

**Written Submission for the General Recommendation
on the Protection of Women’s Human Rights in Conflict and Post-Conflict Contexts**

*Written Submission Focusing on Access to Justice
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1. The Committee on the Elimination of Discrimination against Women (“the Committee”) decided at its forty-seventh session held in October 2010, pursuant to Article 21 of the Convention on the Elimination of All Forms of Discrimination against Women (“the Convention”), to adopt a general recommendation on the protection of women’s human rights in conflict and post-conflict contexts.
2. This submission is intended to enthusiastically support the adoption of a general recommendation to provide authoritative guidance to States parties on the legislative, policy and other appropriate measures to ensure full compliance with their Convention obligations to protect, respect and fulfill women’s human rights in international and non-international conflict and in post-conflict contexts.
3. As recognized in General Recommendation 19, gender-based violence is a form of discrimination that seriously inhibits women’s ability to enjoy basic rights and freedoms.
4. This submission acknowledges the existing weight of authority affirming women’s rights in conflict and post-conflict contexts enshrined in, inter alia, United Nations Security Council resolutions on women, peace and security, on the protection of civilians in armed conflict and on conflict-related sexual violence (particularly Security Council Resolutions 1325 (2000), 1820 (2008), 1888 (2009), 1889 (2009) and 1960 (2010)), the four Geneva Conventions of 1949 (particularly Geneva IV, Art. 27) and Additional Protocols of 1977 (particularly Additional Protocol I, Art. 76; Additional Protocol II, Art. 2(e)), the Beijing Declaration and Platform for Action, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and other instruments protecting women in conflict and post-conflict contexts.
5. This submission affirms the critical role of international criminal law, international humanitarian law, and international human rights law in guaranteeing respect for women’s rights through prohibiting, halting, and punishing acts of gender and sexual violence. It also notes the critical role of domestic laws, domestic justice systems, and the duty and responsibility of States parties in prohibiting violence in wartime or peacetime, in providing adequate protective measures, and in punishing violations.
6. This submission recognizes the jurisprudence from international and mixed war crimes tribunals set up to redress such offenses as war crimes, crimes against humanity and genocide in such places as the Balkans (International Criminal Tribunal for former Yugoslavia or ICTY), Rwanda (International Criminal Tribunal for Rwanda or ICTR), Sierra Leone (Special Court for Sierra Leone or SCSL) and in the permanent International Criminal Court (ICC), which have affirmed that rape and other forms of sexual violence may constitute a war crime, crime against humanity, and instrument of genocide; they may be forms and means of torture, enslavement, and persecution. The forms of sexual violence explicitly recognized by international/ized courts include rape, enforced prostitution, forced pregnancy, enforced sterilization, in addition to gender persecution and sex trafficking in women and girls, forced marriage, forced nudity, sexual mutilation, forced abortion, and any other form of sexual violence of comparable gravity.

Background

7. This submission recognizes that while both female and male civilians account for the vast majority of casualties in contemporary armed conflict, women and girls face the disproportionate risk of gendered violence, commonly manifested in the form of sexual violence, and that some of the gendered violence is exclusively female (such as forced pregnancy and forced abortion).
8. This submission recognizes that women in conflict contexts can identify with various communities including young girls and adolescents, victims of sexual violence, sick and wounded women, internally displaced women, refugee women and women rendered stateless, elderly and widowed women, women providing services to the military, lesbian and bisexual women, and female combatants. Each community or group faces unique challenges and vulnerabilities.
9. Armed conflicts create new dangers for women and exacerbate existing risks and gender inequalities, exposing women to vulnerabilities including restricted access to essential health and other services, sexual violence as a tactic of war, increased exposure to trafficking and sex trade, displacement, poverty, and alienation from policymaking, reconstruction and peace-building efforts.
10. Providing legal remedies for sexual and gender-based violence as an international crime can encourage and facilitate efforts for local governments to pursue prosecution of these crimes locally. International proceedings enhance global protection regimes by providing legal principles that can serve as references in building the bases for safeguarding vulnerable groups. International jurisprudence also encourages mutual legal assistance between States parties and provides templates for pursuing accountability for serious crimes.
11. There is a plethora of evidence that women and girls, and men and boys, are subjected to a wide variety of sexual and gender-based violence in conflict and post-conflict situations. Some violence is opportunistic, committed because the atmosphere of war and the breakdown of law and order present the opportunities; some violence is intentional, strategically committed as a weapon of war, subjugation, and terror. States parties have a duty to put into place measures intended to prevent sexual and gender-based violence. Regardless of why it occurs, it must be investigated and punished when committed.

Recommendations

In light of these comments, this submission recommends that the general recommendation include the following guidance to States parties as pertaining to women's access to justice in conflict and post-conflict contexts. Most of this guidance is highlighted in Security Council resolutions focused on women, peace, security and justice.

Access to Justice in Pre-Conflict Contexts

1. While the focus of the proposed general recommendation is on women's human rights during and after conflict, the state of the pre-conflict justice system is relevant in protecting women during and after conflict situations. Under the principle of legality, perpetrators of sexual and gender-based violence must be judged according to the law applicable at the time of the alleged crime. To this extent, while national systems may not be fully operational in times of conflict, most national laws are not suspended during wartime. Customary international law may be part of domestic laws, thus it is important to note that genocide, crimes against humanity and war crimes constitute crimes under international law. Thus this submission urges that the proposed general

recommendation contain provisions alerting States parties to the relevance of the broader project of achieving long-term non-discriminatory legal systems in achieving justice.

2. Of particular importance in this strengthening of the rule of law to protect women and girls, is the need to both ratify the Rome Statute of the ICC and to implement positive complementarity domestically. Complementarity requires States parties to maintain their national justice systems in a manner that enables national investigations and prosecutions of international crimes. The Rome Statute has key provisions relating to sexual and gender-based violence which should serve as a model in national criminal law reform.
3. In order to lay the groundwork for protecting women during and after conflict, States parties should increase women's representation at all decision-making levels in national institutions and mechanisms for the prevention, management and resolution of conflict, including in the armed forces, police and justice institutions.
4. States parties should establish and strengthen efforts to implement the policy of zero-tolerance of sexual exploitation and abuse in police or military services, and take appropriate preventative action, including pre-deployment and in-theater awareness training, and other action to ensure full accountability in cases of such conduct involving their personnel and to engrain the gravity of sexual violence in the local culture. These measures also help heighten the awareness and responsiveness of military and police personnel to protect civilians and prevent sexual violence against women and girls.
5. States parties should regularly support the development and strengthening of the capacities of national institutions, in particular of judicial and health systems and local civil society networks, in order to provide sustainable assistance to victims of sexual violence in peace, armed conflict and post-conflict situations.
6. States parties are advised to create, for use in armed conflict or post-conflict situations:
 - a. A detailed coordination and strategy plan on the timely and ethical collection of information;
 - b. Reports on progress made in the implementation of the monitoring, analysis, and reporting arrangements;
 - c. Update reports on efforts by focal points on sexual violence.
7. As a precautionary measure, States parties are advised to provide training guidelines and materials on the protection, rights and particular needs of women and girls, as well as on the importance of involving women in all peacekeeping and peace-building operations. These elements may be incorporated, along with HIV/AIDS awareness training, into national training programs for military and civilian police personnel.

Access to Justice during Conflict

8. In the event of armed conflict, States parties must fully respect international law applicable to the rights and protection of women and girls as civilians, in particular the obligations applicable to them under the Women's Convention, as well as the Geneva Convention of 1949 and the Additional Protocols thereto of 1977, the Refugee Convention of 1951 and the Protocol thereto of 1967, the Convention on the Rights of the Child of 1989 and the two Optional Protocols thereto of 25 May 2000, and the relevant provisions of the Rome Statute of the ICC.

9. Under international humanitarian law enshrined in the Geneva Conventions, States parties are obliged to protect women and vulnerable groups during armed conflict, including from sexual violence. States parties should therefore take all appropriate and effective measures to prevent violence against women and girls during situations of armed conflict and in post-conflict settings. Extra measures should be taken to protect them from sexual or gender-based violence, particularly rape and other forms of sexual abuse.
10. It is important for States parties to be aware of the protective impact of official statements on justice in times of conflict. Deterrence of perpetrators may depend on their awareness of the consequences of contemplated crimes. Statements condemning attacks on women and vulnerable groups, emphasizing the prohibitions, and actions following through with punishing sexual and gender-based violence when it occurs, are therefore essential. This is particularly important in conflict situations lasting months, or years.
11. During armed conflicts, humanitarian, legal and other organizations or individuals may endeavor to investigate crimes or preserve evidence, including securing testimony of victims or witnesses. Civilians and others not participating in hostilities must be protected. National or international legal remedies may be available during armed conflict, and civilians and other vulnerable persons must be protected from attacks or reprisals, including in seeking access to justice, assisting investigators or prosecutors, preserving evidence and documenting crimes.
12. Recognizing the importance of forensic evidence in war crime cases, efforts to assist the preservation of legal remedies can extend to the collection of physical evidence, particularly in the case of sexual and gender-based violence. To this end, States parties should allow the safe passage of such evidence, particularly where storage or testing facilities may be located outside the conflict zone.
13. States parties should recognize that sexual violence, when used or commissioned as a tactic of war in order to deliberately target civilians or as part of a widespread or systematic attack against civilian populations, can significantly exacerbate situations of armed conflict and may impede the restoration of international peace and security.
14. States parties are required to take effective steps to prevent and respond to acts of sexual violence, which can significantly contribute to the maintenance of international peace and security, and when necessary, adopt appropriate steps to address widespread or systematic sexual violence. Measures adopted to protect women and girls could include, inter alia, enforcing appropriate military disciplinary measures and upholding the principle of command responsibility, training troops on the categorical prohibition of all forms of sexual violence against civilians, debunking myths that fuel sexual violence, vetting armed and security forces to take into account past actions of rape and other forms of sexual violence, creation and protection of a safe haven, and evacuation of women and children under imminent threat of sexual violence to safety.
15. When establishing and renewing state-specific sanctions regimes, States parties should take into consideration the appropriateness of targeted and graduated measures against parties to armed conflict who commit rape and other forms of sexual violence against women and girls in armed conflict situations.
16. In situations of armed conflict, States parties should identify and take appropriate measures to rapidly deploy a team of experts to situations of particular concern with respect to sexual violence in armed conflict. States parties should make use of existing human resources within the

domestic system to draw upon requisite expertise in the rule of law, civilian and military judicial systems, mediation, criminal investigation, security sector reform, witness protection, fair trial standards and public outreach to, inter alia:

- a. Work closely with legal and judicial officials and other civilian and military justice personnel to address impunity, including by strengthening capacity and drawing attention to the full range of justice mechanisms to be considered;
 - b. Identify gaps in response and encourage a holistic approach to address sexual violence in armed conflict, including by enhancing criminal accountability, responsiveness to victims and judicial capacity;
 - c. Make recommendations to coordinate domestic and any international efforts and resources to reinforce the state's ability to address sexual violence in armed conflict.
17. In situations of armed conflict, States parties should respect the civilian and humanitarian character of refugee camps and settlements, and should take into account the particular needs of women and girls, including in the design of such facilities. Measures should be adopted to ensure the protection of all civilians inhabiting such camps, in particular women and girls, from all violence, including rape and other sexual violence, and to ensure full, unimpeded and secure humanitarian access.
18. States parties should ensure access to healthcare, psychosocial support, legal assistance socioeconomic integration services for victims of sexual violence, particularly in rural areas.
19. In situations of armed conflict, States parties should implement specific and time-bound commitments to combat sexual violence, which should include, inter alia, issuance of clear orders through chains of command, prohibiting sexual violence, prohibition of sexual violence in codes of conduct, military field manuals or equivalent, and implementation of specific commitments on timely investigation of alleged abuses in order to hold perpetrators accountable. A program to track and monitor implementation of these commitments by parties to armed conflict should be established.
20. States parties should establish monitoring, analysis and reporting arrangements on conflict-related sexual violence, including rape in situations of armed conflict and post-conflict situations, and should ensure a coherent and coordinated approach at the field level, engaging with United Nations actors, national institutions, civil society organizations, healthcare service providers and women's groups to enhance data collection and analysis of incidents, trends, and patterns of rape and other forms of sexual violence to assist the state's consideration of appropriate actions, including targeted and graduated measures, while respecting fully the integrity and specificity of the monitoring and reporting mechanisms.

Access to Justice in Post-Conflict Contexts

21. As societies emerging from conflict have the opportunity to develop and institutionalize legislative, policy and other measures that fully protect and advance women's human rights, women and civil society organizations focused on women's issues must therefore be included in peace negotiations and post-conflict rebuilding and reconstruction efforts.
22. States parties should recognize that rape and other forms of sexual violence can constitute a war crime, a crime against humanity, or a constitutive act with respect to genocide, and exclude sexual violence crimes from amnesty provisions in the context of conflict resolution processes, To this end, States parties should comply with obligations for prosecuting persons responsible for such acts, ensure that all victims of sexual violence, particularly women and girls, have equal

protection under the law and equal access to justice, and recognize the importance of ending impunity for such acts as part of a comprehensive approach to seeking sustainable peace, justice, truth, and national reconciliation.

23. States parties should invite women to participate in discussions pertinent to the prevention and resolution of conflict, the maintenance of peace and security, and post-conflict peace-building, and facilitate the equal and full participation of women at decision-making levels.
24. States parties have the obligation to give meaning to appropriate new laws drafted by ensuring non-discrimination and recognition of the realities facing women in different contexts. To ensure long-term access to justice, peace processes, agreements and transitional governance structures should embrace gender equality and take into account the impact of armed conflict on women, ensuring the adoption of effective gender-sensitive legislative mechanisms, including, but not limited to, excluding impunity for gender crimes from any peace agreements.
25. States parties should ensure the participation of women in all levels of the judicial system, particularly at the higher-level appointments, be it as investigators, prosecutors, judges, and gender advisers, as well as legal advisors, translators and interpreters.
26. States parties should take all necessary measures to prosecute violence committed against women and girls in conflict situations. Legal measures should reflect gender-sensitivity by, among other mechanisms, establishing police and investigation units specially trained to deal with crimes against women. The inclusion of female officers and staff members in such endeavors, particularly as investigators, prosecutors, judges, and interpreters, is essential. Likewise, senior gender expertise should be included in technical assessment missions and advisory bodies.
27. When prosecuting gender crimes, States parties should recognize the unique traumas facing victims of sexual and gender-based violence in the judicial process. Addressing these unique circumstances will enable victims and witnesses to provide useful and empowering testimony.
28. When planning for disarmament, demobilization and reintegration, States parties should consider the different needs of female and male ex-combatants and take into account the needs of their dependents.
29. States parties should deploy greater numbers of female military and police personnel to peacekeeping operations, and should provide all military and police personnel with adequate training on sexual and gender-based violence, inter alia, to carry out their responsibilities.
30. Witness protection measures, particularly in terms of non-disclosure of identification, is essential in proceedings related to sexual and gender-based violence. Similarly, support and health services delivered to victims of sexual and gender-based violence should also be specifically tailored to the needs of victims. Psychosocial support is critical to address mental health concerns associated with surviving sexual and gender-based violence, which often leads to post-traumatic stress disorders.
31. In States parties where international tribunals have been set up or within its jurisdiction, States parties are encouraged to exchange best practices and to extract lessons from international jurisprudence, which can serve as a useful source for domestic judicial processes.
32. All States parties are urged to cooperate with international and local courts in providing evidence, assisting victims, and arresting suspects indicted by legitimate justice systems.

33. Specific, targeted sanctions should be established and enforced against parties involved in the trafficking of women or girls and forcing them into sexual slavery.
34. States parties should take the necessary steps to ensure that victims of gender and sexual crimes understand they have the right to reparations. Amid the instability of social and judicial systems in the post-conflict period, States parties should take the necessary measures to facilitate women's access to the available judicial bodies and avenues for redress.
35. States parties should abolish any gender bias in reformed property, inheritance and land ownership laws, in recognition of the reality of women in conflict and post-conflict contexts and the role women, particularly widows, play as heads of household and primary breadwinners.
36. Post-conflict legal processes should additionally take into account that women may have been displaced or rendered stateless. Logistical aspects of legal processes should therefore reflect flexibility in recognition of the challenges women may face in meeting the bureaucratic requirements and deadlines of the judicial process.
37. As obtaining justice and redress extends beyond court-ordered remedies, States parties should take a broad view of justice in conflict and post-conflict contexts. For women victims of war crimes, justice includes access to health and medical care necessary for the treatment of war injuries, be they physical, sexual or psychological. To the extent possible, States parties should provide such care. Additionally, States parties should facilitate the work of civil society organizations capable of providing health and medical care to women.
38. When negotiating and implementing peace agreements, States parties should adopt a gender perspective, including, inter alia: (a) The special needs of women and girls during repatriation and resettlement and for rehabilitation, reintegration and post-conflict reconstruction; (b) Measures that support local women's peace initiatives and indigenous processes for conflict resolution, and that involve women in all of the implementation mechanisms of the peace agreements; (c) Measures that ensure the protection of and respect for human rights of women and girls, particularly as they relate to the constitution, the electoral system, the police and the judiciary.
39. States parties should support the development and strengthening of the capacities of national institutions, in particular of judicial and health systems, and local civil society networks, in order to provide sustainable assistance to victims of sexual violence in armed conflict and post-conflict situations.
40. States parties should take further measures to improve women's participation during all stages of peace processes, particularly in conflict resolution, post-conflict planning and peace-building, including by enhancing their engagement in political and economic decision-making at early stages of recovery processes through, inter alia, promoting women's leadership and capacity to engage in aid management and planning, supporting women's organizations, and countering negative societal attitudes about women's capacity to participate equally.
41. In cooperation with the UN, humanitarian organizations, and civil society, States parties should endeavor to collect data on, analyze and systematically assess particular needs of women and girls in post-conflict situations, including, inter alia, information on their needs for physical security and participation in decision-making and post-conflict planning, in order to improve state-wide responses to those needs.

42. States parties should appoint senior gender advisors and/or women-protection advisors to police and military sectors, and provide technical assistance and improved coordination efforts to address recovery needs of women and girls in post-conflict situations.
43. States parties should ensure gender mainstreaming in all post-conflict peace-building and recovery processes and sectors.
44. States parties should ensure that women's empowerment is taken into account during post-conflict needs assessments and planning, and factored into subsequent funding disbursements and program activities, including through developing transparent analysis and tracking of funds allocated for addressing women's needs in the post-conflict phase.
45. In post-conflict situations, in consultation with civil society, including women's organizations, States parties should specify in detail women and girls' needs and priorities and design concrete strategies, in accordance with their legal systems, to address those needs and priorities, which cover inter alia support for greater physical security and better socio-economic conditions, through education, income generating activities, access to basic services, in particular health services, including sexual and reproductive health and reproductive rights and mental health, gender-responsive law enforcement and access to justice, as well as enhancing capacity to engage in public decision-making at all levels.
46. States parties should 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.
47. States parties should ensure systematic attention to and mobilization of resources for advancing gender equality and women's empowerment as an integral part of post-conflict peace-building, and encourage the full participation of women in this process.
48. States parties should undertake comprehensive legal and judicial reforms, as appropriate, in conformity with international law, without delay and with a view to bringing perpetrators of sexual violence in conflict to justice to ensure that survivors have access to justice, are treated with dignity throughout the justice process and are protected and receive redress for their suffering.
49. States parties should ensure that all reports of sexual violence committed by civilians or by military personnel are thoroughly investigated and the alleged perpetrators brought to justice, and that civilian superiors and military commanders, in accordance with international humanitarian law, use their authority and powers to prevent sexual violence, including by combating impunity.
50. States parties should endeavor to establish, where appropriate, mobile gender justice courts to reach remote areas to end impunity for gender crimes. In doing so, States parties should include mobile health clinics and mobile legal assistance clinics with these mobile courts.