



SOUTH SUDAN: GENDER ANALYSIS OF THE PEACE AGREEMENT

Legal Memorandum

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SOUTH SUDAN: GENDER ANALYSIS OF THE PEACE AGREEMENT

Executive Summary

The purpose of this memorandum is to analyze the Agreement on the Resolution of the Conflict in the Republic of South Sudan (“August Peace Agreement” or “Agreement”) from a gender perspective, highlighting requirements for women's engagement and providing comparative examples of what women can do to engage in the peace process beyond the contents of the peace agreement.

Several of the chapters in the Agreement have explicit provisions that either safeguard women's rights and inclusion, or specifically create positions for women. For instance, seats are allocated to ensure women's participation in the transitional government. However, the transitional government may also consider creating a separate ministry for women's development and women should also be included in the state level governments. Notably, Chapter VI on the Parameters of the Permanent Constitution contains provisions to ensure gender inclusion. It seeks to guarantee gender equity and affirmative action. While the agreement admirably attempts to safeguard women's rights in the constitutional process, the transitional government may consider adopting special gender-related laws or specific constitutional provisions to guarantee gender equity.

While the government may undertake several steps to ensure that women participate in the peace process, women's organizations may also take steps outside of traditional governmental mechanisms to ensure their own participation. For example, the United Nations advocates adopting a “gender perspective” to address the special needs of women in a peace agreement.

Additionally, women's organizations may participate in the peace process. Women traditionally participate in the peace process as mediators or members of mediation teams, delegates of negotiating parties, signatories, and witnesses. Further, women sometimes hold parallel peace conferences, act as gender advisors to mediators (or facilitators or delegates), and create technical committees. While the Agreement includes several provisions to ensure gender equity, several steps may be taken by the transitional government and women's organizations to ensure South Sudanese women are represented both in their government and the peace process.

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SOUTH SUDAN: GENDER ANALYSIS OF THE AUGUST PEACE AGREEMENT

Statement of Purpose

The purpose of this memorandum is to analyze the Agreement on the Resolution of the Conflict in the Republic of South Sudan (referred to as “August Peace Agreement,” “August Agreement,” or “Agreement”) from a gender perspective, highlighting requirements for women's engagement and providing suggestions of what women can do to engage in the peace process beyond what is contained in the peace agreement.

Introduction

In August 2015, the President of South Sudan, the Commander-in-Chief of the South Sudanese Armed Opposition, a representative of the former detainees, and other South Sudanese representatives signed the Agreement on the Resolution of the Conflict in the Republic of South Sudan.¹ The Agreement outlines the establishment and composition of a transitional government, permanent ceasefire arrangements, constitutional parameters, transitional justice mechanisms, and humanitarian assistance and reconstruction issues. Further, its last chapter establishes the agreement's supremacy over previous peace agreements and provides the procedures for any amendments.²

Numerous provisions in the Agreement acknowledge the importance of women's inclusion in the peace process by specifically carving out positions for women. In addition to the various references to the role of women in each chapter of the Agreement, the Preamble further emphasizes the importance of gender equality, noting: “that the sharing and allocation of wealth emanating from resources in South Sudan shall ensure that the quality of life and dignity of all citizens are promoted without discrimination on the grounds of gender, religion, political affiliation, ethnicity, and language.”³ Moreover, the Women's bloc is listed as a stakeholder to the Agreement. More specifically, Amer Manyok Deng is the Representative of Women's Bloc of South Sudan, and signed the Agreement as a Stakeholder.⁴ Overall, the text of the Peace Agreement suggests that gender

¹ *Agreement on the Resolution of the Conflict in the Republic of South Sudan* (South Sudan, 2015), available at http://www.sudantribune.com/IMG/pdf/final_proposed_compromise_agreement_for_south_sudan_conflict.pdf.

² *Agreement on the Resolution of the Conflict in the Republic of South Sudan* ch. VIII (South Sudan, 2015).

³ *Agreement on the Resolution of the Conflict in the Republic of South Sudan* preamble (South Sudan, 2015).

⁴ *Agreement on the Resolution of the Conflict in the Republic of South Sudan* Stakeholders (South Sudan, 2015).

equality and women's rights are one major purpose of the Transitional Government of National Unity ("TGoNU") and Constitution to come.

This memorandum examines the requirements of women in the implementation of the Agreement. The memorandum will also analyze the different opportunities for women's involvement outside of the peace agreement itself. Each chapter of the agreement will be analyzed, to highlight requirements for women's engagement. A recommendation to expand involvement based on practices in other post-conflict societies will be made for each chapter will be made. To conclude, a global set of recommendations for women's engagement in the peace process generally will be set forward.

Chapter I: Transitional Government of National Unity of the Republic of South Sudan

Chapter I of the Agreement lays out the mandate and composition of the TGoNU.⁵ Additionally, this chapter describes the role of the Transitional Legislative Assembly, the Council of States, and the National Constitutional Amendment Committee.⁶ Lastly, Chapter I outlines the structure and composition of state governments and reviews the implementation of the National Elections Act.⁷ While the first chapter has several provisions that explicitly require that certain positions be allocated to women, there are also newly established institutions in which women can play a much larger role. In addition, the TGoNU may consider creating a special ministry that safeguards and develops women's rights.

Existing Provisions

Within the structure of the TGoNU, the Council of Ministers will include 30 Ministries, organized in three clusters including the Service Delivery Cluster, which houses a Ministry of Gender.⁸ In addition, women will have seats in the TGoNU. In accordance with the Transitional Constitution of the Republic South Sudan (TCRSS) of 2011, which called for the composition of the Executive to be 25% women, the Government of the Republic of South Sudan ("GRSS") during the Pre-Transition Period shall nominate no fewer than four women to the Council of Ministers, and the South Sudan Armed Opposition ("SPLM-IO") shall nominate

⁵ *Agreement on the Resolution of the Conflict in the Republic of South Sudan* ch.1, arts. 1-10 (South Sudan, 2015).

⁶ *Agreement on the Resolution of the Conflict in the Republic of South Sudan* ch.1, arts. 11-14 (South Sudan, 2015).

⁷ *Agreement on the Resolution of the Conflict in the Republic of South Sudan* ch.1, arts. 15-16 (South Sudan, 2015).

⁸ *Agreement on the Resolution of the Conflict in the Republic of South Sudan* ch.1, art. 10.2.3 (South Sudan, 2015).

no fewer than three women to the Council of Ministers.⁹ Furthermore, in accordance with the TCRSS provisions, on the participation of women in the Executive, at least two of the Deputy Ministers shall be women.

Gaps in the Agreement

While the Agreement contains the quota from the TCSS for women in certain executive positions, the Agreement fails to expand the requirements for women to serve in the TGoNU. For example, the Agreement fails to set aside a senior-level position in the Executive (President, Vice-President, First Vice-President) for a woman. Similarly, the Agreement does not contain a specific provision providing for the participation of women in the Transitional National Legislative Assembly and the Council of States. Furthermore, the Agreement does not contain a specific provision providing for the participation of women in the judiciary or the National Constitutional Amendment Committee. Additionally, the Agreement does not require a minimum level of women's participation in the transitional institutions and mechanisms listed in Chapter I, article 14.1. While the Agreement does not specifically that men shall fill the aforesaid positions, the addition of women's quotas for positions would help to ensure that women are adequately represented across the TGoNU.

In addition to the TGoNU, the Agreement does not contain a specific provision on women's participation in the state governments. Furthermore, the Agreement does not mention how the government will specifically encourage women's participation in elections. In each of these instances, while the Agreement does not specifically carve out positions for women, the Agreement does not specify that only men can fill these positions. As such, women can continue to advocate for more representation of women in these institutions.

Recommendation: Government Ministries and Units

The Ministry of Gender can be used to facilitate the implementation of women's rights and women's inclusion in the Executive. Ministries responsible for providing education, police assistance, gender-sensitivity training, and preparation for political leadership roles are important tools for promoting women's inclusion. For instance, in its post-conflict setting, Cambodia established a Ministry of Women's and Veteran's Affairs unit to educate the population and raise awareness of women's issues.¹⁰ Sierra Leone established a Family Support

⁹ *Agreement on the Resolution of the Conflict in the Republic of South Sudan* ch.1, art. 10.5.2 (South Sudan, 2015).

¹⁰ Ministry of Women's and Veteran's Affairs, available at <http://www.humantrafficking.org/organizations/44>.

Unit to assist local police in investigating gender-based violence and educate the community through radio and television programs.¹¹ Similarly, East Timor established a Vulnerable Persons Unit to assist the police and a Gender Affairs Unit in the Office of the Special Representative of the United Nations Secretary-General to advocate for gender equality, including increased participation in political decision-making, a gender-sensitive legal and judicial system, education and literacy programs for women and girls, and equal rights to land, employment and investment opportunities.¹²

Chapter II: Permanent Ceasefire and Transitional Security Arrangements

Chapter II outlines the terms of the permanent ceasefire and transitional security arrangements, and includes the institutions that will ensure the ceasefire's implementation.¹³ Chapter II provides that women representatives will be included on some but not all of the security institutions. When transitional security arrangements are being implemented, the TGoNU may create subcommittees and caucuses to focus on women's security issues.

Existing Provisions

The Agreement creates the Ceasefire and Transitional Security Arrangement Monitoring Mechanism (CTSAMM), responsible for reporting on the progress of the implementation of the permanent ceasefire.¹⁴ The membership of the CTSAMM will include one representative from the women's bloc.¹⁵ The CTSAMM will report directly to the Joint Monitoring and Evaluation Commission (JMEC) and last for the duration of the transitional period.¹⁶

The August Agreement also conditions that there shall be a holistic Strategic Defence and Security Review (SDSR) during the Pre-Transition Period. The SDSR, headed by a Board, will have one Women's bloc representative, one youth representative, and one CSO representative.¹⁷

¹¹ United States Department of State, Bureau of Democracy, Human Rights, and Labor, *Report on Sierra Leone* (March 8, 2006), available at <http://www.state.gov/g/drl/rls/hrrpt/2005/61591.htm>.

¹² Chris Styles-Power, Carolyn Hamilton and Erica Hall, *The Vulnerable Persons Unit in Timor-Leste: An Independent Assessment of its Role and Function*, United Nations Children's Fund (March 2008), available at <http://sgdatabase.unwomen.org/uploads/Timor%20Leste%20-%20VPU%20Report%20UNICEF.pdf>.

¹³ *Agreement on the Resolution of the Conflict in the Republic of South Sudan* ch. II, art. 4-6 (South Sudan, 2015).

¹⁴ *Agreement on the Resolution of the Conflict in the Republic of South Sudan* ch. II, art. 4 (South Sudan, 2015).

¹⁵ *Agreement on the Resolution of the Conflict in the Republic of South Sudan* ch. II, art. 4.3 (South Sudan, 2015).

¹⁶ *Agreement on the Resolution of the Conflict in the Republic of South Sudan* ch. II, art. 4.2 (South Sudan, 2015).

¹⁷ *Agreement on the Resolution of the Conflict in the Republic of South Sudan* ch. II, art. 6.1.9-6.1.11 (South Sudan, 2015).

Lastly, the chapter reiterates that warring parties shall refrain from prohibited actions outlined in the Cessation of Hostilities Agreement of January 23, 2014, which includes acts and forms of sexual and gender-based violence, sexual exploitation, and harassment.¹⁸

Gaps in the Agreement

The Agreement did not specifically provide for women's participation at the Permanent Ceasefire and Transitional Security Arrangements (PCTSA) workshop. In addition, the August Agreement does not provide an explanation of how the parties decided the composition of the group, and the Women's Bloc receives the same number of representatives as both China and the EU— one representative. Although presumably the parties mentioned would be able to choose their representative, the Agreement does not indicate how other members, such as the other political parties or the CSOs, will choose their representatives, or whether gender will be an important factor in those decisions.¹⁹

Recommendation: Subcommittees and Caucuses

Subcommittees and caucuses comprise another mechanism that can focus on exclusively women's issues as they relate to security arrangements. For instance, after the Rwandan Genocide, a parliamentary subcommittee on gender was formed to examine and analyze each law to determine its consequences for women.²⁰ Similarly, Guatemala created the Congressional Commission on Women, Minors and Family to reform provisions of criminal code impacting women's rights.²¹ In South Africa, the African National Congress Women's Caucus lobbied for recognition of women as a disadvantaged group and legislation dealing with women's inequality issues.²² The creation of subcommittees and caucuses that focus on women's issues and security could help to ensure that these issues are sufficiently considered and addressed.

¹⁸ *Agreement on the Resolution of the Conflict in the Republic of South Sudan* ch. II, art. 1.7.2 (South Sudan, 2015).

¹⁹ *Agreement on the Resolution of the Conflict in the Republic of South Sudan*, Chapter II, Article 4.3 (South Sudan, 2015).

²⁰ Jolynn Shoemaker, *Constitutional Rights and Legislation*, JUSTICE, GOVERNANCE AND CIVIL SOCIETY, 27, available at http://www.huntalternatives.org/download/29_constitutional_rights.pdf.

²¹ Jolynn Shoemaker, *Constitutional Rights and Legislation*, JUSTICE, GOVERNANCE AND CIVIL SOCIETY, 27.

²² Shireen Hassim, *A virtuous circle? Gender equality and representation in South Africa*, GENDER EQUALITY AND REPRESENTATION, 34-44

Chapter III: Humanitarian Assistance and Reconstruction

This chapter highlights the agreed principles for humanitarian assistance and reconstruction, describing the role of the Special Reconstruction Fund (SRF). However, a position for women on the Board of the SRF is not explicitly set aside. Possible solutions may include: (1) the implementation of a quota to ensure women are represented on the Board; or (2) operation of civil society organizations (“CSOs”) with a focus on women’s issues that interact with the SRF Board.

Existing Provisions

None of the provisions in the third chapter explicitly delineate positions for women. However, the chapter does reiterate that during the transition, the TGoNU will offer special consideration to conflict-affected persons, with an emphasis on children, orphans, women, and widows, in the provision of public service delivery, including access to health and education services and grant the host communities the same benefit, protection and humanitarian services.²³

Gaps in the Agreement

The Agreement does not make specific provision for women’s participation on the Board for the SRF. Instead, the Agreement largely calls for representatives from developmental agencies and civil society, with no reference to gender.

Recommendation: Quotas and Affirmative Action, Non-Governmental Organizations

Use of quotas and affirmative action provisions in constitutions can also aid in the implementation of human rights and the inclusion of women in peace processes. These mechanisms generally apply to women and disadvantaged groups. For instance, in the Iraqi Constitution, one provision advocates for an election law requiring that women represent at least one-quarter of the members of the Council of Representatives.²⁴ The Afghan Constitution also provides that an electoral law should use a quota system. It notes that a law should be adopted requiring at least two female delegates from each province in one house (House of the People) and at least 50% women in the other (House of Elders).²⁵ Similarly, the Rwandan Constitution provides that women should have at least 30% of posts

²³ *Agreement on the Resolution of the Conflict in the Republic of South Sudan* ch. III, art. 1.2.2 (South Sudan, 2015).

²⁴ IRAQ CONST. art. 49 (2006).

²⁵ AFGHANISTAN CONST. art. 83, 84 (2004).

in decision-making entities and that two women from each province should be in the Chamber of Deputies.²⁶

States also include constitutional provisions with language regarding affirmative action to help guarantee political participation of women and marginalized groups. For instance, the Ugandan Constitution provides that woman and other marginalized groups have right to affirmative action to redress past “imbalances created by history, tradition or custom.”²⁷ Similarly, the Bangladeshi and Indian Constitutions provide that special provisions can be made for women, children and “backward” citizens.²⁸ Another way to help guarantee political participation of women may be through creation and operation of NGOs, or working with existing NGOs, with a specified humanitarian purpose. This way, women could compel action and consultation with the SRF Board as outside actors, regardless of their representation on the board itself.

Chapter IV: Resource, Economic and Financial Management Arrangements

Chapter IV outlines the general principles of economic and financial management, explaining institutional reforms, anti-corruption compliance, resource management, and environmental protection.²⁹ Further, Chapter IV establishes the Public Finance and Economic Management, the Enterprise Development Fund (EDF), and the Economic and Financial Management Authority (EFMA).³⁰ While this chapter does not specifically set aside positions for women, the TGoNU may consider appointing an ombudsman to ensure women’s economic health is secured. Women’s organizations may pressure the government to appoint an ombudsman. Alternatively, women may attempt to prompt women’s involvement through additional trainings to increase interaction with the transitional institutions.

Existing Provisions

In addition to the EDF, the Agreement provides that the TGoNU shall establish a Women Enterprise Development Fund for provision of subsidized

²⁶ RWANDA CONST. art. 9, 36, 82 (2003).

²⁷ UGANDA CONST. art. 32, 33 (1995).

²⁸ BANGLADESH CONST. art. 28 (1972); INDIA CONST. art. 15 (1949), available at <http://www.constitution.org/cons/india/const.html>.

²⁹ *Agreement on the Resolution of the Conflict in the Republic of South Sudan* ch. IV, arts. 1-4 (South Sudan, 2015).

³⁰ *Agreement on the Resolution of the Conflict in the Republic of South Sudan* ch. IV, arts. 5-8 (South Sudan, 2015).

credit for women-based enterprise development and capacity building of women entrepreneurs.³¹

The TGoNU must also establish an Economic and Financial Management Authority (EFMA) within four months of the Transition, comprised of individuals selected on the basis of criteria set by the Board of EFMA, which will include the Women's bloc.³²

The TGoNU shall review the Anti-Corruption Commission Act of 2009 in order to enable the Anti-Corruption Commission (ACC).³³ The ACC will protect public property, investigate and prosecute cases of corruption, combat administrative malpractices in public institutions, and promote ethical standards.³⁴ The August Agreement allows for civil society participation by involving the media, civil society, women's organizations, youth organizations, and faith leaders to raise public awareness and policy advocacy.³⁵

Gaps in the Agreement

The Agreement does not include gender equality as a guiding principle for the reforms to the economic institutions. Moreover, the Agreement does not specifically provide for women's participation in the decision-making and negotiation of contracts for the exploration, development, production and use of natural resources.

Recommendation: Ombudsman, Trainings

States also elect or appoint ombudsmen to investigate and remedy violations of human rights and by extension, women's rights. For instance, the Philippine Constitution allows for an independent office of the Ombudsman to serve as "protectors of the people."³⁶ In this capacity, they can investigate complaints against public officials, organizations, and agencies and direct those parties to perform any act as required by law.³⁷ Similarly, the Constitution of Namibia provides for an Ombudsman responsible for investigating complaints regarding

³¹ *Agreement on the Resolution of the Conflict in the Republic of South Sudan* ch. IV, art. 7.1.5 (South Sudan, 2015).

³² *Agreement on the Resolution of the Conflict in the Republic of South Sudan* ch. IV, art. 8.2 (South Sudan, 2015).

³³ *Agreement on the Resolution of the Conflict in the Republic of South Sudan* ch. IV, art. 2.3 (South Sudan, 2015).

³⁴ *Agreement on the Resolution of the Conflict in the Republic of South Sudan* ch. IV, art. 2.3.1.1 (South Sudan, 2015).

³⁵ *Agreement on the Resolution of the Conflict in the Republic of South Sudan* ch. IV, art. 2.3.1.5 (South Sudan, 2015).

³⁶ PHILIPPINES CONST. art. XI, sec. 5, 12, 13 (1987).

³⁷ PHILIPPINES CONST. art. XI, sec. 13 (1987).

violations of “fundamental rights and freedoms,” as well as “practices and actions by persons, enterprises and other private institutions where such complaints allege that violations of fundamental rights and freedoms under this Constitution have taken place.”³⁸ Therefore, creation of an ombudsman to investigate violations of women’s rights may provide for future economic and financial management that equally benefits the men and women of South Sudan.

Additionally, women may also consider training their fellow community-women on best economic and financial management practices to promote increased interaction between women and the Agreement’s proposed economic and financial organizations. Following the instances of existing organizations and entities that have helped women develop and fine-tune their economic and financial skillsets, women may be able to work around the language of the Peace Agreement to ensure that local women are adequately trained and able to utilize the proposed entities and enterprises to their full advantage.

Chapter V: Transitional Justice, Accountability, Reconciliation and Healing

Chapter V establishes several institutions to promote transitional justice, reconciliation, and healing in South Sudan. Chapter V acknowledges in several provisions the importance of including women in the transitional justice process. In addition to the transitional justice mechanisms established in the peace agreement, the existing court system is an effective tool to ensure the gender-related provisions in these newly-created institutions are abided by and enforced.

Existing Provisions

The Agreement establishes the Commission for Truth, Reconciliation and Healing (CTRH).³⁹ The TGoNU must involve and consult women’s organizations in policy advocacy against corruption and raising public awareness to strengthen capacity of the public to resist and prevent corruption.⁴⁰ Without prejudice to its mandate, the CTRH will be required to record the experiences of victims, with an emphasis on female victims.⁴¹ In addition, the CTRH will implement measures to protect victims and witnesses, with special consideration to women.⁴² The CTRH issues regular quarterly progress reports on its progress on tasks and activities

³⁸ NAMIBIA CONST. art. 91 (1990).

³⁹ *Agreement on the Resolution of the Conflict in the Republic of South Sudan* ch. V, art. 2 (South Sudan, 2015).

⁴⁰ *Agreement on the Resolution of the Conflict in the Republic of South Sudan* ch. V, art. 2.2 (South Sudan, 2015).

⁴¹ *Agreement on the Resolution of the Conflict in the Republic of South Sudan* ch. V, art. 2.2.2.6 (South Sudan, 2015).

⁴² *Agreement on the Resolution of the Conflict in the Republic of South Sudan* ch. V, art. 2.2.3 (South Sudan, 2015).

regarding public education, awareness-raising and civic engagement activities to update the TGoNU and the public of South Sudan, with an added importance on informing women. In addition, the CTRH shall be composed of seven Commissioners, four of whom must be South Sudanese nationals, of whom two (half) will be women.⁴³ The remaining three Commissioners shall be from other African states, of whom at least one must be a woman.⁴⁴

Another transitional justice institution is the Hybrid Court for South Sudan (HCSS). The HCSS is an independent judicial body that will have jurisdiction to prosecute serious crimes under international law and relevant laws of South Sudan, including gender based crimes and sexual violence.⁴⁵

Lastly, the TGoNU will create a Compensation and Reparation Fund, headed by the Compensation and Reparation Authority (CRA).⁴⁶ The CRA's mandate is to provide material and financial support to citizens whose property was destroyed by the conflict, and to help them to rebuild their livelihoods.⁴⁷ The CRA shall be run by an executive body, which shall include representatives from various CSOs, the women's bloc, faith-based leaders, and traditional leaders.⁴⁸

Gaps in the Agreement

The CTRH and CRA explicitly call for women's participation in the peace process. However, the Agreement does not require that a certain number or percentage of the HCSS judges be women.

Recommendation: Utilization of Courts

The judiciary can assist in the transitional justice process by interpreting and applying the laws relating to transitional justice and women's rights. States vary in their use of the courts to implement legislation. In some states, courts at all levels can consider constitutional issues, whereas in others the process is restricted to a supreme court, constitutional court, or a special chamber.⁴⁹ Women's advocacy

⁴³ *Agreement on the Resolution of the Conflict in the Republic of South Sudan* ch. V, art. 2.3.2 (South Sudan, 2015).

⁴⁴ *Agreement on the Resolution of the Conflict in the Republic of South Sudan* ch. V, art. 2.3.2 (South Sudan, 2015).

⁴⁵ *Agreement on the Resolution of the Conflict in the Republic of South Sudan* ch. V, art. 3.2.1.4 (South Sudan, 2015).

⁴⁶ *Agreement on the Resolution of the Conflict in the Republic of South Sudan* Ch. V, art. 4 (South Sudan, 2015).

⁴⁷ *Agreement on the Resolution of the Conflict in the Republic of South Sudan* Ch. V, art. 4.2(d) (South Sudan, 2015).

⁴⁸ *Agreement on the Resolution of the Conflict in the Republic of South Sudan* Ch. V, art. 4.2(a)(ii) (South Sudan, 2015).

⁴⁹ Jolynn Shoemaker, *Constitutional Rights and Legislation*, JUSTICE, GOVERNANCE AND CIVIL SOCIETY, 25.

groups may use the courts as a tool to advance women's interests relating to transitional justice.

A state's constitution will often address the availability of judicial review, as well as the constitutional principles that should guide the review. For instance, the South African Constitution provides a right for individuals to seek a remedy in the court system for violations of their rights.⁵⁰ The constitution also obligates the judicial branch to promote the Bill of Rights when interpreting the constitution or legislation. It states, "When interpreting the Bill of Rights, a court, tribunal or forum - must promote the values that underlie an open and democratic society based on human dignity, equality and freedom; must consider international law; and may consider foreign law ... When interpreting any legislation, and when developing the common law or customary law, every court, tribunal or forum must promote the spirit, purport and objects of the Bill of Rights."⁵¹

Courts can play crucial roles in making states responsible for the enforcement of human rights, including economic, social, and cultural rights. Enforcing these rights can be an important component of the transitional justice process as court cases can set the precedent that these rights need to be respected in the future. For instance, the South African Constitutional Court has found that exclusion of an anti-retroviral drug from the state's public healthcare services was unreasonable where it could reduce HIV transmission from mothers to children.⁵² The court found that the state's refusal to make the drug broadly available and its lack of a plan to address mother-to-children HIV transmission violates the constitutional right of access to healthcare for indigent mothers and children.⁵³ Similarly, a special constitutional court in Portugal has held that the constitutional right to health imposes an express duty on the government to create a national health service, and, therefore, any statute abrogating the establishment of a that service is unconstitutional.⁵⁴

A court's interpretation of the right to education provides another instance in which courts can implement human rights provisions and support women's rights in particular. For instance, the Columbian Constitutional Court held that the right

⁵⁰ SOUTH AFRICA CONST. art. 38 (1996).

⁵¹ SOUTH AFRICA CONST. art. 39 (1996).

⁵² International Commission of Jurists, *Courts and the Legal Enforcement of Economic, Social and Cultural Rights: Comparative Experiences of Justiciability* (2008), 39, available at <http://www.icj.org/dwn/database/ESCR.pdf>.

⁵³ International Commission of Jurists, *Courts and the Legal Enforcement of Economic, Social and Cultural Rights: Comparative Experiences of Justiciability* (2008), 40.

⁵⁴ International Commission of Jurists, *Courts and the Legal Enforcement of Economic, Social and Cultural Rights: Comparative Experiences of Justiciability* (2008), 32.

to education binds private schools to obligations regarding their disciplinary powers and ability to terminate contracts with students.⁵⁵ As a result, a school's decision to expel a pregnant student in the middle of the year constituted a violation of the right to education, and the school was ordered to re-admit the student. Similarly, a school violated the right to education, among other rights, of students that were threatened with expulsion based on their physical appearance.⁵⁶ These instances, and countless others, demonstrate the ability of courts to provide an effective mechanism for the implementation of rights enshrined in international instruments and state constitutions.

Chapter VI: Parameters of Permanent Constitution

Chapter VI of the Agreement discusses the drafting process of the new Permanent Constitution. While the chapter promotes women's inclusion in the constitutional process, the TGoNU may pass electoral and gender laws, as well as constitutional amendments to enforce women's rights.

Existing Provisions

Regarding the parameters of the permanent constitution, the TGoNU shall initiate and oversee the process to create a permanent Constitution, during the Transitional Period that initiates a Federal and democratic system of government that reflects the character of South Sudan in its various institutions taken together, and specifically guarantees gender equity and affirmative action.⁵⁷

In order to ensure quality of participation and inclusiveness in the reformulated Constitution review process by the TGoNU, the composition of the National Constitution Review Commission (NCRC) shall include participation from the Women's bloc.⁵⁸ The NCRC will prepare the draft of the Constitution after consultations with all key stakeholders including civil society organizations.⁵⁹ The NCRC shall extensively involve consultation with CSOs and faith-based groups for their views to prepare a draft constitution.⁶⁰

⁵⁵ International Commission of Jurists, *Courts and the Legal Enforcement of Economic, Social and Cultural Rights: Comparative Experiences of Justicability* (2008), 47.

⁵⁶ International Commission of Jurists, *Courts and the Legal Enforcement of Economic, Social and Cultural Rights: Comparative Experiences of Justicability* (2008), 47.

⁵⁷ *Agreement on the Resolution of the Conflict in the Republic of South Sudan* ch. VI, art. 1.2 (South Sudan, 2015).

⁵⁸ *Agreement on the Resolution of the Conflict in the Republic of South Sudan* ch. VI, art. 8 (South Sudan, 2015).

⁵⁹ *Agreement on the Resolution of the Conflict in the Republic of South Sudan* Ch. VI, art. 5 (South Sudan, 2015).

⁶⁰ *Agreement on the Resolution of the Conflict in the Republic of South Sudan* Ch. VI, art. 5 (South Sudan, 2015).

Recommendation: Electoral and Gender Laws and Constitutional Provisions

State legislation, such as electoral laws, often provides for mechanisms for enforcing human rights and women's rights. For instance, as noted, the Iraqi electoral law requires that women represent at least one-quarter of the Council of Representatives members.⁶¹ Similarly, the Afghan electoral law provides that at least two female delegates should be elected from each province into the House of the People (Wolesi Jirga).⁶² Alternatively, states may choose to enshrine these recommendations in their constitutions.

Gender-based legislation also provides an effective mechanism. For instance, the Indian National Commission for Minorities Act established the National Commission for Minorities and assigned the Commission power to investigate complaints regarding the deprivation of rights, conduct case studies of possible discrimination, and write reports or suggest remedies for the central or provincial governments.⁶³ Similarly, the Estonian Gender Equality Act established a Gender Equality Commissioner charged with proposing legislative amendments, providing opinions, and demanding written explanations regarding discrimination to comply with the law providing for the promotion of gender equality in state and local government.⁶⁴ The Act also grants the Minister of Social Affairs the authority to make recommendations about the performance of state and local governments.⁶⁵

Chapter VII: Joint Monitoring and Evaluation Commission

Chapter VII establishes the Joint Monitoring and Evaluation Commission (JMEC), which is responsible for monitoring and overseeing the implementation of the Agreement. A task force may be created to assist the JMEC.

Existing Provisions

⁶¹ IRAQ CONST. art. 49 (2006).

⁶² AFGHANISTAN CONST. art. 83 (2004).

⁶³ INDIAN NATIONAL COMMISSION FOR MINORITIES ACT, chap. II, sec. 3(i), chapter III, art. 9 (1992), available at http://ncm.nic.in/NCM_Act.html.

⁶⁴ ESTONIAN GENDER EQUALITY ACT, chap. 5, sec. 16(4), 17(1), 17(4) (2004), available at http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CFMQFjAA&url=http%3A%2F%2Fwww.iwrawap.org%2Fresources%2Fdocuments%2FGE_Estonia.doc&ei=R9u_T6vpDcSrgweU2czICQ&usg=AFQjCNFPo7pfsMniHVMNmeKdSq4attK78Q&sig2=6QfeiMFO4JIO_WqxIxPuwg.

⁶⁵ ESTONIAN GENDER EQUALITY ACT, chap. 3, sec. 9(1), (3) (2004).

Within the JMEC, membership shall comprise of representatives of the Parties to the Peace Agreement, regional and international guarantors and partners of South Sudan, and other South Sudanese stakeholders and adherents, including one representative from the Women's bloc.⁶⁶ The joint composition of a monitoring and evaluation commission is typically included in peace agreements and can be pivotal in ensuring the successful implementation of a peace agreement.

Gaps in the Agreement

Though the Agreement provides for the Women's bloc representative on the JMEC, it does not require that a certain number or percentage of the other JMEC members be women. However, none of the other proposed JMEC members reference gender, so women could potentially fill other positions as well.

Recommendation: Task Forces

States create task forces to protect human rights and, specifically, women's rights. Like government ministries or units, these task forces can combat violence against women through law enforcement training. For instance, Afghanistan established an Inter-Ministerial Task Force on the Elimination of Violence Against Women under the Ministry of Women's Affairs to improve judicial and law enforcement systems in the area of domestic violence.⁶⁷ The duties of the task force included training court officials, staff at the Attorney General's office, and police departments to handle cases of violence against women, as well as creating an initiative for formal registration of marriages and divorces to ensure the protection of women's rights under Islamic law and international standards.⁶⁸

Chapter VIII: Supremacy of this Agreement and Procedures for Amendment of the Agreement

This Chapter provides that the terms of the Agreement prevail over the Constitution or any conflicting legislation. The Agreement can only be amended by two-thirds of the members of the Council of Ministers and two-thirds of the voting members of the JMEC consenting to the amendment, followed by the ratification of the TNLA. This robust protection will deter amendments that dilute

⁶⁶ *Agreement on the Resolution of the Conflict in the Republic of South Sudan* ch. VII, art. 2.2.2 (South Sudan, 2015).

⁶⁷ Reliefweb, *Afghanistan: Government Task Force for Combating Violence Against Women releases 3-month workplan* (July 18, 2005), available at <http://reliefweb.int/node/413581>.

⁶⁸ Reliefweb, *Afghanistan: Government Task Force for Combating Violence Against Women releases 3-month workplan* (July 18, 2005).

the Agreement, but it also may be difficult to make changes to the Agreement. This Chapter does not include any gender-related provisions.

Recommendations for Engagement in the Peace Process

Outside of the provisions of the peace agreement, states may undertake several steps to ensure that women participate in the peace process. However, women's organizations may take steps outside of traditional governmental mechanisms to ensure their participation. For example, the United Nations advocates adopting a "gender perspective," to address the special needs of women in a peace agreement. Additionally, women's organizations may participate in a peace process through one of the established methods, outlined in the Peace Process Participation section.

Adopting a Gender Perspective

United Nations Security Council (UNSC) Resolution 1325 aims to address women, peace, and security, says that peace agreements should "adopt a gender perspective," addressing the special needs of women during repatriation and resettlement, and implementing measures that support local women's initiatives and ensure the protection of women's rights.⁶⁹ The resolution has proved to be successful. Shortly after its implementation, women in the Democratic Republic of the Congo (DRC) successfully advocated for formal participation in the Inter-Congolese Dialogue (a national convention on political reform and reconciliation).⁷⁰ The convention initially excluded women.

Adopting a gender perspective may mean mere inclusion of women in peace negotiations, or could include including women's input to the agreement, which attempts to provide for material gains.⁷¹ Additionally, adopting a gender perspective may be a means to draw attention both to gender imbalance in the peace process and in the substance of the agreement.⁷²

⁶⁹ Security Council Resolution 1325, para. #8, U.N. Doc. S/RES/1325 (Oct. 31, 2000), available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N00/720/18/PDF/N0072018.pdf?OpenElement>.

⁷⁰ Pablo Castillo Diaz & Simon Tordjman, *Women's Participation in Peace Negotiations: Connections Between Presence and Influence*, UN WOMEN, page 3 (Oct. 2012), available at <http://www.unwomen.org/~media/headquarters/attachments/sections/library/publications/2012/10/wpssourcebook-03a-womenpeacenegotiations-en.pdf>.

⁷¹ Christine Bell, *Text and Context: Evaluating Peace Agreements for their "Gender Perspective,"* POLITICAL SETTLEMENTS RESEARCH PROGRAMME, page 5 (Oct. 11, 2015), available at <http://www.politicalsettlements.org/files/2015/10/Text-and-Context-11-October-2015.pdf>.

⁷² Christine Bell, *Text and Context: Evaluating Peace Agreements for their "Gender Perspective,"* POLITICAL SETTLEMENTS RESEARCH PROGRAMME, page 5 (Oct. 11, 2015).

In order to adopt a gender perspective, women's organizations shall continue to push for female inclusion in the peace process. They should continue to renew commitments to equality of women through institutions engaged with peace building.⁷³ Furthermore, women's organizations can play a role in monitoring peace agreement implementation, supporting initiatives that seek to ensure that newly created institutions will also provide gender equality.⁷⁴

Peace Process Participation

Women participate in peace processes in several ways. Traditionally, they may participate as mediators or as members of mediation teams. However, most official peace processes are initiated or supplemented by informal initiatives, which can be facilitated by people from the conflict regions. In 2011, a total of eleven peace agreements were signed around the world: from five African, two Asian, and two Middle Eastern states. Among them, domestic mediators brokered four agreements in Nepal, Myanmar, Lesotho, and the Central African Republic.⁷⁵

Women may also participate as delegates of the negotiating parties. Often the negotiating parties set the agenda for the structure of the process as well as discuss substantive provisions of the peace accord. A report from UN Women argues, "[s]trengthening information exchange between women's groups and delegations has been a powerful strategy to encourage the negotiating parties to raise gender issues and increase the chance for the peace agreement to advance gender equality and protect women's rights."⁷⁶ For instance, Luz Méndez, delegate for the Guatemalan National Revolutionary Unity party (URNG) during the Guatemala peace talks in the mid-1990s, demonstrates how a delegate can negotiate on behalf of all women. Méndez made significant strides for the women of her state by advancing a number of gender equality concerns and ensuring that they were addressed in the agreements.⁷⁷

⁷³ Christine Bell, *Text and Context: Evaluating Peace Agreements for their "Gender Perspective,"* POLITICAL SETTLEMENTS RESEARCH PROGRAMME, page 18 (Oct. 11, 2015).

⁷⁴ Christine Bell, *Text and Context: Evaluating Peace Agreements for their "Gender Perspective,"* POLITICAL SETTLEMENTS RESEARCH PROGRAMME, page 18 (Oct. 11, 2015).

⁷⁵ Pablo Castillo Diaz & Simon Tordjman, *Women's Participation in Peace Negotiations: Connections Between Presence and Influence,* UN WOMEN, page 7 (Oct. 2012).

⁷⁶ Pablo Castillo Diaz & Simon Tordjman, *Women's Participation in Peace Negotiations: Connections Between Presence and Influence,* UN WOMEN, page 8 (Oct. 2012).

⁷⁷ Pablo Castillo Diaz & Simon Tordjman, *Women's Participation in Peace Negotiations: Connections Between Presence and Influence,* UN WOMEN, page 8 (Oct. 2012).

Women may also participate as signatories to the agreements, although it is less common. In Somalia, Asha Hagi Elmi signed on behalf of all Somali women. She participated in the peace talks in Eldoret as the representative of the Sixth Clan two years prior. The Sixth Clan grew out of a network of women with cross-clan marriages and represented the pan-Somali women's movement.⁷⁸

Women may also participate as witnesses, signing the agreement on behalf of the state sponsoring or facilitating the talks. However, the "witness" category is much less relevant than the other categories, given the representational role and limited input into the process and content of the agreement.⁷⁹

Women may also participate as representatives of women's civil society with an observer role. Usually one of the most sought-after forms of engagement, it often yields the most uneven results. For instance, two different women's coalitions from Uganda were granted official observer status in the peace talks in Juba, but it was at the end of the process and without a consultative role.⁸⁰

Holding a parallel peace conference is a method often used by women's organizations. In 2006, the Uganda Women's Peace Coalition formed a Women's Peace Caravan. They took a women's peace torch from Kampala all the way to the site of the peace talks, in Juba, to protest the underrepresentation of women in the peace negotiations.⁸¹

One of the most effective strategies is to secure the inclusion of adequate gender-related provisions in the text of the agreement, as gender advisors to mediators, facilitators, or delegates. For instance, in Uganda, a gender advisor was able to play the double role of influencing the Special Envoy on the one hand and, on the other, aiding the women's peace coalition to conduct consultations and develop women's protocols for each subject to accompany the accords. As a result, the agreements yielded by the Juba talks contain a number of gender-equality provisions.⁸²

⁷⁸ Pablo Castillo Diaz & Simon Tordjman, *Women's Participation in Peace Negotiations: Connections Between Presence and Influence*, UN WOMEN, page 9 (Oct. 2012).

⁷⁹ Pablo Castillo Diaz & Simon Tordjman, *Women's Participation in Peace Negotiations: Connections Between Presence and Influence*, UN WOMEN, page 9 (Oct. 2012).

⁸⁰ Pablo Castillo Diaz & Simon Tordjman, *Women's Participation in Peace Negotiations: Connections Between Presence and Influence*, UN WOMEN, page 9 (Oct. 2012).

⁸¹ Pablo Castillo Diaz & Simon Tordjman, *Women's Participation in Peace Negotiations: Connections Between Presence and Influence*, UN WOMEN, page 10 (Oct. 2012).

⁸² Pablo Castillo Diaz & Simon Tordjman, *Women's Participation in Peace Negotiations: Connections Between Presence and Influence*, UN WOMEN, page 10 (Oct. 2012).

Lastly, women may participate as members of technical committees, or they may create a separate table or working group devoted to gender issues. For instance, in El Salvador in the early 1990s, women were present at nearly all post-agreement technical tables that worked out the implementation details of the agreement. They made an important difference in enabling them to refine technical details to facilitate implementation of their priorities.⁸³

Conclusion

The August Agreement outlines roles for both civil society organizations and women's organizations (mainly the Women's bloc) in the peace process. The August Agreement reflects the efforts made by the IGAD-Plus members and the parties to establish a foundation for peace. However, there are still open questions about how the agreement will be implemented that should be considered to ensure a peaceful transition. The Agreement calls for the creation of economic, judicial, and governing institutions to remedy the various issues women face in present day South Sudan as a result of the conflict. In addition, the Agreement requires eight major institutions (HCSS, NCRC, JMEC, CRA, SDRS, CTSAMM, Executive of TGoNU, and EFMA) to directly appoint women to main governmental positions, even implementing quotas to ensure women's participation. Overall, the Peace Agreement lists gender equality and women's rights as a major purpose of the TGoNU and Constitution to come. However, women may also want to consider action outside the parameters of the existing Agreement.

⁸³ Pablo Castillo Diaz & Simon Tordjman, *Women's Participation in Peace Negotiations: Connections Between Presence and Influence*, UN WOMEN, page 11 (Oct. 2012).