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# PEACE AGREEMENTS OR PIECES OF PAPER? THE IMPACT OF UNSC RESOLUTION 1325 ON PEACE PROCESSES AND THEIR AGREEMENTS

CHRISTINE BELL AND CATHERINE O'ROURKE\*

**Abstract** On the 31 October 2000 UNSC Resolution 1325 was adopted. The resolution provided for a range of measures aimed at the inclusion of women in the prevention, management and resolution of conflict. In particular, several of the resolution's provisions addressed the role of women and gender in peace negotiations and agreements. This article examines whether and how Resolution 1325 has impacted on the drafting of peace agreements. We analyse explicit references to women and gender in peace agreements from 1990 to 2010, providing a quantitative and qualitative assessment of the extent to which women and gender are addressed. We conclude by using our findings and analysis to address the relationship of feminist intervention to international law, and debates around the strategies and trade-offs which underlie feminist promotion and use of UN Security Council Resolutions in particular.

## I. INTRODUCTION

The post Cold War years have witnessed a steady proliferation of peace processes and peace agreements aimed at ending violent social conflict.<sup>1</sup> This same period has been marked by women's transnational mobilization to secure feminist-informed reform to international law and institutions.<sup>2</sup> On 31 October 2000 these two processes came together at the highest formal legal institutional level—with the adoption of UNSC Resolution 1325 on Women,

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<sup>1</sup> For description of the rise in peace agreements, the reasons linking it to the end of the Cold War, and the scale of the phenomenon, see C Bell, *On the Law of Peace: Peace Agreements and the Lex Pacificatoria* (OUP, Oxford, 2008).

<sup>2</sup> N Reilly, *Women's Human Rights: seeing Gender Justice in a Globalising Age* (Polity, Oxford, 2008); see also, A Boyle and C Chinkin, *The Making of International Law* (OUP, Oxford, 2007) ch 2.

Peace and Security. Among other things, this resolution specifically targets peace negotiations and agreements calling for a 'gender perspective' to be adopted.

This article examines whether and how Resolution 1325 has impacted on the drafting of peace agreements in practice. Using a comprehensive database of peace agreements signed between January 1990 and January 2010, we analyze specific references to women in these peace agreements as an indicator of whether the 'gender perspective' mandated by the resolution has been adopted.<sup>3</sup> Specifically, we evaluate quantitatively whether the prevalence of peace agreement provisions on women has changed since the adoption of Resolution 1325. We provide further data on the extent to which a positive correlation exists between the UN being a third party to the peace agreement, and the inclusion of provisions on women in the text of the agreement. We also provide qualitative analysis of the nature of peace agreement provision for women and the extent to which it addresses the issues highlighted by Resolution 1325.

In summary, we find that only 16 per cent of peace agreements contain specific references to women. However, quantitatively peace agreement references to women have increased post Resolution 1325, with the rise being more marked among agreements in which the UN had a third party role. Qualitatively, we find that references to women do touch on the issues raised by Resolution 1325, but unsystematically so. These findings suggest a modest impact of Resolution 1325 on peace agreements. They inform feminist debates about the resolution's effectiveness, but also inform more general debates about the effectiveness of UNSC Resolutions addressing civil war.<sup>4</sup> We conclude by using our findings to argue for a more layered understanding of the barriers to Resolution 1325's implementation, based on understanding of where normative standards might make a difference, where their effect may be limited, and what the negative trade-offs for women may be.

## II. UNSC RESOLUTION 1325 (2000)

Resolution 1325 calls for women's equal participation with men and for their full involvement in all efforts for the maintenance and promotion of peace and security. It reaffirms the need to fully implement international humanitarian and human rights law to protect women and girls from human rights abuses, including gender-based violence.<sup>5</sup> It identifies the need to mainstream gender

<sup>3</sup> The limitations of this approach, namely, that even where gender goes unmentioned it is relevant, are acknowledged and discussed in II A and VII D below. A fuller explanation of our coding of 'women' and 'gender' for the purposes of the quantitative study is set out in Section III.

<sup>4</sup> See International Peace Institute forthcoming project on 'Understanding Compliance with UN Security Council Resolutions Addressing Civil Wars', information available at [www.ipinst.org/programs/coping-with-crisis/details/11/28.html](http://www.ipinst.org/programs/coping-with-crisis/details/11/28.html).

<sup>5</sup> Paras 9, 10, 11 and 12, SC Res 1325.

perspectives in relation to conflict prevention, peace negotiations, peace-keeping operations, humanitarian assistance, post-conflict reconstruction and disarmament, demobilization and reintegration initiatives.<sup>6</sup> The resolution is addressed variously to United Nations institutions, Member States, and all parties to armed conflict. A specific reference to peace agreements is found in paragraph 8 which:

*Calls on* all actors involved, when negotiating and implementing peace agreements, to adopt a gender perspective, including, inter alia:

- (a) The special needs of women and girls during repatriation and resettlement 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 and girls, particularly as they relate to the constitution, the electoral system, the police and the judiciary; . . .

The adoption of Resolution 1325 was significant on several grounds. The resolution constituted the first time that the UN Security Council turned its full attention to the subject of women and armed conflict and acknowledged the role of women as active agents in the negotiation and maintenance of peace agreements, providing a clear legal basis for addressing the issue.<sup>7</sup> Symbolically, the resolution marked the impact of war on women and provided formal high-level acknowledgement that the exclusion of women from conflict resolution is a threat to peace. In practice, the resolution automatically triggered ongoing UN attention to women, peace and security, by providing for ongoing UN Secretary-General reporting on its implementation.<sup>8</sup> The resolution constituted a major victory for women's transnational mobilization aimed at mainstreaming women's equality within the United Nations.<sup>9</sup>

As it reaches its 10 year anniversary, Resolution 1325 has been supplemented by additional UNSC resolutions aimed at strengthening and expanding

<sup>6</sup> Paras 1, 2, 5, 6, 7, 8 and 13, SC Res 1325.

<sup>7</sup> Resolution 1325 is a 'thematic' resolution best understood as a Chapter VI UN Charter (non-binding) resolution. Its legal authority has been accentuated by the fact that it was passed unanimously, and that the resolution uses the language of obligation. On the status and nature of Resolution 1325, see S Anderlini, *Women Building Peace: What they do, Why it Matters* (Lynne Rienner, Boulder, Colorado, London, 2004) 196–199; D Otto, 'A Sign of "Weakness"?' *Disrupting Gender Certainties in the Implementation of Security Council Resolution 1325* (2006) 13 *Michigan Journal of Gender and Law* 113; TL Tryggstad, 'The UN and Implementation of UN Security Council Resolution 1325 on Women, Peace and Security' (2009) 15 *Global Governance* 539. On the background of Resolution 1325 see generally Peace Women website <peacewomen.org/themes\_theme.php?id=15&subtheme=true> and UNIFEM Women War and Peace Portal at <womenwarpeace.org/1325\_toolbox>.

<sup>8</sup> Para 17, SC Res 1325. For reports see tracking at <www.womenwarpeace.org/1325\_toolbox#tracking>.

<sup>9</sup> See references above (n 7).

its provisions and securing its implementation. This recent flurry of activity attests to an ongoing strategy of advancing women's needs and equality in conflict and peace negotiations by means of UNSC resolution. Each of the new resolutions underlines Resolution 1325's references to peace negotiations and agreements. UN Security Council Resolution 1820 (2008) reinforces Resolution 1325's provisions on sexual violence against women in armed conflict and urges increased participation of women in peace talks.<sup>10</sup> UN Security Council Resolution 1888 (2009), focusing on the implementation of measures dealing with sexual violence, also notes in its preamble 'the underrepresentation of women in formal peace processes, the lack of mediators and ceasefire monitors with proper training in dealing with sexual violence, and the lack of women as Chief or Lead peace mediators in United Nations-sponsored peace talks.'<sup>11</sup> Resolution 1888 was closely followed by UN Security Council Resolution 1889 (2009) aimed at increasing awareness of and achieving implementation of Resolution 1325, and affirming its key peace process provisions.<sup>12</sup>

#### *A. UNSC Resolutions as Sites of Feminist Intervention*

Resolution 1325 and the subsequent resolutions have prompted the question of how effective such resolutions are in securing compliance from those at whom they are addressed, and most notably from the UN itself. Ten years on, research is beginning to attempt to assess progress in the implementation of Resolution 1325. In addition to the periodic reviews provided for by the resolution within the UN,<sup>13</sup> there have been attempts to establish benchmarks for

<sup>10</sup> Para 12 urges '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, and encourages all parties to such talks to facilitate the equal and full participation of women at decision-making levels'.

<sup>11</sup> Para 17 urges that 'the issues of sexual violence be included in all United Nations-sponsored peace negotiation agendas', and also that 'the inclusion of sexual violence issues from the outset of peace processes in such situations, in particular in the areas of pre-ceasefires, humanitarian access and human rights agreements, ceasefires and ceasefire monitoring, DDR [demobilization, demilitarization and reintegration] and SSR [security sector reform] arrangements, vetting of armed security forces, justice, reparations, and recovery/development.'

<sup>12</sup> SC Res 1889 recognizes in its preamble the underrepresentation of women 'at all stages of peace processes', and in particular at the level of mediators. The preamble also notes the particular exclusion from peace processes of refugees and internally displaced persons, both being groups where women tend to be over-represented. Para 1 calls on Member States, international and regional organizations to improve the participation of women in peace processes, and para 4 calls on the Secretary-General to develop a strategy to increase the number of UN mediators who are women.

<sup>13</sup> See United Nations Secretary-General, *Women, Peace and Security*, UN Doc. S/2004/814 (2004); United Nations Secretary-General, *Women, Peace and Security*, UN Doc. S/2008/622 (2008).

the implementation of Resolution 1325.<sup>14</sup> Empirical evaluation of Resolution 1325 has largely concentrated on case studies. Analysis has identified both good and bad practice in terms of the practical implementation of the resolution by international organizations and conflict and post-conflict States.<sup>15</sup> In addition, more critical feminist scholarly analysis has questioned the strategy of using UNSC Resolutions to further gender equality, noting the trade-offs that occur for women, between influence and co-option, and between changing international law and changing the situation of women.<sup>16</sup> This strand of the literature is particularly concerned with the tendency of the UNSC Resolutions to advance protective stereotypes that essentialize women in conflict situations as either victims of sexual violence, mothers, or as uncritical advocates for an end to conflict. These stereotypes tend to marginalize women as political agents in conflict situations (and also, perversely, obscure the victimhood of men and boys in conflict). This literature questions whether advancements made at the level of policy are sufficient to outweigh the risks of reinforcing stereotypes of women that marginalize them politically.

This article engages with both strands of the literature by offering empirical evaluation—both quantitative and qualitative—of the implementation of Resolution 1325 with reference to peace negotiations and agreements. Our research starts from the premise that whether or not peace agreements address women is capable of discrete measurement by ‘counting’ where peace agreements specifically mention women or gender. Paragraph 8 talks of the need to adopt a ‘gender perspective’—a concept that goes well beyond whether the terms such as ‘gender’ or ‘women’ enter an agreement, to include, for example, how civilian/combatant distinctions are dealt with, provision for socio-economic rights, the role of customary law, or what conceptualization of equality underpins any new constitutional order. However, paragraph 8 would seem to require specific measures relating to women in peace agreement texts. We suggest further, that specific reference to women is a key indicator of whether a broader gender perspective has been used, capable of touching how

<sup>14</sup> See, for example, Gender Action for Peace and Security, *Global Monitoring Checklist on Women, Peace and Security* (Gender Action for Peace and Security, London 2009); see further United Nations Secretary-General, *Women, Peace and Security*, UN Doc/ S/2010/173 (2010).

<sup>15</sup> See, for example, H Charlesworth and M Woods, “Mainstreaming Gender” in International Peace and Security: The Case of East Timor’ (2001) 26 *Yale Journal of International Law* 313; L Olsson and J Tejpar (eds), *Operational Effectiveness and UN Resolution 1325—Practices and Lessons from Afghanistan* (Stockholm, FOI, Swedish Defence Research Agency, 2009). More work is in train. In 2007, International Alert launched a three year project entitled *Supporting women’s peacebuilding priorities: Implementing UN SCR 1325*, the research component of which will be case studies, see <[www.international-alert.org/gender/index.php?t=2](http://www.international-alert.org/gender/index.php?t=2)>.

<sup>16</sup> See in particular, Otto (n 7); D Otto, ‘The Exile of Inclusion: Reflections on Gender Issues in International Law Over the Last Decade’ (2009) 10 *Melbourne Journal of International Law* 11; P Scully, ‘Vulnerable Women: A Critical Reflection on Human Rights Discourse and Sexual Violence’ (2009) 23 *Emory International Law Review* 113; C Cohn et al., ‘Women, Peace and Security: Resolution 1325’ (2004) 6 *International Feminist Journal of Politics* 130. cf the nuanced defence of Resolution 1325 in Tryggestad (n 7).

the agreement is constructed in terms of gender equality. Increased references to women in the content of peace agreements could therefore have been expected post resolution, if this provision was being implemented by all those involved in conflict resolution. Full compliance with Resolution 1325, now reinforced by its successors, could have been expected to result in five types of peace agreement measures in particular:

- measures that would ensure the protection of and respect for the human rights of women and girls, in particular with relation to formal political and legal institutions—the constitution, the electoral system, the police and the judiciary (paragraph 8(c), Resolution 1325)
- measures dealing with the special needs of women and girls in post-conflict processes such as repatriation, resettlement, rehabilitation, reintegration and post-conflict reconstruction, in peace processes where such issues were relevant (paragraph 8(a), Resolution 1325)
- measures supporting local women’s peace initiatives and indigenous processes for conflict resolution, and to involve women in all of the implementation mechanisms of the peace agreement (paragraph 8(b), Resolution 1325; cf paragraphs 11 and 12, Resolution 1820), and
- measures dealing with the issue of sexual violence (paragraph 10, Resolution 1325; cf paragraph 8 Resolution 1820, paragraph 17, Resolution 1888), and in particular to exclude war crimes including those relating to sexual violence against women and girls, ‘where feasible’ from amnesty provisions (paragraph 11, Resolution 1325; cf paragraph 4, Resolution 1820)
- measures providing for the different needs of women in planning for disarmament, demobilization and reintegration and vetting (paragraph 12, Resolution 1325; cf paragraph 17, Resolution 1888)

Our research therefore both quantifies where peace agreements specifically refer to women and gender, tracking how the resolution might have affected these references, and identifies the ways in which these references deal with the issues targeted in Resolution 1325 as set out above.

### *B. Peace Agreements as Sites of Feminist Intervention*

Before moving to this evaluation, it is worth considering why peace negotiations and agreements have become a focus of feminist intervention. Resolution 1325’s reference to peace agreements responds to the post Cold War proliferation of peace agreements and the use of negotiated settlement as the key mechanism by which to bring violent social conflict to an end.<sup>17</sup> Peace agreements document agreement between warring parties in an attempt to end the conflict and establish politics as an alternative to military violence. Inclusion in peace agreement texts is therefore an important starting point in

<sup>17</sup> For reasons for the post Cold War rise in peace agreements, see Bell (n 1) ch 2.



achieving other political, legal and social gains for women. The scale of the practice is quite overwhelming, with around as many States having peace processes and agreements as do not.<sup>18</sup> The documents in these processes include ceasefire and pre-negotiation agreements; framework agreements which set out the arrangements for substantively settling the conflict; and implementation agreements that address implementation of the framework agreement.<sup>19</sup>

Specific references to women can be important at all three stages. Whether issues such as sexual violence are included in ceasefire agreements will determine what will be regarded as a ceasefire violation, what violations will be monitored, and often whether the issue will be further addressed in any comprehensive peace settlement. As regards framework and implementation peace agreements, inclusion of references to women is often significant to women's inclusion in post-conflict peacebuilding strategies. While in 1990 peace agreements were viewed as comprehensive 'contracts' between parties, they are currently viewed more as 'roadmaps'.<sup>20</sup> Paradoxically this shift has accentuated, rather than replaced, the importance of agreement references to women. The peace agreement as road-map defines the goals of the peace process and, further, sets specific priorities for a broad range of matters from institutional reform to socio-economic development, both for local parties and for international organizations and the international funders of the process. While the terms of a peace agreement do not secure the implementation of its provisions, and the omission of an issue does not mean that it cannot be addressed in practice, issues that are not specifically mentioned in the agreement can be difficult to prioritize post-agreement, and importantly, international implementation mechanisms and donor funding flow from the agreement's priorities.<sup>21</sup> In other words, although gender references may do little to further women's equality, without gender being mentioned the struggle for inclusion is even more difficult.

<sup>18</sup> See figures in text at III.A. below (there are peace agreements in 97 jurisdictions or interstate disputes, with the current number of states standing at around 192 (the number of UN members), depending on how states are classified).

<sup>19</sup> Bell (n 1) 55–56 (for classification of peace agreements in these terms).

<sup>20</sup> J Arnault, 'Good Agreement? Bad Agreement? An Implementation Perspective', Princeton, Center of International Studies, Princeton University, no date, [www.stanford.edu/class/psych165/Arnault.doc](http://www.stanford.edu/class/psych165/Arnault.doc) [accessed 20 September 2010].

<sup>21</sup> As Chinkin writes, 'The legitimacy of the implementing action derives from the peace agreement, which tends to acquire a weight and authority of its own. If a particular policy is not within the mandate specified by the agreement it may be hard to convince those implementing the agreement to address the issue.' C Chinkin 'Peace Agreements as a Means for Promoting Gender Equality and Ensuring the Participation of Women' United Nations Division for the Advancement of Women, EGM/PEACE/2003/BP.1, 31 October 2003 at 12. For recommendations regarding gender and peace agreements see further United Nations Division for the Advancement of Women, 'Peace Agreements as means for Promoting Gender Equality and Ensuring Participation of Women—A Framework of Model Provisions' *Report of the Expert Group Meeting Ottawa, Canada 10–13 November 2003*, 10 December 2003, New York, United Nations. UN Doc EGM/PEACE/2003/Report.

Addressing the status of women in peace agreement texts is significant not just for the inclusion of women in peace-building strategies, but for their future inclusion in the domestic political and legal order itself. Peace agreements have a distinctive quasi-constitutional quality, and sometimes even constitute or contain constitutions.<sup>22</sup> Comprehensive or framework peace agreements typically set out complex arrangements for new democratic institutions, human rights and minority protections, and reform or overhaul of security and justice sector institutions. Like constitutions they operate as ‘power-maps’ for how power will be held and exercised, as between the body politic and its institutions. Constitutions represent a higher legal order, the framework in which political disagreements and institutional reform are played out.<sup>23</sup> In recognition of their importance, feminist analysis is increasingly looking to the development of constitutions as an important site of intervention.<sup>24</sup> Peace agreements are similarly important because they ‘not only formalize political priorities but also articulate a nation’s political aspirations and their enduring nature.’<sup>25</sup>

Yet, there can also be objections or concerns about strategies focused on the formal inclusion of women in the text of peace agreements. Peace agreements tend to revolve primarily around compromises negotiated in secret by political-military elites who are almost exclusively men.<sup>26</sup> For feminists, means and ends are generally viewed as related, raising doubts as to whether provisions capable of delivering substantive change for women can be normatively propelled into agreements produced in contexts that permit neither women’s involvement nor broader public consultation or democratic input. Requiring the participation of women in negotiations processes (a focus of all the UNSC resolutions) may do little to address how the priorities of peace settlement are defined or how peace is conceptualized. Even where strong gender provisions are conceded, the relationship between peace agreement text, implementation

<sup>22</sup> See further, C Bell, ‘Peace Agreements: Their Nature and Legal Status’ 100 *American Journal of International Law* 391–394.

<sup>23</sup> See M Loughlin, *Sword and Scales* (Hart Publishing, Oxford, 1999).

<sup>24</sup> A Dobrowolsky, ‘Shifting States: Women’s Constitutional Organizing Across Time and Space’ in LA Banaszak, K Beckwith, and D Rucht (eds), *Women’s Movements Facing the Reconfigured State* (CUP, New York, 2005) 114–140. See also A Dobrowolsky and V Hart, *Women Making Constitutions: New Politics and Comparative Perspectives* (Palgrave MacMillan, Houndsmill, Basingstoke & NY, 2003).

<sup>25</sup> Dobrowolsky *ibid*, 114 (referring to constitutions).

<sup>26</sup> See H Martin, *Kings of Peace, Pawns of War: the Untold Story of Peace-making* (Continuum, London and New York, 2006), xi, noting that 99 per cent of those who negotiate in peace processes are male; A Potter ‘We the Women: Why Conflict Mediation is Not Just A Job for Men’ (Centre for Humanitarian Dialogue, Geneva, 2005); see also, UNIFEM Briefing Note, ‘Women’s Participation in Peace Negotiations: Connections between Presence and Influence’ (April 2009) noting that out of 21 major peace processes since 1992, only 2.4 per cent of signatories were women, no women had been appointed Chief or Lead peace mediators in UN-Sponsored peace talks, and that women’s participation in negotiating delegations averaged 5.9 per cent of the 10 cases for which such information was available, <[www.realizingrights.org/pdf/UNIFEM\\_handout\\_Women\\_in\\_peace\\_processes\\_Brief\\_April\\_20\\_2009.pdf](http://www.realizingrights.org/pdf/UNIFEM_handout_Women_in_peace_processes_Brief_April_20_2009.pdf)>.

of its provisions and durable peace, remains largely unknown. Moreover peace agreements, almost without exception, involve international third parties in implementation and enforcement, and this involvement often has negative trade-offs as well as benefits for local women, whether through the sexual exploitation that often accompanies the presence of international actors, or because internationalization of domestic constitutional spaces can oust or limit, rather than enable, the possibilities of local democratic practice.

Two decades into the practice of peace agreements, these debates point to the importance of measuring the impact of Resolution 1325 on peace agreement texts. While evaluation of peace agreement texts only measures one element of Resolution 1325, this discrete and measurable element provides some sort of indicator as to how the resolution as a whole is being implemented. The strength of the measure lies in the fact that peace agreement references constitute a relatively concrete and quantifiable measure. It can be relatively difficult to measure the effectiveness of Resolution 1325's rather broad exhortations 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' (paragraph 1), or to assess how the 'role and contribution of women in United Nations field-based operations' has been expanded (paragraph 4). It is possible, however, to assess whether references to women have been included in peace agreements, provided that a comprehensive collection of such agreements exists. While further research is required to evaluate whether and how any references to women in peace agreements have been implemented, if there is no reference this absence has immediate significance. Moreover, we argue that further research depends on access to baseline data such as we provide here.

### III. ASSESSING THE IMPACT OF RESOLUTION 1325 ON PEACE AGREEMENTS

#### *A. The Dataset*

The research reported in this article draws on an ongoing documenting of peace agreements since 1990, by logging their names and categorizing their substance in a database.<sup>27</sup> The resultant database includes 585 peace agreements in 102 peace processes (in 97 jurisdictions or inter-state relationships, five jurisdictions having more than one conflict producing peace agreements). The database includes a breakdown of peace agreement textual references according to the following categories: dealing with the past (amnesty, past mechanism, prisoner release, victims), undoing the legacy of the past (refugees, land), state institutional reform (criminal justice, policing, judicial

<sup>27</sup> For the pilot of the database see <[www.peaceagreements.ulster.ac.uk/](http://www.peaceagreements.ulster.ac.uk/)>. The dataset on peace agreement references on women and the UN is held in full at [www.transitionaljustice.ulster.ac.uk/tji\\_database.html](http://www.transitionaljustice.ulster.ac.uk/tji_database.html).

reform, new rights institutions), enforcing the agreement (enforcement mechanism, international community, UN involvement), and agreement provisions addressing a range of other issues, such as women, civil society, and socio-economic/development. The database therefore enables texts of peace agreements to be compared with respect to these categories.<sup>28</sup>

### *B. Peace Agreement Definition*

While the term peace agreement is used in databases and UN documents, there is no official definition of a peace agreement. The term peace agreement is not a term of art but a label attached to certain documents in a peace process. Nonetheless, a number of authoritative databases and definitions exist with much common ground in what is included.<sup>29</sup> The definition of peace agreement used in the peace agreement dataset here is a broad one that attempts to capture documents significant to agreement between the parties in a militarily violent conflict. We adopt the following definition:

[P]eace agreements are documents produced after discussion with some or all of the conflict's protagonists which address militarily violent conflict with a view to ending it.

The concept of 'militarily violent conflict' is taken from the lowest threshold definition in political science literature, namely the Uppsala Conflict Data Program definition of armed conflict as:

[A] contested incompatibility that concerns government and/or territory where the use of armed force between two parties, of which at least one is the government of a state, results in at least 25 battle-related deaths in one calendar year.<sup>30</sup>

<sup>28</sup> See C Bell and O'Rourke, 'The People's Peace? Peace Agreements, Civil Society, and Participatory Democracy' (2007) 28 *International Political Science Review* 293 (reviewing peace agreement references to civil society).

<sup>29</sup> The two main websites are the UN Peacemaker website, which defines a peace agreement as 'Peace agreements are contracts intended to end or significantly transform a violent conflict so that it may be addressed more constructively' <[peacemaker.unlb.org/index1.php](http://peacemaker.unlb.org/index1.php)>; and the USIP peace agreement digital library which defines a peace agreement as 'the full text of agreements signed by the major contending parties ending inter- and intra-state conflicts worldwide since 1989', <[www.usip.org/resources-tools/digital-collections](http://www.usip.org/resources-tools/digital-collections)>. A third definition is found in the Uppsala conflict database which states that 'A peace agreement should address the problem of the incompatibility, either by settling all or part of it, or by clearly outlining a process for how the warring parties plan to regulate the incompatibility', <[www.pcr.uu.se/research/UCDP/data\\_and\\_publications/definitions\\_all.htm#dyad](http://www.pcr.uu.se/research/UCDP/data_and_publications/definitions_all.htm#dyad)>.

<sup>30</sup> The definition of battle-related deaths used is taken from the Uppsala Conflict Data Program as: conflict behaviour between warring parties in the conflict dyad, which is directly related to the incompatibility, ie carried out with the purpose of realizing the goal of the incompatibility and result in deaths, see <[www.pcr.uu.se/research/UCDP/data\\_and\\_publications/definitions\\_all.htm](http://www.pcr.uu.se/research/UCDP/data_and_publications/definitions_all.htm)>.

This is a substantively lower threshold than that of ‘civil war’ (which typically uses figures of 1000 battle-related deaths in one calendar year),<sup>31</sup> and captures both civil wars but also a range of smaller-scale but protracted social conflicts.

This peace agreement dataset therefore includes: agreements in both interstate and intrastate conflict; proposed agreements not accepted by the relevant parties (but satisfying the definition above); agreements between some but not all parties to conflicts; agreements essentially imposed after a military victory; joint declarations largely rhetorical in nature; agreed public memorandums of meetings between parties; regional agreements aimed at underwriting or enabling agreement between parties to a conflict that is primarily internal; and implementation agreements produced to consolidate or extend framework peace agreements. Where specific pieces of legislation, constitutions, interim constitutions, constitutional amendments, or UNSC Resolutions were the outcome of peace negotiations, these are included in the collection. Where agreements were produced to implement or consolidate prior peace agreements these have also been included as peace agreements. We did not impose a timeframe requirement between peace agreement and violent conflict for it to be classified as a peace agreement.

### C. Counting Peace Processes

It is important also to explore the possibility that peace agreement numbers increasingly result from more agreements *within* processes, rather than an ever-increasing spread of peace negotiations and agreements to *new* processes. This is important to understanding whether any increase in references to women is due to increased references across new peace processes, or to more consistent referencing within processes. There are some indications that while peace agreements continue to be produced in large numbers, they include larger numbers of ‘repeat’ agreements within peace processes, and fewer new processes. First, the number of intrastate conflicts is apparently falling,<sup>32</sup> while war-on-terror proscription of ‘terrorists’ (as most non-state armed opponents are defined by the states they oppose) makes negotiations more difficult, pointing to the possibility of a return to military strategies of defeat, as seen in recent approaches to ending internal conflicts in Colombia and Sri Lanka. Second, the change in peace agreement emphasis from contract to road map, and new research on the difficulties of implementation (such as the emergence of post-settlement ‘spoilers’ who then need to be incorporated in any peace agreement framework), indicates that peace agreements tend to beget more peace agreements.<sup>33</sup>

<sup>31</sup> For an overview of civil war datasets and their categorization of ‘civil war’ see K Eck, ‘A Beginner’s Guide to Conflict Data: Finding and Using the Right Dataset’ Uppsala Conflict Data Program Paper #1 <[www.pcr.uu.se/publications/UCDP\\_pub/UCDP\\_paper1.pdf](http://www.pcr.uu.se/publications/UCDP_pub/UCDP_paper1.pdf)>.

<sup>32</sup> See eg, L Harbom, S Hogbladh and P Wallensteen, ‘Armed Conflict and Peace Agreements’ (2006) 43 *Journal of Peace Research* 617. <sup>33</sup> *ibid.*

To attempt to capture this dimension of the peace agreement picture we counted not just absolute numbers of peace agreements, but also the number of distinct processes involving distinct conflicts in which these peace agreements were produced.<sup>34</sup> This calculation involved some decisions as to what constituted a distinct process using secondary literature regarding the conflicts in question. Peace agreements that merely extended a peace agreement to include new sets of non-state actor were not counted as a separate process even though a different conflict dyad was terminated by the agreement's extension (eg Burundi). Conversely, in some cases different peace processes involved some of the same parties (eg Afghanistan), while in others (eg Colombia) a distinct peace process and set of agreements produced as part of a single strategy and initiative in a distinct time period and counted as one process, involved distinct parties. A decision was also made to count regional agreements (eg African Great Lakes agreements) as separate processes even though these linked to one or more underlying intrastate conflicts. While many of these calls can be challenged, we submit that the process figures give some sense of whether our peace agreement data represents a practice across processes or within processes.

#### *D. References to Women*

The texts of the peace agreements were analyzed and provisions making explicit reference to 'women' were coded. In addition, any reference to 'gender', as in 'gender balance' or 'gender sensitivity' (for example in new institutions established by the agreement) or 'gender-based violence' was also coded. Specific references to 'widows' or 'girls' and to 'sexual violence', or named forms of sexual violence such as 'rape', were also coded as references to women.<sup>35</sup> Where peace agreements included reference to international legal instruments that specifically address women, for example CEDAW and the 1957 Convention on the Nationality of Married Women, this too was recorded. In two agreements the only reference to women was the fact that a women's organization had signed the agreement. We coded these agreements as mentioning women for the purposes of the study because Resolution 1325

<sup>34</sup> We counted processes rather than conflict dyads because processes often address more than one conflict dyad simultaneously (see eg Agreements in Burundi); counting by 'dyads' would therefore have led to double-counting of these processes. The Uppsala Conflict Data Program defines a dyad as 'two conflict units that are parties to a conflict. One of these units has to be an armed challenger while the other unit has to be the challenged one, for example; government vs opposition group or two alliances fighting each other (the alliance is connected by its position in the incompatibility)', <[pcr.uu.se/research/UCDP/data\\_and\\_publications/definitions\\_all.htm#dyad](http://pcr.uu.se/research/UCDP/data_and_publications/definitions_all.htm#dyad)>.

<sup>35</sup> This last element of the coding is, we note, controversial as sexual violence should not be assumed to be directed against women only. However, many of the processes in which sexual violence is mentioned are ones where violence against women was an acknowledged feature of the conflict and where failure to code as a mention of women would be to fail to recognize that violence against women was the primary motivating factor for the provision.

specifically calls for the greater participation of women in peace processes, and this is often the single key demand of women's organizations in peace processes.<sup>36</sup> Hence, we reasoned that these agreements reflected a specific reference to women in having been involved in the peace negotiations 'as' women.<sup>37</sup> General statements or commitments of equality or human rights were not included unless specific reference was made to gender- or sex-based discrimination. Similarly, provisions addressing generic 'disadvantage' or 'under-represented' groups did not satisfy the classification unless the terms 'gender' or 'women' were specifically attached.

#### *E. References to UN Third Party Involvement*

We separately coded whether the UN was involved as some type of third party to the peace agreement. This enabled us to question the extent to which the UN has played a role in implementing its own normative standards by enabling cross-referencing with agreements which mentioned women. UN third party involvement was defined using the agreement text and documenting whether the UN, a UN agency, or a UN representative was party or signatory, mediator or facilitator, observer, witness or negotiator to the agreement. We did not draw on secondary sources in making this determination. Where agreements mentioned the UN elsewhere, for example, by calling on the United Nations to play a role in peace agreement implementation, they were not included in the 'counting' of UN involvement for the purposes of this study.

#### *F. 'Before' and 'After' Resolution 1325*

We arranged all agreements chronologically, separating agreements signed before October 31, 2000 (the date on which UNSC 1325 was adopted) from those signed after that date. Although it might be expected that Resolution 1325 would have taken some time to have an impact, the date of the resolution itself was chosen as the only clear point from which to measure. Full and robust implementation should have included rapid dissemination, and there is evidence in the case of UN guidelines on human rights which have still not been made public and have no legal status, having been circulated to UN

<sup>36</sup> See Cohn et al. (n 16) 138, quoting demands of women's organizations in the Solomon Islands, Vanuatu, Bougainville and Fiji: 'Whatever the code words let us in! Peace-builder, decision-maker, whatever argument works, let us in! Let us in so we can wrestle with the discussion at least, contest the parameters, and react, in real time and not after the fact.'

<sup>37</sup> The agreements are in Bougainville / Papua New Guinea and are referenced and discussed further below (n 82). In fact, research on the Bougainville process indicates a substantive 'women's process' although this often took place with little connection to the formal track one negotiations and peace agreements: see Chinkin (n 21) 4.

Secretary General Representatives involved in peace negotiations with very rapid impact.<sup>38</sup>

### G. Cross-referencing 'Women' and 'UN'

The database coding meant that agreements making explicit provision for women could be cross-referenced with agreements which involved the UN as a third party signatory. All agreements could also be counted in terms of whether they were pre- or post- Resolution 1325. In other words, women could be treated as a dependant variable, and a UN third party role as an explanatory independent variable, for all agreements, and for agreements signed before and after Resolution 1325, so as to test both the hypothesis that there had been a rise in references to peace agreements post Resolution 1325, and also to test the hypothesis that a UN third party role correlated with references to women before and after Resolution 1325. This analysis is set out in IV below.

### H. Qualitative Assessment

In addition to this quantitative data, we also assessed peace agreement references to women qualitatively. Using peace agreement provision, we grouped agreement provision under the main types of subject matter that they dealt with, for example, quotas in elected bodies, general statements of equality, sexual violence (agreements typically addressing more than one issue). This qualitative survey assists in giving a picture of the nature of peace agreement references to women. In particular, it enables us to compare peace agreement references with the issues singled out by Resolution 1325 as set out in II above. This qualitative analysis is set out in Section V below.

#### IV. QUANTITATIVE ASSESSMENT OF PEACE AGREEMENT REFERENCES TO WOMEN

In summary, our research shows that only 16 per cent of peace agreements contain references to women, but that references to women have increased significantly since the passing of Resolution 1325, from 11 per cent to 27 per cent of agreements. This rise is more dramatic for agreements in which the UN had a third party role (from 4 per cent to 12 per cent), than for agreements which did not have the UN in such a role (from 7 per cent to 14 per cent). However, both before and after Resolution 1325 agreements are more likely to

<sup>38</sup> See P Hayner, *Negotiating Peace in Sierra Leone: Confronting the Justice Challenge* (Geneva, Centre for Humanitarian Dialogue, International Centre for Transitional Justice, 2007) 17–18 (documenting the influence of human rights guidelines circulated by the UN Secretary General on the Sierra Leone Lomé Accord, 1999. These guidelines were only circulated to UN SG representatives in mid 1999, and were perhaps only drawn to the attention of his representative in Sierra Leone two days before the Lomé Accord was signed). See further below (n 90).



reference women in agreements in which the UN is *not* named as a third party. The more marked increase in references to women in 'UN' agreements must therefore be understood in a context where such agreements were less likely to reference women prior to Resolution 1325. The findings relating to peace processes indicate that the rise in references to women is due both to increased references to women in multiple agreements in particular processes, and to references to women in new peace processes.

#### *A. Numbers and Spread of Peace Agreements*

The study involved 585 peace agreements signed between 1 January 1990 and 1 May 2010.<sup>39</sup> This included 529 agreements focused on intrastate conflicts and parties, 34 agreements focused on primarily inter-state conflicts and parties, and 22 regional agreements where regional actors addressed the external dimensions to a primarily intrastate conflict. Within that period 399 of these agreements (68 per cent) were signed before Resolution 1325, and 186 (32 per cent) of agreements were signed after Resolution 1325. These agreements took place in 102 processes, of which 82 (80 per cent) were in train before Resolution 1325, and 44 (43 per cent) were in train after Resolution 1325 (24 processes having starting before 1325 and continuing past this date and 20 processes starting after 1325). These figures are illustrated in Table 1.

#### *B. References to Women*

Review of the peace agreements references to women established that out of a total number of 585 agreements, only 92 agreements (16 per cent) mentioned women. The small number and percentage of agreements explicitly mentioning women is perhaps the most significant figure of the entire study. This figure, it should be remembered, includes *all* references to women, including those which limited rather than furthered equality, and those with only one small provision; as we will see in the qualitative discussion any type of holistic consideration of women is rare (see section V below).

When agreements mentioning women are disaggregated with reference to the timing of Resolution 1325, 42 agreements mentioning women were reached before Resolution 1325 was passed, constituting 11 per cent of all agreements signed before 1325; 50 agreements mentioning women were

<sup>39</sup> The list of agreements draws on and incorporates but goes beyond other comprehensive collections. By way of comparison, at the time of writing the UN peacemaker collection had 376 peace agreements in 91 jurisdictions, while USIP has 129 agreements in 42 jurisdictions. However, our own records indicate that even our own collection is incomplete, for we have references for up to 60 additional agreements which we do not hold, but believe from authoritative sources (including references from within other peace agreements) to exist, but which are not publicly available. For the most part these include rather obscure 'repeat' agreements, and a large number of agreements in Chad/Libya.

Table 1. *Peace agreements signed, showing figures for before and after Resolution 1325*<sup>40</sup>

	Peace agreements	Processes producing agreements
Before 1325	399 (68%)	82 (80%)
After 1325	186 (32%)	44 (43%)
Total	585	102

Table 2. *Peace agreements containing a reference to women showing figures for before and after Resolution 1325*<sup>41</sup>

	Peace agreements references to women	Peace agreement references by percentage	Number of processes producing peace agreements which mention women
Before 1325	42	11%	26 (32%)
After 1325	50	27%	19 (43%)
Total	92	16%	40 (39%)

reached after Resolution 1325 was passed, constituting 27 per cent of all agreements signed after Resolution 1325. These results are presented in Table 2. The results indicate that there was a significant increase in references to women in peace agreements after Resolution 1325 was passed.

However, there are indications that this rise is relatively recent. If post-Resolution 1325 figures are examined only up to December 31, 2007 (ie agreements signed in 2008, 2009, and 2010 are excluded), then the number of agreements mentioning women drops to 25 out of 161, or 16 per cent—indicating a very slight rise from the pre-Resolution 1325 era (11 per cent mentioning women). This timeframe excludes multiple agreements in African conflicts, in particular those of Democratic Republic of Congo, Kenya, Somalia, and Uganda, many of which mention women. This is a matter to which we return in section VI.

<sup>40</sup> These peace agreements were signed between 1 January 1990 and 1 May 2010. The figures relating to processes after 1325 include 24 processes which started before that date and continued after. In order to provide for the most accurate accounting of references to women these processes are included in both the before and the after tallies. Of post Resolution 1325 processes, only 20 were processes *starting* after that date.

<sup>41</sup> The percentages relate to the percentage of agreements and processes in the relevant time period. As with table 1, the processes that were both pre- and post- Resolution 1325 are included in both before and after figures to provide for the most accurate reflection of changes.

Table 3. *Peace agreements in which the UN had a third party role and which did not, cross-referenced with references to women showing numbers before and after Resolution 1325*<sup>42</sup>

	UN Third Party Role	Sub-set of agreements mentioning women	No UN Third Party Role	Sub-set of agreements mentioning women
Before 1325	130 (33%)	16 (4%)	269 (67%)	26 (7%)
After 1325	66 (36%)	24 (12%)	120 (65%)	26 (14%)
Total	196 (34%)	40 (7%)	389 (66%)	52 (13%)

These last figures raise the question of whether the post-Resolution 1325 rise in references to women in peace agreements represents a broader inclusion of women in a greater number of peace processes, or more consistent referencing of women in *particular* processes which happen to have multiple agreements. The figures on peace processes assist in answering this question. If we compare the number of *peace processes* which referenced women before Resolution 1325, 26 peace processes with agreement(s) referenced women out of a total of 82 processes (32 per cent). After Resolution 1325, 19 processes out of 44 (43 per cent) mentioned women, while 8 of the 14 (57 per cent) peace processes beginning after Resolution 1325 had agreements mentioning women. This indicates that the rise in peace agreement references to women is due to new peace processes mentioning women and not just to references across multiple agreements within peace processes.

### C. UN Third Party Role and References to Women

Of the 585 agreements signed between 1 January 1990 and 1 May 2010, 196 involved the UN as a mentioned third party to the agreement. Of these agreements, 130 (33 per cent of pre 1325 agreements) were signed before Resolution 1325 and 66 (36 per cent of post Resolution 1325 agreements) were signed after Resolution 1325 (table 3). The UN was therefore involved in similar numbers of agreements before and after the passing of Resolution 1325.

Out of agreements in which the UN was mentioned as a third party, 40 agreements (7 per cent of agreements) made reference to women. Of these, 16 (4 per cent of pre 1325 agreements) date from before Resolution 1325, and 24 (12 per cent of post 1325 agreements) date from after Resolution 1325. This shows a significant rise in peace agreement references in which the UN was involved as third party.

<sup>42</sup> The percentages relate to the total number of agreements in the relevant time period.

Conversely, of the 585 agreements signed between 1 January 1990 and 1 May 2010, 389 (67 per cent) did not note the UN as a third party or present. Fifty-two of those agreements (13 per cent of agreements) mentioned women. Of these, 26 (7 per cent of agreements in that period) were pre-1325, and 26 (14 per cent of agreements in that period) mentioned women. Again, this is a significant rise in peace agreements references to women. These results are set out in table 3.

These results indicate that the post-1325 references to women were more marked in agreements in which the UN was a third party. However, this statistic must be understood in a context in which, surprisingly perhaps, agreements prior to Resolution 1325 involving the UN as third party were *less* likely to reference women than agreements in which the UN was not mentioned as third party. In other words, the more dramatic increase in UN involvement in peace agreements must be read in light of the fact that it occurred from a lower baseline. In fact, even after Resolution 1325, agreements in which the UN was not involved as a third party were more likely to mention women. These observations accord with logistic regression analysis of the figures.<sup>43</sup>

#### V. QUALITATIVE ASSESSMENT OF PEACE AGREEMENT REFERENCES TO WOMEN

Moving behind the figures, when peace agreements do make reference to women, what do they address substantively? To what extent do peace agreement priorities coincide with the priorities of Resolution 1325 and its successors? We analyzed the content of the 92 peace agreements identified as mentioning women, grouping similar type of provisions together. This produced a list of 23 topics or categories, such as ‘quotas for political institutions’, ‘dealing with the past’, ‘demobilization, demilitarization and reintegration (DDR)’. We then compared these categories with the types of issues which Resolution 1325 and its successors specifically mention should be addressed in peace agreements, as set out at the end of section II above. What follows is a qualitative assessment of peace agreement provision for women, grouped under headings identified by Resolution 1325.

<sup>43</sup> A logistic model was estimated with the dependent variable taking the value 1 if the agreement contained a reference to women, the value 0 if it did not and with the explanatory variable taking the value 1 if there was UN involvement in drafting the agreement, 0 if there was not. Estimating this model separately for pre- and post- Resolution 1325 agreements indicated that, for post-1325 agreements UN involvement had a significant positive influence on the likelihood of agreements making reference to women; for pre-1325 agreements, however, the likelihood of agreements making reference to women was not significantly affected by UN involvement. The statistical analysis demonstrated that the effectiveness of UN involvement, in terms of references to gender/women in agreements, could not be considered independently of whether or not Resolution 1325 was operating.

*A. Protection and Respect for Human Rights of Women and Girls with Particular Reference to Formal Political and Legal Institutions—the Constitution, the Electoral System, the Police and the Judiciary (paragraph 8(c))*

Many agreement references to women might be considered to further this Resolution 1325 requirement with varying degrees of specificity.

*1. Representation of Women in Political Institutions*

A number of agreements provided for the involvement of women in political institutions, although the specificity of what was provided varied. Provision for power-sharing in legislatures and executives is a persistent feature of peace agreements.<sup>44</sup> Interestingly, research on peace agreement implementation indicates power-sharing pacts are, on average, fully implemented and implemented quickly—on average seven months after the signing of the agreement, and often before elections.<sup>45</sup> The question of whether or not to provide quotas for women in peace agreements arises against this distinct background.

At this top end of the spectrum nine agreements provided for reserved seats or quotas for women in legislative or executive bodies (often transitional).<sup>46</sup> In Somalia, for example, the Transitional National Charter (TNC) established a 245 member Transitional National Assembly (TNA), with specified seats for specified clans and a quota of at least 12 per cent for women.<sup>47</sup> Women were subsequently granted 25 seats to be equally divided among the four major clans and a clan 'Alliance'.<sup>48</sup> An additional 15 agreements provide a much more general type of reference such as to 'effective participation' or 'gender balance in decisions or appointments' or a strong recommendation that

<sup>44</sup> See A Jarstad and D Nilsson, 'From Words to Deeds: The Implementation of Power-Sharing Pacts in Peace Accords' (2008) 25 *Conflict Management and Peace Science* 206.

<sup>45</sup> *ibid.* 215.

<sup>46</sup> Bangladesh/Chittagong Hill Tract (B) 4 (a) and (C) 3–4, Agreement between the National Committee on Chittagong Hill Tracts Constituted by the Government and the Parbattya Chattagram Janasanghati Samity, 2 December 1997; Burundi art 8, Accord de Partage de Pouvoir au Burundi (French) 6 August 2004; India/Bodoland Para 4.2 Memorandum of Settlement on Bodoland Territorial Council, 10 February 2003; Nepal art 9, Decisions of the Seven Party Alliance (SPA) Maoist Summit Meeting, 8 November 2006; PNG/Bougainville art 11.1 of Constitution, art 33 of Transitional Provisions, Draft Basic Agreement Concerning the Bougainville Reconciliation Government, 24 December 1998; Philippines/Mindanao art 25, Peace Agreement with the Moro National Liberation Front, 2 September 1996 (provision for 15 per cent sectoral representatives including from 'women'); Somalia: art IV, Addis Ababa Agreement conclude at the first Session of the Conference on National Reconciliation in Somalia, 27 March 1993; art 29, The Transitional Federal Charter of the Somali Republic, 29 January 2004; art 5, Decision on the High Level Committee Djibouti Agreement, November 25, 2008.

<sup>47</sup> Somalia (2004) *ibid.*

<sup>48</sup> S Nakaya, 'Women and Gender Equality in Peace Processes: from Women at the Negotiating Table to Postwar Structural Reforms in Guatemala and Somalia' (2003) 9 *Global Governance* 459, 468.

women be nominated to such bodies but without specifying a precise quota.<sup>49</sup> This more general provision for women was often included in agreements which had clear quotas for the political or ethnic groupings at the heart of armed conflict. For example, provisions for the participation of Darfur in the Government of Sudan are set out, with specific numbers of Darfurians, the Sudan People's Liberation Movement/Army (SPLM/A) and the Justice and Equality Movement (JEM,) while the last section provides 'Special effort shall be made to ensure that women are represented in these nominations.'<sup>50</sup> The Protocol on Powersharing which forms part of the Sudanese Comprehensive Peace Agreement also has clearly delimited quotas for the National Government with no quotas for women.<sup>51</sup>

There is evidence of quotas for women proving difficult to reconcile with ethnic or clan quotas. In the case of Bangladesh and the Chittagong Hills Tract Accord, for example, quotas are provided for the Hill District Councils intended to give the Chittagong Hills Tract peoples some form of self-government. These quotas provide for a Council composition of one chairman, 12 tribal males, 2 tribal females, 6 non-tribal males, and 1 non-tribal female.<sup>52</sup> The specific nature of the quotas used here guarantees the participation of women, but also stands to limit this participation by capping it. This example indicates the importance of a broader knowledge of the requirements of international and comparative law relating to non-discrimination, which would

<sup>49</sup> Afghanistan Chapter VI, Agreement on Provisional Arrangements in Afghanistan Pending the Reestablishment of Permanent Government Institutions (Bonn Agreement), 5 December 2001; Burundi art 15(16), Protocol 4, Chapter 3, art 13(d), Arusha Peace and Reconciliation Agreement for Burundi, 28 August 2000; DRC: Chapter III (1), Global and Inclusive Agreement on Transition in the Democratic Republic of Congo (The Pretoria Agreement), 16 December 2002; art 3b (iv), Inter-Congolese Negotiations: The Final Act (The Sun City Agreement), 2 April 2003; Great Lakes: art 1(11) and 3(33), Dar-el Salaam Declaration on Peace, Security Democracy and Development in the Great Lakes Regions, 20 November 2004; Preamble, Protocol of Non-Aggression and Mutual Defence in the Great Lakes Region, November 30, 2006; Guatemala: Preamble, Agreement on a Firm and Lasting Peace, 29 December 1996; art 178, Agreement on the Implementation, Compliance and Verification Timetable for the Peace Agreements, 29 December 1996; Liberia: art XXVII, Comprehensive Peace Agreement Between the Government of Liberia and the Liberians United for Reconciliation and Democracy (LURD) and the Movement for Democracy in Liberia (MODEL) and Political Parties, 18 August 2003; Mexico/Chiapas: Paragraph 5e, and III.5, Joint Proposals that the Federal Government and the EZLN agree to remit to the National Debating and Decision-Making Bodies in accordance with paragraph 1.4 of the Rules of Procedure, 16 February 1996; PNG/Bougainville: art B.4.28, Bougainville Peace Agreement, 30 August 2001; Sudan: art 1(15), Darfur Peace Agreement, 5 May 2006; arts 1(2) and 7(19), Chapter One, Eastern Sudan Peace Agreement, 14 October 2006; Uganda: arts 2.1(b) and 2.1(f), Agreement on Comprehensive Solutions between the Government of Uganda and the Lord's Resistance Army/Movement, Juba, Sudan, 2 May 2007; Zimbabwe: art 20, Agreement between the Zimbabwe African National Union-Patriotic Front (ZANU-PF) and the Two Movement for Democratic Change (MDC) Formations, on Resolving the Challenges Facing Zimbabwe, September 15, 2008.

<sup>50</sup> Sudan (2006) Darfur *ibid*.

<sup>51</sup> Sudan: Protocol between the Government of the Sudan and the Sudan People's Liberation Movement (SPLM) on Power Sharing, May 26, 2004.

<sup>52</sup> Bangladesh/Chittagong Hills Tract (1997) (n 46).

view a limiting quota as discriminatory against women. However, both Bangladeshi and Somali examples illustrate the difficulty in dealing with the intersectionality of gender identity and other forms of identity within peace agreement texts.<sup>53</sup> Quotas for women are sometimes provided as a sub-part of what is assumed to be an overarching ethnic or clan identity meaning that women may well be viewed as being present as ethnic and clan members first and foremost. While identities are constructed and never just given,<sup>54</sup> the potential for cross-identity organization of women to promote women's equality within new government structures may be restricted from the outset.

## 2. *Indigenous Women*

In conflicts involving indigenous groups, the position of indigenous women is often specifically addressed and specific quotas provided. Agreements in Bangladesh, (Chittagong Hills), India (Bodoland), Guatemala, Mexico, and the Philippines, make specific reference to indigenous women.<sup>55</sup> It is unclear why this is so, and whether the use of quotas is due to the greater mobilization of indigenous women, or 'outsider' assumptions that such societies lack internal equality, or other random factors, such as choice of mediator, which happen to have affected these agreements disproportionately. These references are not always unproblematic as the above-described case of Bangladesh indicates.

## 3. *General References to Political and Legal Equality*

Even more references to women arise at the level of general statements to political or legal equality or non-discrimination. Twenty-six agreements make broad references to political and/or legal equality for women or on the basis of gender; for example the Great Lakes agreements provide for parties to

<sup>53</sup> See E Rooney, 'Engendering Transitional Justice: Questions of Absence and Silence' (2007) 3 *International Journal of Law and Context* 93.

<sup>54</sup> cf Nakaya's discussion of Somalia (n 48) 469–470 finding that breakthrough quotas for women failed at the level of implementation because 'the real decision making authority continues to rest within clans.'

<sup>55</sup> Bangladesh/Chittagong Hills Tract (1997) (n 46); India/Bodoland (2003) (n 46); Guatemala: Agreement on the Identity and Rights of Indigenous Peoples, 31 March 1995; Mexico/Chiapas: Protocole sur les principes de négociation en vue d'un accord de paix conclu par le Gouvernement et l'EZLN (Ejército zapatista de liberación nacional), 11 September 1995; Actions and Measures for Chiapas Joint Commitments and Proposals from the State and Federal Governments, and the EZLN, 17 January 1996; Agreement on the Documents, 16 February 1996; Commitments for Chiapas by the State and Federal Governments and the EZLN under Paragraph 1.3 of the Rules of Procedure, 16 February 1996; Joint Declaration that the General Government and the EZLN shall submit to national debating and decision-making bodies, 16 February 1996; Philippines/Mindanao Memorandum of Agreement on the Ancestral Domain Aspect of the GRP-MILF Tripoli Agreement on Peace of 2001, 5 August 2008.

‘adopt deliberate policies and mechanisms for promoting gender equality at all levels and in all sectors, at the national and regional levels’.<sup>56</sup>

#### 4. *Human Rights Standards*

Seven agreements specifically incorporate or refer to CEDAW or other women-specific international legal measures.<sup>57</sup> Sixteen agreements make more general reference to the need to protect women’s human rights, or ensure the application of humanitarian law to women.<sup>58</sup> These types of reference, as with general references to political and legal equality, often appear to offer little more than an ‘equality before the law’ form of protection. A specific measure such as incorporation of CEDAW may seem like a fairly ‘easy’ provision to

<sup>56</sup> Great Lakes (2004) (n 49), para 35; see also, Bosnia and Herzegovina: Annex 4, The General Framework Agreement for Peace in Bosnia and Herzegovina (The Dayton Agreement), 21 November 1995; Burundi (2000) (n 49), Protocol 1, art 5; Cambodia: Annex 5, art 2, Agreement for a Comprehensive Political Settlement of the Cambodia Conflict, 23 October 1991; Colombia arts 13 and 43, Political Constitution 1991; Eritrea: Preamble, art 5, Constitutional Commission of Eritrea Draft Constitution, July 1996; Fiji: art 5(k), Constitution (Amendment) Act of 1997 of the Republic of the Fiji Islands, 25 July 1997; Great Lakes: (2004) (n 49), Preamble, Paragraph 11, art 35; (2006) (n 49), art 2; Iraq: art 20, Constitution of Iraq, 2005; Liberia (2003) (n 49), art XXXI(3); Mexico/Chiapas: Actions and Measures (2006) (n 55), ‘Guarantees of Access to Justice’; Commitments for Chiapas (1996) (n 55), Commitment 1; art 5(e), Joint Proposals that the Federal Government and the EZLN agree to remit to the National Debating and Decision-making Bodies in Accordance with paragraph 1.4 of the Rules of Procedure, 16 February 1996; Nepal: Preamble and art 3.5, Comprehensive Agreement concluded between the Government of Nepal and the Communist Party of Nepal (Maoist), 21 November 2006; Preamble, 12-point Understanding between Parties and Maoists, 22 November 2005; (2006) (n 46) Preamble; Philippines/NDF Part III, art 23, Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law between the Government of the Republic of the Philippines and the National Democratic Front of the Philippines, 16 March 1998; Somalia (2004) (n 46), art 26(i); South Africa: Preamble a, Declaration of Intent, 21 December 1991; Sudan: Principles on Preamble, art 1.6, Machakos Protocol, 20 July 2002; arts 2 and 3, Declaration of Principles for the Resolution of the Sudanese Conflict in Darfur, 5 July 2005; (2004) (n 51), art 1.6.2.16; Uganda: (2007) (n 49), arts 2(1)(b), and (f), and 5; art 5, Agreement on Implementation and Monitoring Mechanisms, February 29, 2008; UK/NI Rights, Safeguards and Equality of Opportunity, Part 1, The Agreement Reached in Multi-Part Negotiations, 10 April 1998; Zimbabwe (n 49) art 6.

<sup>57</sup> Bosnia and Herzegovina: Annex, Washington Agreement, 1 March (1994); (1995) (n 56) Annex 4; DRC (2003) (n 49), Resolution No DIC/CPR/02 (cites Sudanese incorporation of CEDAW); Great Lakes (2006) (n 49), art 35; Guatemala: (1995) (n 55), B.1.(c); 1.B.13(h), Agreement on the Social and Economic Aspects and Agrarian Situation, 6 May 1996; Mexico/Chiapas (1996) Actions and Measures (n 55), ‘Situation, Rights and Culture of Indigenous Women’.

<sup>58</sup> Afghanistan Preamble, The Tashkent Declaration on Fundamental Principles for a Peaceful Settlement of the Conflict in Afghanistan, 19 July 1999; Burundi (2000) (n 49), art 6; DRC: art III, Act d’Engagement, Nord Kivu, 23 January 2008; art III, Act d’Engagement, Sud Kivu, 23 January 2008; Eritrea (1996), (n 56), art 7.2; Great Lakes: (2004) (n 49), Preamble; (2006) (n 49), art 3; Preamble and art 8, Pact on Security, Stability and Development in the Great Lakes Region, 15 December 2006; Guatemala: art 1.B, Agreement on the Social and Economic Aspects and Agrarian Situation, 6 May 1996; Iraq: Preamble, UNSC 1546, 8 June 2004; Iraq: Preamble, art 30, Constitution of Iraq, 15 October 2005; Mexico/Chiapas: (1995) (n 55), art 1(1)(b); (1996) (n 56), ‘Situation on Rights and Cultures of Indigenous Women’; Nepal (2006) (n 56), art 7.6; Sudan (2005) (n 56), Preamble; UK/NI (1998) (n 56), ‘Rights, Safeguards, and Equality of Opportunity’.



insert, particularly in a context in which human rights instruments are being incorporated more generally. However, whether due to ignorance or resistance to CEDAW, incorporation of CEDAW is by no means routine. In Sudan, for example, although specific human rights conventions are listed to be ratified, CEDAW is not one of them, and later in the agreement references to women's equality are tied to the International Covenant on Civil and Political Rights rather than to CEDAW.<sup>59</sup>

### 5. Representation in Legal Institutions

There are relatively few mentions of women with reference to the institutions of the police, the judiciary, or public administration more generally. Five agreements mention women with relation to representation in the police or women-centred police reform.<sup>60</sup> Four agreements mention women or gender equality with relation to the make-up of the judiciary;<sup>61</sup> while five agreements reference women or gender equality with relation to reform of public administration.<sup>62</sup> These references occur both before and after Resolution 1325 with relatively equal (in)frequency.<sup>63</sup> None of the agreements provide evidence of systematic consideration of the representation of women in legal institutions.

#### *B. Measures Dealing with the Specific Needs of Women and Girls in Post-conflict Processes such as Repatriation, Resettlement, Rehabilitation and Post-conflict Reconstruction (paragraph 8(a))*

Twelve agreements in 10 processes specifically mention women with reference to processes of rehabilitation and/or reconstruction.<sup>64</sup> For example the

<sup>59</sup> Sudan (2004) (n 51).

<sup>60</sup> Bosnia and Herzegovina: art 14, Framework Agreement on Police Restructuring, Reform and Democratization in Republika Srpska, 9 December 1998; El Salvador: art 7, D.(b), Peace Agreement (Chapultepec Agreement), 16 January 1992; Rwanda: art 84(6), Protocol of Agreement between the Government of the Republic of Rwanda and the Rwandese Patriotic Front on the Integration of the Armed Forces of the Two Parties, 3 August 1993; Sudan (2006), Darfur (n 49), art 25 (379); UK/NI: art 21, Joint Declaration by the British and Irish Governments, 1 May 2003.

<sup>61</sup> Burundi (2000) (n 49), art 7(18b); Fiji (1997) (n 56), art 134; Liberia (2003) (n 49), art XXVII; Uganda: art 25, Annexure to the Agreement on Accountability and Reconciliation, February 19, 2008 (not specifically judiciary, but calls for accountability mechanisms to have representation of women in 'all institutions').

<sup>62</sup> Burundi: (2000) (n 49) Chapter II, art 7 (5), (8); (2004) (n 46), art 19; Colombia (1991) (n 56) art 40(7); Liberia (2003) (n 49), art XVI; Sudan (2006) Darfur (n 49), art 77(b).

<sup>63</sup> *ibid.*

<sup>64</sup> Burundi (2000) (n 49), Protocol IV, Chapter 3 art 16(i); DRC: (2003) (n 49), Resolution NO: DIC/CHSC/01 Relating to the Emergency Programme in Different Social Sectors; Paragraph 12.7, Accord de Paix Entre le Gouvernement et le Congrès National Pour la Défense du Peuple (CNDP), Goma, 23 March 2009; Great Lakes (2004) (n 49), arts 27 and 67; Iraq (2005) (n 56), art 30(1<sup>st</sup>); Kenya: art 2, Public Statement—Kenya National Dialogue and Reconciliation 4 February 2008; Liberia (2003) (n 49), art XXXI(3); Nicaragua: Preamble, The Toncontin Agreement, 23 March 1990; art 1, The Managua Protocol on Disarmament, 30 May 1990; Sierra

Public Statement—Kenya National Dialogue and Reconciliation, provides for basic services to women in displaced camps.<sup>65</sup> The Comprehensive Peace Agreement in Liberia provides that the National Transitional Government of Liberia ‘shall accord particular attention to the issue of the rehabilitation of vulnerable groups or war victims (children, women, the elderly and the disabled) within Liberia, who have been severely affected by the conflict in Liberia.’<sup>66</sup> In addition, four agreements specifically mention women with reference to ‘development’; for example article III.8 of the Agreement on the Resettlement of the Population Groups uprooted by the Armed Conflict 1994, in Guatemala, states:

The Government undertakes to eliminate any form of de facto or de jure discrimination against women with regard to access to land, housing, credits and participation in development projects. The gender-based approach shall be incorporated into the policies, programmes and activities of the comprehensive development strategy.<sup>67</sup>

Eighteen agreements expressly provide for forms of social equality or financial or workers’ rights with specific mention of women or gender.<sup>68</sup>

*C. Measures Supporting Local Women’s Peace Initiatives and Indigenous Processes for Conflict Resolution, and to Involve Women in all of the Implementation Mechanisms of the Peace Agreement (paragraph 8(b))*

Very few agreements (eight) specifically provide for the promotion of women’s organizations and infrastructure.<sup>69</sup> More agreements (13) provide

Leone art XXVII, Peace Agreement between the Republic of Sierra Leone and the Revolutionary United Front of Sierra Leone (RUF/SL) (Lomé Agreement), 7 July 1999; Sudan Chapter VI, Peace Agreement between the Government of Sudan and the South Sudan United Democratic Salvation Front, 21 April 1997; Uganda: (2007) (n 49), art 2.1(f); arts 2.2 and 2.8, Agreement on Disarmament, Demobilization and Reintegration, February 29, 2008.

<sup>65</sup> Kenya *ibid*, para 1 (c).

<sup>66</sup> Liberia (2003) (n 49), art XXXI(3).

<sup>67</sup> Guatemala: art III.8, Agreement on Resettlement of the Population Groups uprooted by the Armed Conflict, 17 June 1994. See also, Burundi (2000) (n 49), Protocol IV Chapter 3 art 16(i); Guatemala (1996) (n 58), art 1.B; Iraq (n 56), art 30(1<sup>st</sup>).

<sup>68</sup> Burundi (2000) (n 49), Protocol II, art 3.19; Colombia (1991) (n 56) art 53; DRC (2003) (n 49), Resolution No: DIC.CHSC.01 Relating to the Emergency Programme in Different Social Sectors; Fiji (1997) (n 56), art 6(k); Great Lakes (2004) (n 49), art 33; Guatemala: (1996) *ibid*, art II.2, art III.8; (1995) (n 55), F.9(g); (1996) (n 57), art 1.B; (1996) (n 49), art 88; Preamble, Agreement on a Firm and Lasting Peace, 29 December 1996; Liberia (2003) (n 49), art XXXI; Mexico/Chiapas: (1996 ‘Actions and Measures’) (n 55), ‘Situation, Rights, and Culture of Indigenous Women’; (1996 ‘Agreement Regarding the Documents’) (n 54), art 3; (1996 ‘Commitments for Chiapas’) (n 55) I, pg 2; Mexico (1996 ‘Joint Proposals’) (n 49), art III.5; Philippines /NDF (1998) (n 56), Part III, art 23; Somalia (2004) (n 46), art 26; UK/NI (1998) (n 49), ‘Rights, Safeguards and Equality of Opportunity: Economic, Social and Cultural Issues, para 1; Zimbabwe (2008) (n 49), art 5.8, 5.9, 8, 15, 16.

<sup>69</sup> Burundi (2000) (n 49), art 8(2); Côte d’Ivoire Para 18, Security Council Resolution 1721, November 1, 2006; Guatemala: Chapter VI, 59 and 60, Agreement on the Strengthening of Civilian Power and on the Role of the Armed Forces in a Democratic Society, 19 September 1996; (1996) (n 49), art 22; Mexico/Chiapas (1996) (n 49), art 3.6; Somalia: (2004) (n 46), art 26(c)(i);

for a role for women in the implementation of the agreement, either in general terms or by insisting on the nomination of women to key peace implementation bodies.<sup>70</sup> Five agreements make specific reference to Resolution 1325 itself.<sup>71</sup> Three agreements, one of them a constitution, established a specific institution for women or gender equality as part of the new institutional configuration.<sup>72</sup>

#### *D. Measures Dealing with Sexual Violence (paragraph 10)*

Seventeen agreements make explicit reference to sexual violence.<sup>73</sup> A further nine agreements make reference to 'gender-based violence' or violence against women, in more general terms, or by outlawing specific violations of women.<sup>74</sup> As with provision on quotas, some textual provision appears

(2008) (n 46), art 5; Sudan: art VIII, Chairman's Conclusions from the Arusha Consultations, August 6, 2007.

<sup>70</sup> Côte d'Ivoire (2006) *ibid*, art 18; DRC (2009) (n 64), Paragraph 5.1; Great Lakes: (2004) (n 49), Chapter IV art 76 (Regional Inter Ministerial Committee implementation mechanism to be enhanced with participation of women); (2006) (n 58), art 25; Guatemala: (1996) *ibid*, art VI (60); (1996) (n 49), art 88; Sudan (2006) Darfur (n 49), art 29(394); (2007) *ibid*, art VIII; Uganda: art 11, Agreement on Accountability and Reconciliation between the Government of the Republic of Uganda and the Lord's Resistance Army/Movement, 19 June 2007; (2008) (n 64), art 3.3; art 26, Implementation Protocol to the Agreement on Comprehensive Solutions, February 22, 2008; (2008) (n 56), art 5; Zimbabwe (2008) (n 49), art 22.

<sup>71</sup> Côte d'Ivoire (2006) *ibid*, art 18; Great Lakes: (2006) (n 49), Preamble; (2004) (n 49), art 27; Uganda: art 6.1(b), Agreement on a Permanent Ceasefire, Juba, Sudan, 23 February 2008; (2008) (n 64), arts 2.14 and 2.15.

<sup>72</sup> Guatemala: (1995) (n 55), art B.1(b); (1996) (n 49), arts 29 and 85; South Africa Section 119, Interim Constitution, 6 December 1993.

<sup>73</sup> Burundi: (2000) (n 49), art 6; art III, 1.7, Ceasefire Agreement between the Transitional Government of Burundi and the Conseil National pour la Défense de la Démocratie-Forces pour la Défense de la Démocratie, 2 December 2002; art II 1.1.5, Comprehensive Ceasefire Agreement between the Government of the Republic of Burundi and the Palipehutu-FNL (English/French), 7 September 2006; DRC: art I, 3(c), Ceasefire Agreement (The Lusaka Agreement), 10 July 1999; (2003) (n 49), Resolution No: DIC/CHSC/01 Relating to the Emergency Programme in Different Social Sectors, and Resolution No: DIC/COR/04 On the Institution of a 'Truth and Reconciliation Commission'; art 7, Act d'Engagement Gabarone (French), 24 August 2004; Great Lakes: (2006) (n 58), art 11; (2004) (n 49), Preamble para 2, art 27, art 67; Guatemala: (1995) (n 55), B.1(a); (1996) (n 49), Section D art 177 (sexual harassment a crime); Indonesia/Aceh Preamble, art 2, Cessation of Hostilities Framework Agreement Between Government of the Republic of Indonesia and the Free Aceh Movement, 9 December 2002; Mexico/Chiapas (1996) (n 56), 'Situation, Rights and Culture of Indigenous Women'; Nepal (2006) (n 56) art 7.6.1; Sudan art 11, 2(d) Nuba Mountains Ceasefire Agreement on Sudan, 19 January 2002; Uganda: (2007) (n 70), art 3.4 and 10; (2008) (n 71), art 5, 5.4(c); (2008) (n 61), arts 4, 13 and 24.

<sup>74</sup> Colombia art 10, Acuerdo de la Puerto Cielo, 15 July 1998 (not deprive pregnant women of liberty); DRC: (2008 Nord Kivu) (n 58), art III (acts of violence against women); (2008 Sud Kivu) (n 58), art III; (acts of violence against women); Great Lakes (2006) (n 49), art 3 ('renunciation of use of force, . . . and primary responsibility to protect the lives and human rights of women residing within their territories'); Iraq (2005) (n 56), art 29 (4), (violence and abuse in the family); Kenya (2008) (n 64), art 1; (security and protection in the camps, particularly for women and children); Nepal: art 5.1.13, Agreement on the Monitoring of Arms and Armies, 8 November 2006 (All acts and forms of gender-based violence); Philippines/NDF (1998) (n 56), Part IV, art 10 (special attention to women and children to ensure their physical and moral integrity); Sudan

ambiguous in how it speaks of the violation of women. For example, while the provision may have been important in preventing violence against women, there might be some concern at the use of the term 'moral integrity' in an agreement in the Philippines which provides that the parties 'shall provide special attention to women and children to ensure their physical and moral integrity.'<sup>75</sup>

Resolution 1888, dealing particularly with sexual violence, in particular targets agreements other than framework agreements, such as 'pre-ceasefire', humanitarian access and human rights agreements, ceasefires and ceasefire monitoring, DDR, vetting, and reparations programmes. Out of the 26 agreements mentioning sexual or other forms of violence against women, 10 are in ceasefire agreements, 12 in framework or comprehensive agreements, and three in implementation agreements. Within ceasefire agreements, four agreements define sexual violence as a ceasefire violation, in very similar terms perhaps indicating the emergence of standardized language:

The acts of violence include summary executions, torture, harassment, detention and execution of civilians based on their ethnic origin; propaganda inciting ethnic and tribal hatred; arming civilians; recruitment and use of child soldiers; sexual violence; training and use of terrorists; massacres, downing of civilian aircraft; and bombing the civilian population.<sup>76</sup>

Interesting also is that only some agreements within processes mention sexual violence against women. In peace agreements in Sudan, for example, while the Darfur agreement and the Nuba Mountains Ceasefire Agreement mention sexual violence and gender-based violence respectively, many other agreements between the North and the South of Sudan do not. It may be that sexual violence was more a feature of some of the conflict areas and dyads than others; however, it may also be that sexual violence was more highly prioritized at some stages and dyads of the process than at others. The inconsistency of references to sexual violence appears to indicate that something other than systematic compliance with Resolution 1325 is driving whether or not sexual violence is addressed.

#### *E. Exclusion of Sexual Violence Against Women and Girls From Amnesty Provisions (paragraph 11)*

Partial amnesties, where provided, do not tend to specifically except war crimes including sexual violence, but rather except war crimes in general terms.<sup>77</sup> As regards dealing with mechanisms established to deal with the past,

(2006 Darfur Peace Agreement) (n 49), art 25 (236), art 26 (278 ff), and 28 (379) (not tolerate gender based violence or abuse of women).<sup>75</sup> Philippines/NDF (1998) (n 56), art 10.

<sup>76</sup> DRC (1999) (n 73), art 1, 3(c); cf Burundi: (2002) (n 73); (2006) (n 73); Sudan (2002) (n 73).

<sup>77</sup> See eg art 3, Côte D'Ivoire: Annex 1, Linas-Marcoussis Agreement 24 January 2003.

such as truth commissions, seven agreements which provided for some type of mechanism for dealing with the past specifically noted that sexual violence or crimes against women should be dealt with by this mechanism.<sup>78</sup>

#### *F. Measures Providing for the Different Needs of Women in Planning for Disarmament, Demobilization and Reintegration and Vetting (DDR)*

Seven peace agreements noted the need to address the needs of women and girl combatants specifically; for example, the Ugandan Agreement on Disarmament, Demobilization and Reintegration, 2008, has relatively exemplary provisions focusing on the particular needs of women across its provisions.<sup>79</sup>

In the case of internal conflicts, non-state actors in particular will often be in prison for their conflict-related acts, frequently undistinguished from 'ordinary' criminals. As a result, peace agreements provide for prisoner release. Where women are particularly mentioned, it is usually in a context of being prioritized for early release. The four different processes mentioning women with relation to prisoner release did so because they prioritized women for release.<sup>80</sup> In Nicaragua, a wonderfully essentialized provision on prisoner release deserves mention: the Managua Protocol on Disarmament, 1999, commits to the release of prisoners 'in honour of Mother's Day'.<sup>81</sup>

#### *G. Miscellaneous /Other*

The only other references to women found in peace agreements (six) are rather random. In two agreements in Bougainville-Papua New Guinea, as noted above, the only mention of women was as signatories of the peace agreement itself.<sup>82</sup> In Côte d'Ivoire, a peace agreement notes that foreign men marrying Ivorian women are entitled to Ivorian citizenship (with no reference to foreign

<sup>78</sup> Burundi: (2000) (n 49), arts 6 and 8(2); (2006) (n 49), art 67; DRC: (2003) (n 49), Resolution No: DIC/COR/04 on the institution of a 'truth and reconciliation' commission; Kenya: art 2, Kenyan National Dialogue and Reconciliation- Truth, Justice and Reconciliation Commission, 4 March 2008; Liberia (2003), (n 49), arts XXXI(3) (programme implementation); Sudan (2006) Darfur (n 49), arts 25 (278 ff); Uganda (2008) (n 61), arts 4 68, 13, 24 and 25.

<sup>79</sup> Uganda (2008) (n 71), art 3(3.3); (2008) (n 63), arts 2.2, 2.9, 2.11, 2.12, 2.14, 2.15, 6.3. See also, Burundi (2006) (n 73), art II, 1.1.5; Guatemala: art 12, Agreement on the Basis for the Legal Integration of the Unidad Revolucionaria Nacional Guatemalteca, 12 December 1996; Great Lakes (2004) (n 49), Preamble para 11; Sudan: art 24.8, Agreement on a Permanent Ceasefire and Security Arrangements Implementation Modalities between the Government of Sudan and the SPLM/SPLA during the pre-interim and interim periods, 31 December 2004; (2006 Darfur) (n 49) art 26 (278 ff).

<sup>80</sup> Colombia (1998) (n 74) 10; Israel PLO: Annex VII.2.a, Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip ('Oslo II'), 28 September 1995; art 10; Sudan (2006) (n 49), art 25(275); Uganda (2008) (n 64), art 2.11 (pregnant and lactating women).

<sup>81</sup> Nicaragua (1990) (n 64) art 10 (gender of prisoners not specified).

<sup>82</sup> PNG/Bougainville: The Hutjena Record, 15 December 1999 and The Rotakas Record, 3 May 2001.

women).<sup>83</sup> In Israel-PLO Protocol Concerning the Safe Passage between the West Bank and Gaza Strip, women (together with men over 50) are prioritized for receipt of 'safe passage' cards.<sup>84</sup> In Northern Ireland, the latest Hillsborough Agreement 2010 made provision for a 'fit for purpose' women's prison.<sup>85</sup> In Sri Lanka an agreement's only reference to women was that women would be a matter 'reserved' to central government.<sup>86</sup> Without more, it is difficult to tell what reservation of power signified and whether it did anything to further women's equality. Where power is devolved to geographic entities created to give effect to the self-determination of particular ethnic groups, then reserving powers to the central State can often constitute an attempt to ensure that women's rights are dealt with consistently across the jurisdiction and even to protect women against traditional or religious legal systems. However, such a reservation may also constitute one of a number of tools by which the centre consolidates its power vis-à-vis the would-be secessionist region, for example by imposing monitoring.

#### VI. ASSESSING THE EFFECTIVENESS OF RESOLUTION 1325

##### *A. Few References to Women*

The overall finding that only 16 per cent of peace agreements make any sort of reference to women is disappointing. Even the higher figure for post Resolution 1325 references to women of 27 per cent (from 11 per cent) indicates a long way to go before peace agreements systematically include references to women. The qualitative review of the nature of the peace agreement references indicates that many of these references are unsubstantial. There is little evidence of systematic inclusion of women in peace agreement texts, or systematic treatment of issues across peace agreements within conflicts. Moreover, some of the references are, at best, ambiguous in terms of feminist gains, for example: the use of quotas which not only encourage but limit the participation of women; reference to 'moral integrity'; references to women as mothers to be targeted for early prisoner release or as victims to be protected from sexual violence. These provisions may well have played an important role in alleviating the situation of some women; however, as lone references in complex political processes the underlying picture of women they present is one which ultimately may also limit effective participation in public life, or limit which women are targeted by measures to those who fit the good woman/victim/mother.<sup>87</sup> Our findings support findings

<sup>83</sup> Côte d'Ivoire (2003) (n 77) Annex 1.

<sup>84</sup> Israel-PLO: Annex VII.2.a, Protocol Concerning the Safe Passage between the West Bank and the Gaza Strip, 5 October 1999.

<sup>85</sup> UK/NI: Para 7, Agreement at Hillsborough Castle, 10 February 2010.

<sup>86</sup> Sri Lanka: Appendix, Devolution Proposals, 3 August 1995.

<sup>87</sup> cf Otto (n 7).

of research into implementation of Resolution 1325 in other settings.<sup>88</sup> Resolution 1325 appears to have been more effective as a focus of mobilization for women outside of peace processes than in securing women's participation within formal peace processes.<sup>89</sup>

### *B. A Post-1325 Rise in References to Women*

Our data provides evidence of a rise in peace agreements references to women and evidence that this rise is more marked in processes where the UN is involved. However, correlation is not causation, and some caution is necessary before definitively concluding that Resolution 1325 has made a difference in promoting the inclusion of women in peace processes. It is possible that the same transnational mobilization that produced Resolution 1325 would have produced an increase in references to women in peace agreements in any case. However, well documented local and transnational activism using Resolution 1325 means that it is highly likely that Resolution 1325 has played some role in promoting references to women, whether directly by influencing those involved in negotiation, or indirectly by enabling women to mobilize and influence peace negotiations even from outside.

### *C. The Relationship of a UN Third Party Role*

There is a more marked rise in references to women in peace agreements in which the UN was named as a third party. This rise indicates that Resolution 1325 has had a particular effect on UN intervention in peace agreement texts that is important not just for those texts but as an indicator of the UN's willingness and ability to promote Resolution 1325 more generally. Again, there are possible technical objections to such a conclusion. It could be argued that our coding of UN third party involvement has little relationship to whether the UN had capacity to influence text. Coding UN third party involvement only where the UN is formally included as a third party can be argued to be both too broad and too narrow. The UN may not have had capacity to influence peace agreement texts even where it was present as a third party, and may have had capacity to influence peace agreement texts where it had no formally acknowledged third party role. In rebuttal we would suggest that while there is some truth to both arguments, it is likely that a named third party role as signatory indicates some capacity to influence text different to a more oblique or less visible role because it captures a structural presence at negotiations. There is also precedent for expecting robust normative action from the UN as

<sup>88</sup> In their 2001 report (n 15) 314 Hilary Charlesworth and Mary Woods concluded that UNSC 1325 was 'being implemented in a rather superficial and inadequate manner' by the UN mission in East Timor.

<sup>89</sup> See, for example, C Cockburn, *From Where We Stand* (Zed Books, London, 2007).

signatory even where it has failed to influence the text. In the case of Lomé Accord of 1999 in Sierra Leone, a UN Secretary-General Representative signing the agreement as ‘witness’, but finding the content of the agreement deficient in terms of the UN’s normative commitments as set out in human rights guidelines (in this case because the agreement included a blanket amnesty covering serious international crimes), was instructed by the UN Secretary-General to append a ‘rider’ dissenting from the text’s amnesty provision.<sup>90</sup>

There are, however, a range of possible explanations for the correlation between a UN third party role and a more marked rise in peace agreement references to women. Processes in which the UN is structurally involved tend to be processes which are internationalized more generally, because they correlate with levels of mass atrocity and violence, capacity for regional and international destabilization and attract stronger forms of international intervention.<sup>91</sup> These processes may in practice have created a more extreme situation for women, in which large scale sexual violence, displacement, and dispossession, are more easily understood by all the parties to the peace agreements as requiring to be addressed. Violence against women may be increasingly more visible and documented, due to feminist efforts to include it in formal definitions of international criminal law, and to have it recognized as an integral part of many armed conflicts.<sup>92</sup> These factors alone may explain the rise in peace agreement references to women, and why it has been more dramatic in processes in which the UN was structurally involved.

More negatively, however, it is possible that the compromises in agreements in the type of conflict in which the UN becomes structurally involved have a more imposed element, in which normatively driven references to women or gender are simpler to require. Interestingly, our figures indicate that the rise in peace agreement references to women is largely down to the increase in references in recent agreements in Africa, in particular in Democratic Republic of Congo, Kenya, Somalia, and Uganda. Agreements in these countries involved the UN as third party signatory and contained multiple references to women. It may therefore be that conflict resolution efforts in Africa may be internationally understood to require a more normatively driven interventionism than in other regions, something that is backed

<sup>90</sup> See, para 7, Seventh Report of the Secretary-General on the United Nations Observer Mission in Sierra Leone, UN SCOR, UN Doc. S/1999/836 (1999). For a full discussion of the relationship of UN third party to the Peace Agreement between the Republic of Sierra Leone and the Revolutionary United Front of Sierra Leone (RUF/SL) (Lomé Accord), 7 July 1999 see Hayner (n 38).

<sup>91</sup> This distinction is of course at the heart of the Chapter VI / Chapter VII UN Charter distinction between non-binding and binding resolutions.

<sup>92</sup> See B Bedont and K Hall Martinez, ‘Ending Impunity for Gender Crimes under the International Criminal Court,’ (1999) 6 *Brown Journal of World Affairs* 65.



up by government statements and international policy documents.<sup>93</sup> While international intervention may be one of the only routes into a process for women, it also raises a troubling dimension for feminism's anti-imperialist ambitions. Yet, a number of other factors also require to be taken into account before such an assessment can be made. Clearly-focused local and international activism has taken place in many of the same jurisdictions in which gender provisions occur, often with the support of organizations such as UNIFEM.<sup>94</sup> There is strong evidence of a regional embracing of gender. For example, on 18 June 2008, member states of the International Conference on the Great Lakes Region, civil society organizations, development partners and UN agencies attending a high Level Regional Consultation on Eradicating Sexual Violence and Ending Impunity in the Great Lakes Region, in Goma in the Democratic Republic of Congo, committed themselves under the Goma Declaration to eradicate all forms of gender-based violence, in particular sexual violence, and to take appropriate measures for empowerment and equal representation of women and girls.<sup>95</sup> In Kenya in 2008 the African Union appointed Graçia Machal as one of three mediators for the crisis.<sup>96</sup> In Uganda, a National Action Plan was developed in 2008,<sup>97</sup> and the United Kingdom in its 2007 update to its own action plan on Resolution 1325 notes 'the appointment and posting of a gender adviser to the UN envoy to the Juba peace talks for Uganda'.<sup>98</sup> It is possible that the African agreements are in fact examples of innovation with a connection to local activism. Further research is needed to analyze the dynamics of how and why provision on women entered texts with respect to locally asserted needs, and to trace whether

<sup>93</sup> See eg, P Collier et al, *Breaking the Conflict Trap: Civil War and Development Policy*, (World Bank and OUP, Washington DC, 2003); see also The White House, *The National Security Strategy of the United States of America* (Washington DC, The White House, 2006) 15 (dealing with 'failed states').

<sup>94</sup> For an overview of some of this activity see JD Brewer, *Peace Processes: A Sociological Approach* (Polity, Cambridge, 2010) 68–102.

<sup>95</sup> The Goma Declaration on Eradicating Sexual Violence and Ending Impunity in the Great Lakes Region – Goma, 18th June 2008, available at <[www.womenwarpeace.org/docs/Goma-Declaration+Final+Version.pdf](http://www.womenwarpeace.org/docs/Goma-Declaration+Final+Version.pdf)>.

<sup>96</sup> See UNIFEM Briefing note (n 26).

<sup>97</sup> The Uganda National Action Plan on UN Security Council Resolutions 1325, 1820 and the Goma Declaration, Ministry of Gender, Labour and Social Development, December 2008, <[www.un-instraw.org/images/documents/GPS/UGANDANAP.pdf](http://www.un-instraw.org/images/documents/GPS/UGANDANAP.pdf)>. Resolution 1325 urges state to take action at the national level in key areas, and in Presidential Statements S/PRST/2004/40 and S/PRST/2005/52 the Security Council called on Member States to continue to implement resolution 1325, including through the development of national action plans or other strategies. So far 17 states have done so: for strategy and plans see further <[www.peacewomen.org/pages/about-women-peace-and-security/national-action-plans-naps](http://www.peacewomen.org/pages/about-women-peace-and-security/national-action-plans-naps)>.

<sup>98</sup> See, Updates to the UK National Action Plan to Implement UNSCR 1325, November 2007, Foreign and Commonwealth Office, <[www.fco.gov.uk/resources/en/pdf/unscr-1325-uk-action-plan](http://www.fco.gov.uk/resources/en/pdf/unscr-1325-uk-action-plan)>. For the underlying UNSCR 1325—UK High Level National Action Plan, 8 March 2006, see <[www.un-instraw.org/images/files/NAPper cent 20UKper cent 202006.pdf](http://www.un-instraw.org/images/files/NAPper cent 20UKper cent 202006.pdf)>.

implementation occurred and had any tangible effect.<sup>99</sup> We suggest our dataset provides a basis for case study selection.

*D. The Relationship to Agreements to which the UN was not a Signatory*

Despite the more dramatic rise in post-Resolution 1325 references to women in processes where the UN was a third party, peace agreements are more likely to contain references to women in cases where the UN was not involved as a signatory. This fact indicates that internationalization of a process is not, on the whole, conducive to women but rather the more internal a process is, the more accessible it is to input and influence from women. As mentioned above, processes are internationalized on the basis of their capacity for mass violence and regional or international destabilization. In such a situation there may be a greater tendency to prioritize a fairly closed deal between military elites, formally negotiated in a self-contained 'track one' process.<sup>100</sup> These types of process are particularly difficult for women to access and it should not, perhaps, be surprising that the combination of extreme violence against civilian populations, regional actors, and multiple international mediators produces a process in which the possibility for women to mobilize and affect the negotiations is reduced. Case studies bear out the suggestion that local processes may be more amenable to input from women; some of the least internationalized processes, for example Northern Ireland, seem to have been particularly amenable to women organizing as women.<sup>101</sup> It is also worth considering whether the dynamics of locally-driven conflict resolution processes may be more conducive to the inclusion of civil society actors (and therefore women) and to finely balanced compromises in which a broader understanding of the root causes and consequences of conflict plays a role in enabling agreement on the military and political divisions originally viewed as central to the conflict.

Such a dynamic would tend to explain both our finding that the influence of Resolution 1325 appears to have been greater on UN internationalized processes, and yet why references to women remained more common in locally-driven processes. It is precisely in a situation of internationalized negotiations, often focusing on military-politico elites, that a normative 'command' to address the situation of women, such as is found in Resolution 1325, might play a role by ensuring that explicit inclusion of women is not swept away in the pressure to address 'the' conflict. However, locally-driven processes may still produce better results for women because of their capacity

<sup>99</sup> In Uganda, for example, many of the key agreements were never signed with the LRA, the peace process collapsed, and none of the agreements could be fully implemented.

<sup>100</sup> On the track one/two distinction and relationship of women to track one see Potter and also other references above (n 26).

<sup>101</sup> K Fearon, *Women's Work: the Story of the Northern Ireland Women's Coalition* (Blackstaff, Belfast, 1999); see further Brewer (n 97).

to remain open to a wider set of influences and analyses, in particular those of civil society actors. Case study analysis of some of the processes in which the UN did have a mediation influence and which produced relatively exemplary references to women appears to support the point. In Guatemala and Burundi, for example, both sets of agreements are striking for the comprehensive way in which they address the gender-specific concerns of women. In both sets of agreements the compromises between parties' political-military objectives and human rights and social justice analysis of the conflict is predominant, indicating that broader projects of inclusion, social justice and accountability were viewed as central to resolution of the conflicts in question. Both processes used innovative attempts to include the voices and influence of civil society, including women's organizations. It is not surprising that this was a context in which women's claims of inclusion were able to be heard and addressed.<sup>102</sup>

If correct, our analysis raises a key question for strategies seeking to implement Resolution 1325. Paradoxically, in locally-driven processes asserting the imperative of Resolution 1325 as norm is likely to be less important than finding a way in which civil society can influence the negotiations, and women can persuasively articulate the relationship of gender to the military and political divisions understood to be at the conflict's heart. Resolution 1325, and more so its successors, have been criticized as failing to capture the depth and subtlety of the connection between militarization and gender—a subtlety which would view every element of the peace agreement as relating to women as women.<sup>103</sup> Yet for all processes, international or local, the ability to find a way to articulate these deepest connections between the politics of the conflict and the broader politics of exclusion may well be crucial to influencing an agreement's text, a matter to which we return in our concluding recommendations.

### *E. Fewer Peace Processes?*

Finally, the research findings merit two further side observations. First, there would appear to be a 'slowing' of peace agreement practice, which itself has significance for activism around the implementation of Resolution 1325 and the situation of women.<sup>104</sup> The recent attempt by the government to 'win the war' in Sri Lanka, using massive military force hidden from the outside world,

<sup>102</sup> In both cases the role of mediators appears to have been important to the inclusion of gender with Jean Arnault in Guatemala and Nelson Mandela in Burundi. Paradoxically, both could be described as 'charismatic' style leaders, often assumed to be a 'male' style of leadership, see (n 117).<sup>103</sup> See in particular Otto (n 7).

<sup>104</sup> As a fairly crude statistical measure, to test for whether the number of agreements has fallen a Pearson's test was conducted, defined as sum of (Observed-Expected) squared/expected. Observed are 399 and 186 (pre and post) expected is 293 (equal numbers) so Pearson's is  $\chi^2(1) = 77$  and null hypothesis of equal outcomes is decisively rejected. In other words, there has been a significant fall off in the number of agreements being signed.

with little counter-pressure internationally despite years of internationally supported faltering peace processes, testifies to the stark alternatives to negotiated settlement. Whatever the deficits of negotiated settlement in human rights and gender terms, they are often better and more palatable than large scale loss of life and mass atrocity—with its heavy toll on female civilians and combatants.

#### *F. Third-Party Shopping?*

The second interesting side observation is that contrary to some other assertions,<sup>105</sup> there is little falling off in the UN having a third party role from around 2000 on. It is true that an increasingly diverse spectrum of regional organizations, third party countries and even non-governmental organizations have ever increasing conflict resolution ambitions. It is also probably right to say that the UN is now less likely to be the main negotiator as it was in El Salvador or Guatemala.<sup>106</sup> However, the UN remains a persistent third party signatory of agreements. This perhaps provides some basis for confidence that the normative commitments made by the UN with regard to what it will and will not sign up to, including its commitment to include gender equality, have not eliminated its third party influence. Nevertheless, the data also suggests that successful implementation of Resolution 1325 provision on peace agreements centrally depends on organizations other than the United Nations.

#### *G. From Mention of Women to Change in their Situation*

While the inclusion of women in peace agreements is often an important starting point to their inclusion in the post-conflict order, it cannot be assumed that inclusion in a peace agreement without more translates into greater equality for women. A danger of focusing on textual inclusion in legal standards is that such inclusion becomes an end in itself.<sup>107</sup> Indeed the strategy of using UNSC resolutions to advance gender equality in negotiations can be seen as very indirect: a strategy of attempting to change one set of legal documents, to produce change in another set of legal documents. The connection to any change in the status of women may stand at the end of a long chain of effort and activism, with every stage having its own attrition rate for women. When we turn to general literature on peace agreement implementation, the limitations of peace agreement texts become immediately clear.

<sup>105</sup> cf J Darby, 'Borrowing and Lending in Peace Processes' in J Darby & R McGinty (eds) *Contemporary Peacemaking: Conflict, Violence, and Peace Processes* (Houndsmill, Basingstoke, Palgrave Macmillan, 2003) 245.

<sup>106</sup> On new permutations of mediators see further Bell (n 1) 66–76.

<sup>107</sup> D Kennedy, 'The Problem of the International Human Rights Movement: Part of the Problem?' (2002) 15 *Harvard Human Rights Journal* 101. cf Otto (n 7).

There are many reasons why peace agreement provisions are not implemented, either in their entirety or in their detail.<sup>108</sup> Peace agreements in Guatemala and Burundi, noted above for their strong and holistic treatment of women, provide rather depressing tales in terms of lack of implementation for many of the above reasons.<sup>109</sup> Even if the agreement is implemented, the provisions on women may not be implemented. Alternatively, the new post-conflict consensus may contain dynamics which lead to a retrenchment of women's rights in ways not anticipated by the agreement, for example, in areas such as reproductive rights.

Conversely, however, it is also worth remembering that the reach of Resolution 1325 is broader than peace agreements, and may enable women to argue for equality in situations where gender is not mentioned in the agreement. Even where women and gender are not specifically mentioned in peace agreements, the UN Secretary-General must report on this aspect of UN peacekeeping mission,<sup>110</sup> and Resolution 1325 itself mandates greater gender expertise within UN missions. It may therefore be that even where Resolution 1325 remains relatively ineffective in securing the inclusion of women and gender in peace agreement negotiations and provisions, it may still ensure that the exclusion or oversight of women from peace agreements is not fatal to providing mechanisms of inclusion at the implementation stage.

#### VII. CONCLUSIONS: THE WAY FORWARD?

We suggest in conclusion that further thought must be given to the strategies and barriers to effective implementation of Resolution 1325. Our findings regarding the resolution's effectiveness with respect to peace negotiations and peace agreement texts suggest the following way forward.

##### *A. A Strategy which Cuts Across Complex Mediation of Complex Processes*

Further thinking on how Resolution 1325 is being taken forward by organizations other than the UN is required, particularly as their role is increasing. The world of peace mediation is becoming ever more complex with multiplying regional organizations, State groupings of 'neighbours' or 'friends', third party States, individuals, and non-governmental organizations, all undertaking mediation roles, increasingly in the same peace process.<sup>111</sup> The

<sup>108</sup> For theories and case studies on when and why agreements are not implemented, see SJ Stedman, D Rothchild & EM Cousens (eds) *Ending Civil Wars: The Implementation of Peace Agreements* (Lynne Reiner, Boulder, London, 2002).

<sup>109</sup> See Nakaya (n 48) on Guatemala, and S Vandeginste, *Law as a Source and Instrument of Transitional Justice in Burundi* (Faculteit Rechten, Universiteit Antwerpen, Antwerpen, 2009) 242–298 (chronicling the long and difficult implementation process of the Arusha Accords).

<sup>110</sup> United Nations Secretary-General Report 2004 (n 13) Section D. Peacekeeping Operations, in particular at paras 31–40. <sup>111</sup> See Bell (n 1) 66–76.

multiplicity of actors poses serious challenges for any attempt to ensure that Resolution 1325 has compliance-pull. Parties to conflicts are adept at ‘mediator-shopping’. If parties are not to have a choice between a ‘normative mediator’—that is a mediator who views their mediation role as requiring them to ensure compliance with legal norms—and a mediator who is not so constrained, then normative standards should apply to all.

*B. Consideration of Which Barriers to the Inclusion of Women are Susceptible to Normative Command and Which Are Not*

The patchy treatment of women and gender in peace agreements suggests that in many instances gender references are omitted from peace agreements due to ignorance and lack of gender awareness by the parties and mediators, the absence of women at the table, lack of openness of the process to input from women, and an overly narrow and militarized understanding of the issues that drive and sustain the conflict. It might be expected these omissions may be susceptible to influence, in principle at least, by a normative command to ensure the inclusion of women. Promoting Resolution 1325 as normative command could provide a counter-weight to these process deficits. Jenkins and Goetz, for example, argue that the particular forms of silencing and exclusion that occur around sexual violence, increase the importance of the normative command of UNSC resolutions in influencing mediators to ensure the issue’s inclusion in peace negotiations.<sup>112</sup> The increasing emphasis in subsequent UNSC resolutions on the need to have women mediators, suggests a strategic emphasis on this one structural change as a key to remedying all the above deficits. Sometimes called ‘add women and stir’, this strategy assumes that women mediators will be more sensitive to the gender dimensions of both conflict and conflict resolution processes, and more willing and able to use their power as mediator to influence peace agreement texts. These are all controversial assumptions.<sup>113</sup>

There is, however, evidence of a much deeper obstacle to inclusion in peace agreements. There has been little consideration in the literature of the extent to which gender-specific concerns of women are left off the table, not due to oversight, lack of knowledge of how conflict affects women, or lack of commitment, but because of concerns that to include them would make it

<sup>112</sup> R Jenkins and A Goetz, ‘Addressing Sexual Violence in Internationally Mediated Peace Negotiations’ 17 *International Peacekeeping* 261.

<sup>113</sup> For discussion of these assumptions in the negotiation context see DM Kolb and GG Coolidge, ‘Her Place at the Table’ in JW Breslin and JZ Rubin (eds), *Negotiation Theory and Practice* (The Program on Negotiation at Harvard Law School, Cambridge Massachusetts, 1991) 261. However, see M Villellas Ariño, *The Participation of Women in Peace Processes: The Other Table*, ICIP Working Papers 2010/05, Institut Català per Pau, Barcelona May 2010, arguing that women are absent due to a serious lack of will.

more difficult for the parties to reach agreement or destabilize any agreement reached.

The difficulty in achieving clear gender quotas in legislatures and executives offers an example of what might be two quite different dynamics requiring two quite different strategies. The qualitative assessment demonstrated cases where there was no clear quota of inclusion for women in a context in which quotas were a key mechanism for inclusion on grounds of ethnicity. The unevenness between requirements for gender equality as opposed to other forms of status equality would seem to leave general references to 'effective participation' of women vulnerable to not being fully implemented. There are several reasons why the inclusion of women may not be tied down to a specific quota including, of course, broader concerns about gender quotas.<sup>114</sup> However, in States seeking an end to violent conflict where quotas for other forms of identity/political affinity and complex power-sharing have been provided for, it may simply be the case that the inclusion of women was not prioritized. Here again, a normative standard requiring inclusion of women might play a useful role in placing women higher up the priority agenda. However, where opposition to gender quotas is due to their being difficult to implement concurrently with ethnic quotas, and ethnic quotas are viewed as more essential to achieving or sustain a ceasefire; or where gender quotas are a deal-breaker for an armed protagonist group (for example due to religion), then a normative requirement, without more, may be insufficient to counter these dynamics. Human rights provisions in peace agreements are seldom entirely neutral in terms of how power is distributed between parties. They offer opportunities to insist on international monitoring, to promote particular democratic and cultural values, or to 'water down' or restrain majoritarian expressions of power. If fully implemented, such provisions fundamentally reallocate power.<sup>115</sup> Gender equality provisions have no special exemption from this dynamic. Cases where the inclusion of gender is seen as in some respects in tension with the requirements of peace are unlikely to be affected by the existence of a normative standard alone, as persistent debates on the so-called 'justice vs peace' dilemma relating to amnesties illustrate. In other words, there may be a 'gender justice vs peace' dilemma that needs to be specifically named and addressed.

### *C. Further Consideration of Good and Bad Practice*

The qualitative assessment of peace agreement references to women indicates that there remains a vital role for consideration and development of good practice in peace agreement texts. The patchiness of references to women

<sup>114</sup> A Phillips, *The Politics of Presence* (OUP, Oxford, 1995) 57–84.

<sup>115</sup> E Bertram, 'Reinventing Governments: The Promise and Perils of United Nations Peace Building' (1995) 39 *Journal of Conflict Resolution* 387.

indicates that parties may not be sure what they can include, may not be marrying Resolution 1325 with the demands of CEDAW, and even that women may not be sure what to ask for or, more accurately, how to frame their demands in terms of a provision in a peace agreement text. There is little advice ready-to-hand on these matters. The case of quotas, for example, is a complicated one where women themselves will often require technical support to evaluate whether and how a proposed quota system is likely to translate into actual seats for women. Similarly, the language and conventions around ceasefires and ceasefire monitoring is increasingly a specialist one, where peace agreement texts specifying violations and forms of monitoring will control what can and cannot be monitored in ways that are difficult for non-military actors to anticipate.

The difficulties of inclusion are not just technical. Several decades of analysis regarding feminist engagement with law has demonstrated in many different areas how attempts by women to promote gender equality through formal inclusion in legal instruments tends to result in uneven gains and even costs. Our qualitative discussion suggests that in many processes there is a tension between whether women are present and represented 'as women', or as political actors motivated by other forms of political identity, or by complex combination. The difficulties of navigating the boundary between using gender as a category disruptive of traditional military and political assumptions, and 'essentializing' women as bringing a 'different voice', a different set of priorities, and a form of 'transcendent' identity politics, is particularly acute in the peace negotiation context.<sup>116</sup> These difficulties are equally applicable to strategies of promoting female international mediators. We must realize that expecting a woman with a high profile career, as one of the very few women in such a role, to 'experiment' with time-honoured practices of 'secret negotiations' and military-political elite brokered ceasefires, is to ask them to risk failure that will inevitably be put down to any 'different style' they brought to the negotiations, even where exogenous conflict dynamics are a more likely explanation. The world of peace agreement mediation is a highly competitive one favouring a charismatic-leader approach which is peculiarly male.<sup>117</sup>

#### *D. Further Development of 'Gender Perspectives'*

Resolution 1325 calls for the adoption of a 'gender perspective' in peace negotiations and agreements. Yet there is still remarkably little work setting out what a gender perspective for peace agreements would ideally involve. As noted at the outset it is clear that adoption of a 'gender perspective' is not the same as the adoption of provisions mentioning women. The qualitative analysis indicates the extent to which any wholesale consideration of how

<sup>116</sup> Otto (n 7).

<sup>117</sup> See Martin (n 26).



gender affects the totality of a peace agreement text is missing. While such an approach would inevitably specifically name women, it is not reducible to their random 'mention', but would touch more fundamentally on both the process and the substance of peace agreement negotiations.

A gender perspective for peace negotiations, for example, would pay much more attention to the question of who is given formal and informal access to the site of negotiations, and try to construct innovative ways of broadening access. Given that women are underrepresented in formal sites of power, and are more fully represented and even over-represented in civil society spheres, more attention to how civil society is enabled during a peace process would be likely to promote the inclusion of women. Promotion of local women's participation also stands to legitimate and thereby assist the implementation of resulting measures in a way that imposition by mediators will not. Requiring mechanisms to include local women in peace processes is therefore as important as the use of women mediators.

A gender perspective would also be expected to influence how the peace agreement deals with issues which do not mention gender but which fundamentally structure gender relations. As the growing literature on the relationship of women to peace agreements illustrates, gender is part of the sub-text of the socio-economic order,<sup>118</sup> of civilian/ combatant distinctions,<sup>119</sup> of definitions of security,<sup>120</sup> of the traditional law/constitutional law relationship,<sup>121</sup> and of the constitutional approach chosen.<sup>122</sup> There is need for further thinking through of what a 'gender perspective' actually is, what its reach should be, and, again, how to manage conflicts between gender perspectives and the deal-making ambitions of the conflict's violent protagonists.

### *E. Space for Re-envisioning Peace Processes*

There is a sense that one gets from reading peace agreements that the attempt to promote a gender perspective, while a necessary attempt to engage with the only show in town, risks buying into a highly problematic process to which gender analysis and equality can only ever be marginal. Achieving a peace agreement reference can involve 'piggy-backing' gender references to more general statements of equality designed for other purposes; large-scale internationalized campaigns to get issues like sexual violence or release of women

<sup>118</sup> F Ní Aoláin, 'Women, Security, and the Patriarchy of Internationalized Transitional Justice' (2009) 31 Human Rights Quarterly 1055.

<sup>119</sup> J Gardam and H Charlesworth, 'Protection of Women in Armed Conflict' (2000) 22 Human Rights Quarterly 148.

<sup>120</sup> Ní Aoláin (n 118).  
<sup>121</sup> A Aldehaib, *Sudan's Comprehensive Peace Agreement Viewed Through the Eyes of the Women of South Sudan* Fellow's Programme Occasional Paper 3/2010, Institute for Justice and Reconciliation, South Africa.

<sup>122</sup> J Mertus, 'Improving the Status of Women in the Wake of War: Overcoming Structural Obstacles' (2002–3) 41 Columbia Journal of Transnational Law 541 (arguing that liberal constitutional models are too limited to accommodate the post-conflict needs of women).

prisoners discretely addressed some of the time; and becoming complicit in having women tasked post-conflict as ethnic reconcilers or agents of service delivery. This project stands as a loose summary of how women appear in many of the low proportion of peace agreements in which they figure at all.

A key difficulty continues to be the inherent paradox central to all peace processes, namely, that if those who are fighting fail to reach a ceasefire little stability or justice—including for women—will be possible, but if all justice issues are sacrificed to the achievement of a ceasefire, the ceasefire is likely to achieve very little in terms of transforming women's lives. It is difficult to find a feminist way through, whether the problem is resisting capitulation to military actors; the impossibility of finding a 'family friendly' way to negotiate concomitant with requirements of secrecy, artificial deadlines, and round-the-clock talks; or the need to buy into long-term militarized international involvement as the post-conflict price of implementation. At every level, these are uncomfortable processes for women.

Our final conclusion is therefore to argue for space to at least consider whether the peace agreement paradox is with us for all time. We do not seek to suggest that this should replace the attempt to engage with peace processes and agreements. However, in the struggle to survive conflicts and peace processes there is an abiding need to carve out a literal and conceptual 'space in-between' an apparently fixed analysis of the conflict as military fighting between men, and the fixed prescriptions for its resolution that flow from this analysis, in which women can question the parameters of the process as currently set.<sup>123</sup> This plea for a space to be left to women to fundamentally reconceive the job of peacemaking might seem curiously abstract, luxurious and irrelevant when compared to day-to-day battles of inclusion and survival. Yet, a more general skepticism as to what current peace processes and agreements are capable of achieving is increasing, as is concern over their use as a vehicle for old imperial projects in new guises. It is important that we use the task of influencing particular processes to reinforce, rather than obliterate, the question of whether and for whom these processes deliver and whether there might be a better way.

<sup>123</sup> For space 'between' analysis see C Cockburn, *The Space Between Us: Negotiating Gender and National Identities in Conflict* (Zed Books, London, 1998).