation by setting up monitoring agency and process that would be in place for periodic check both scheduled and unannounced.

13. Setup government-run programs for re-training in professional skills wherever needed and gender training in all public agencies.

14. Efforts to be made to protect women’s land rights and to emancipate women to reclaim spaces at public areas.

15. Adopt positive discrimination policies, including the establishment of quota systems during elections, setting of measurable goals and the development of leadership training for women.

16. More work should be done to advocate and assist religious institutions in enhancing their structures and procedures with the values of equality, including gender equality.

17. To establish time-bound targets for reaching the goal of gender balance in decision-making, and ensure gender mainstreaming in legislation.58

18. Measures should be taken to raise awareness amongst women about the rights available to them and the manner in which they can claim these rights.

58 ADDIS ABABA, UNITED NATIONS DEPARTMENT OF ECONOMIC AND SOCIAL AFFAIRS (DESA) AND DIVISION FOR THE ADVANCEMENT OF WOMEN (DAW)”EQUAL PARTICIPATION OF WOMEN AND MEN IN DECISION-MAKING PROCESSES, WITH PARTICULAR EMPHASIS ON POLITICAL PARTICIPATION AND LEADERSHIP” EXPERT GROUP MEETING (2005)
19. Ensure maximum voting by women by raising awareness for the same.

20. Ensure proper implementation and compliance of all the policies enacted in this regard with the help of activists and CSOs.

4. Conclusion

Article 21 of the UDHR recognizes the right of every person to take part in the government. Equal access of men and women to power, decision-making and leadership at all levels is a necessary prerequisite for the proper functioning of democracy. Equal participation of men and women in political affairs makes governments more representative of the composition of society; it makes them more accountable and transparent and ensures that the interests of women are taken into account in policy-making.\textsuperscript{1189} Since the India consists largely of the female population, women’s participation cannot be neglected.

I firmly believe that gender equality in the form of equal participation and representation will aid in achieving the Sustainable Development Goals that include eradicating poverty in all its forms, promoting equitable growth and achieving quality education for all— within the next 12 years.

I would like to conclude with just a simple thought that comes to my mind- When people say “Ladies First” why don’t they literally mean it in the context of representation of women and equal participation in different sectors such as politics, employment or even sports– when it really counts?

\textsuperscript{1189} ADDIS ABABA, UNITED NATIONS DEPARTMENT OF ECONOMIC AND SOCIAL AFFAIRS (DESA) AND DIVISION FOR THE ADVANCEMENT OF WOMEN (DAW)"EQUAL PARTICIPATION OF WOMEN AND MEN IN DECISION-MAKING PROCESSES, WITH PARTICULAR EMPHASIS ON POLITICAL PARTICIPATION AND LEADERSHIP" EXPERT GROUP MEETING (2005)