



PA-X RESEARCH REPORT



Women's Rights in Armed Conflict under International Law

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This research draws on the PA-X Peace Agreements Database (www.peaceagreements.org), a database of all peace agreements at any stage of the peace process from 1990 to 2018. The database is fully searchable and supports both qualitative and quantitative examination of peace agreements.

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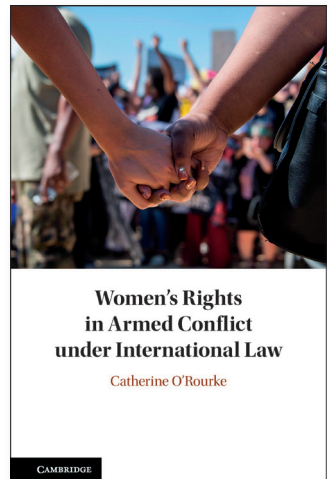
Table of Abbreviations

ICC	International Criminal Court
ICL	International Criminal Law
ICRC	International Committee of the Red Cross
IHL	International Humanitarian Law
IHRL	International Human Rights Law
MARA	Monitoring, Analysis and Reporting Arrangements
MRM	Monitoring and Reporting Mechanism
OTP	Office of the Prosecutor
UNSC	United Nations Security Council
WPS	Women, Peace and Security
WRAC	Women's Rights in Armed Conflict

Summary

Protections for women's rights in armed conflict (WRAC) have proliferated under international law in the last three decades. Consequently, there is now a wide range of international institutions engaged in defining, monitoring and enforcing women's rights in different conflicts under international law. Key institutions of relevance include the International Committee of the Red Cross (ICRC), human rights treaty-bodies, the International Criminal Court (ICC) and the United Nations Security Council (UNSC). The increase in institutional activity is a broadly positive development. Nevertheless, there is significant scope to strengthen the legal status of specific protections to women's rights; to improve how key institutions comply with and implement their own guarantees of women's rights; to improve coordination amongst key institutions; and to maximise the strengths of different monitoring and enforcement procedures to protect and promote different women's rights in different conflict settings. This policy brief elaborates these key findings and concludes with recommendations to a range of key actors.

The policy brief is drawn from [*Women's Rights in Armed Conflict under International Law* \(Cambridge University Press, 2020\)](#). The larger study examines the protection of women's rights in conflict under international humanitarian law (IHL), international human rights law (IHRL), international criminal law (ICL) and the UN Security Council. In practice, the study examined the activities of the ICRC, human rights treaty-bodies, the ICC and the UNSC in three conflict settings on a subset of emblematic women's rights violations, namely, the recruitment and use of girl soldiers and the perpetration of sexual violence in the Democratic Republic of Congo; forced displacement and sexual violence in the Colombia; and enforced disappearance and sexual violence in Nepal.



Key Findings

1. In order to understand and improve the protection of WRAC under international law, it is important to look across the activities of the ICRC, human rights bodies, the ICC and the UNSC. In particular, it is necessary to be aware of the full range of monitoring and enforcement procedures that they can bring to the protection of WRAC.
2. Different regimes of international law (IHL, ICL, IHRL and the UNSC) bring different strengths and advantages to efforts to protect WRAC. In brief, IHL engages directly with belligerent actors to prevent violations of WRAC; ICL offers the potential for individual accountability for WRAC violations; IHRL focuses on state accountability for WRAC violations; whilst the UNSC is focused on enforcement actions against WRAC violations. In order to improve the protection of WRAC under international law, these comparative advantages need to be understood and exploited.
3. Key international institutions – the ICRC, human rights bodies, the ICC and the UNSC – are not implementing their own commitments and obligations about WRAC. In particular, the UNSC has been much better at adopting normative commitments around WRAC than in operationalising them through its country-specific activities.
4. Despite the significant increase in legal protections to WRAC under international law, specific protections to women tend to have weak legal status. It is important therefore to develop clear strategies to address this challenge.
5. International laws and institutions interact very substantially in the regulation of WRAC. For example, the ICRC also delivers human rights training to police and security forces in many conflict-affected settings and the ICC draws on human rights law to interpret the Rome Statute. There are important opportunities to use these interactions to strengthen the overall protection of WRAC.

Findings

1. In order to understand and improve the protection of WRAC under international law, it is important to look across the activities of the ICRC, human rights bodies, the ICC and the UNSC.

In particular, it is necessary to be aware of the full range of monitoring and enforcement procedures that they can bring to the protection of WRAC. The table lists the key institutions, and potential monitoring and enforcement procedures, with authority over WRAC protections under IHL, ICL, IHRL and the UN Security Council, respectively. Many of these procedures can be availed of concurrently to enhance WRAC protections.

Table 1. International Institutions and Monitoring/Enforcement Procedures for Women's Rights in Conflict under International Law

IHL	
INSTITUTION	MONITORING/ENFORCEMENT PROCEDURE
International Committee of the Red Cross	<ul style="list-style-type: none"> • Humanitarian assistance • Protection: monitoring compliance by belligerent actors, including direct representation to weapons bearers and prison visits • Promotion: educating belligerent actors in IHL obligations and implementation
Third party states	'Protecting powers' to ensure IHL compliance
International Fact-finding Commissions	International supervisory organ to verify IHL violations

ICL	
INSTITUTION	MONITORING/ENFORCEMENT PROCEDURE
International Criminal Court	Decision to proceed to investigation Trials
Office of the Prosecutor	Preliminary examinations Investigations Prosecutions
Ad hoc or hybrid tribunals	Limited temporal and geographical jurisdiction for prosecution of international crimes established by or with UNSC resolution
IHL	
Human rights treaty-bodies (e.g. CEDAW, Human Rights Committee, Committee Against Torture)	Periodic reporting 'Monitoring plus': statements and requests for exceptional reports Individual complaints Inquiries into grave or systematic violations
Charter-based human rights bodies, principally the Human Rights Council	Special Procedures <ul style="list-style-type: none"> • Special Rapporteurs • Working Groups • Commissions of Inquiry • Fact-finding Missions Universal Periodic Review

UNSC	
INSTITUTION	MONITORING/ENFORCEMENT PROCEDURE
UN Security Council	<p>Chapter VI</p> <ul style="list-style-type: none"> • Recommend pacific measures for the settlement of disputes, e.g. negotiation, fact-finding, mediation, conciliation, arbitration and judicial settlement • Peacekeeping <p>Chapter VII</p> <ul style="list-style-type: none"> • Sanctions • Use of Force <p>Establish subsidiary organs for the performance of its functions, e.g. ad hoc tribunals, sanctions committees, Commissions of Inquiry, working groups</p> <p>Annual Thematic Reporting</p> <ul style="list-style-type: none"> • Monitoring, Analysis and Reporting Framework (MARA) for conflict-related sexual violence • Monitoring and Reporting Mechanism (MRM) documenting grave violations of children's rights in armed conflict, including child soldier recruitment and sexual violence • 'Listing' of perpetrators in thematic report annexes

2. Different regimes of international law (IHL, ICL, IHRL and the UNSC) bring different strengths and advantages to efforts to protect WRAC. In order to improve the protection of WRAC under international law, these comparative advantages need to be understood and exploited.

The study identified relatively clear and consistent comparative advantages and disadvantages to IHL, ICL, IHRL and the UNSC, and their attendant monitoring and enforcement procedures, for WRAC. Principally, IHL engages directly with all belligerent actors in order to prevent WRAC violations, as well as engaging directly with victims of WRAC violations to address their legal and humanitarian needs, whilst also delivering ongoing humanitarian assistance to female civilians in conflict-settings. ICL has a singular focus on individual accountability for WRAC violations in the face of widespread impunity. Also positive is that the ICC demonstrates relative institutional openness to civil society. IHRL focuses on delivering state accountability for WRAC violations. In addition, across the case studies, human rights treaty-bodies performed best in drawing connections between conflict-related and ostensibly 'non-conflict' violations of women's rights in conflict-affected settings. IHRL is also particularly inclusive to civil society. The UNSC brought unique enforcement capacity to women's rights under international law, including sanctions, peacekeeping and the use of force. Table 2 summarises these comparative advantages.

Table 2. Maximising the Comparative Advantage of Different Regimes

COMPARATIVE ADVANTAGE	COMPARATIVE DISADVANTAGE
IHL	
<p>Opportunities of ICRC role and activities:</p> <ul style="list-style-type: none"> • Emphasis on prevention of violations, including engaging with and educating belligerent actors • Multisectoral response to female victims of sexual violence • Meeting humanitarian needs of female civilians in conflict settings • ICRC pragmatic avoidance of overly strict legal definitions in daily operations 	<p>Frequent resistance from belligerent actors to IHL application, in particular by states</p> <p>Weak enforcement of IHL</p> <p>Limitations of ICRC role and activities:</p> <ul style="list-style-type: none"> • ICRC's impartiality precluding 'gendered power relations' from mandate • Confidential representations to belligerent actors increasing silence around sexual violence and gendered harm <p>Limited feminist engagement with IHL and absence of clear feminist voice in IHL development, interpretation and implementation</p>
ICL	
<p>Focus on individual accountability to tackle widespread impunity</p> <p>Relative institutional openness to civil society, including women's organisations</p> <p>Influencing domestic accountability efforts through 'positive complementarity'</p>	<p>Very poor ICC record in securing accountability for sexual and gender-based international crimes</p> <p>ICC vulnerable to state strategies to avoid the Court's jurisdiction</p>

IHL	
<p>Focus on state accountability</p> <p>Links conflict-related violations of women's rights to broader contexts of gender inequality</p> <p>Draws out relationships between conflict-related and 'non-conflict' violence against women</p> <p>Stricter accountability norm for sexual violence in conflict</p> <p>Attends to both broad patterns of violations and avenues for vindication of individual violations</p> <p>Pluralism, i.e. IHL offers several avenues to accountability</p> <p>The Charter-based human rights system shows flexibility and responsiveness to new human rights challenges</p>	<p>Limited capacity to prevent violations</p> <p>Requires state consent to treaty obligations and treaty body procedures</p> <p>Requires a state interlocutor of sufficient capacity to end and remedy violations</p> <p>Very vulnerable to selective state engagement</p> <p>Inconsistent capacity and expertise to deal with specificity of conflict-related violations of women's rights</p> <p>Inconsistent accessibility and efficacy of individual complaints mechanisms</p>
UNSC	
<p>Extraordinary enforcement powers</p> <p>Established thematic agenda on women's rights in conflict</p> <p>'Listing' mechanism for perpetrators of certain violations of women's rights in conflict operating relatively autonomously</p>	<p>Sovereignty bias, i.e. tends to privilege relevant states in all decision-making, above civil society demands and the needs of individuals</p> <p>Better at adopting normative thematic agendas than operationalizing them through country-specific activities</p> <p>Insufficient deference to its own 'listing' mechanisms in shaping its country-specific activities</p>

3. Key international institutions – the ICRC, human rights treaty-bodies, the ICC and the UN Security Council – are not implementing their own commitments and obligations about WRAC.

The failure of international institutions to align their country-specific activities with their normative commitments on WRAC was most apparent in the UNSC. As set out in Table 2, UNSC activity on scrutinising violations of the rights of women and girls in conflict under the WPS agenda is ongoing. Yet the case studies revealed a patchy and inconsistent relationship between these thematic activities under WPS, for example, the UNSC continued to provide military support to the DRC national army, despite the army's repeated inclusion in the UNSC's own listing processes of perpetrators of sexual violence in conflict and of grave violations of children rights in conflict. Likewise, the ICC Office of the Prosecutor's adoption of a robust and progressive Policy Paper on Sexual and Gender-based Crimes had limited apparent effect on the investigation and prosecution of such crimes in the case studies. The study therefore identified significant scope to improve implementation by key international institutions of their own WRAC commitments.

4. Despite the significant increase in legal protections to WRAC under international law, specific protections to women tend to have weak legal status. It is important therefore to develop clear strategies to address this challenge.

A consistent finding across the study – whether investigating girl soldiers, forced displacement, or enforced disappearance – was that specific protections to female victims of these violations were incorporated in 'soft' rather than 'hard' law. Typically, 'hard' treaty-based definitions of violations and rights were codified in gender-neutral terms, leading to subsequent efforts to codify gender-specific rights and remedies to female victims, which were almost uniformly formulated in 'soft' law. The advantage of soft law is that states are typically willing to permit more progressive statements of women's rights in conflict in soft law consensus documents than in treaty-based obligations. Typically, the processes leading to soft law outcomes, such as international conferences, are more inclusive of civil society. In addition, soft law is useful in permitting more tailored and targeted norms, addressed to more specific problems of women's rights, which can provide clearer guidance to states and other actors. Conversely, soft law commitments come with little by way of monitoring and no effective means of enforcement. They rely heavily for implementation on the goodwill of states and other actors. One important strategy to address the challenge of weak legal status is to identify opportunities to reinforce these WRAC protections across multiple regimes and institutions.

5. IHL, ICL, IHRL and the UNSC interact very substantially in the regulation of women's rights and inclusion in conflict. There are opportunities to make these interactions more productive.

For example, the ICRC also delivers human rights training to police and security forces in many conflict-affected settings and the ICC draws on human rights law to interpret the Rome Statute. The UNSC gives some weight to humanitarian and human rights concerns in its decision-making. Human rights treaty-bodies are often called on to interpret IHL. These interactions offer some promise for the protection of WRAC, in particular where progressive norms with diverse legal origins complement and reinforce each other through robust enforcement procedures.

To further illustrate, the CEDAW Committee routinely monitors state-level implementation of UNSC Resolution 1325.¹ In fact, in contexts of ongoing peace processes, the CEDAW Committee has prioritised recommendations to relevant state parties to include women in line with Resolution 1325. Further, the Committee has imposed additional monitoring on those states to ensure implementation of these inclusion recommendations, for example in 2014 in periodic state examinations of Georgia, the Central African Republic, Iraq and Syria, in which recommendations for including women in ongoing peace processes were all prioritized by the CEDAW Committee.

The larger study – examining girl soldiers, forced displacement, enforced disappearance and sexual violence – also identified potential for interactions between regimes to be adverse and to potentially weaken women's rights protections under international law. Table 3 (below) summarises the most pertinent positive and adverse interactions between the regimes for the protection of a broader set of women's rights in conflict.

¹ See generally Catherine O'Rourke and Aisling Swaine, Guidebook on CEDAW General Recommendation Number 30 and the UN Security Council Resolutions on Women, Peace and Security. UN Women, 2015, available at <https://www.unwomen.org/en/digital-library/publications/2015/8/guidebook-cedawgeneralrecommendation30-womenpeacesecurity>.

Table 3. Regime Interactions and Women's Rights in Conflict

POSITIVE INTERACTIONS	ADVERSE INTERACTIONS
IHL-ICL	IHL-ICL
<p>ICRC promoting Rome Statute ratification and domestication</p>	<p>ICC advancing interpretations of IHL norms that conflict with the ICRC's interpretation</p> <p>Formal limitations on ICC's capacity to enforce IHL, for example over non-state parties to Rome Statute</p>
IHL-IHRL	IHL-IHRL
<p>IHL offering more specific protections to women in conflict than general human rights protections</p> <p>CEDAW scrutinising violations of women's rights prohibited concurrently under IHL</p> <p>IHRL bodies monitoring state compliance with rights to health, housing and family life of the displaced</p> <p>IHRL delivering reparations for female victims of concurrent IHL and IHRL violations</p> <p>ICRC engagements with national police and security forces including instruction on IHRL</p>	<p>IHRL bodies lacking adequate knowledge of IHL or, potentially, of the specific impacts of conflict on rights</p>

POSITIVE INTERACTIONS	ADVERSE INTERACTIONS
<p data-bbox="284 459 387 485">ICL-IHRL</p> <p data-bbox="140 518 452 603">ICC openness to soft and hard IHRL instruments in reparations jurisprudence</p> <p data-bbox="140 624 527 703">Human rights treaty-bodies advocating and monitoring domestic prosecutions for international crimes</p> <p data-bbox="140 724 527 836">Human rights treaty-bodies urging state parties to cooperate with ICC, where relevant, to bring perpetrators of international crimes to justice</p> <p data-bbox="140 857 486 995">States engaging in mutual implementation of IHRL and ICL obligations, for example, improving criminal justice responses to sexual violence in armed conflict</p>	<p data-bbox="729 459 832 485">ICL-IHRL</p> <p data-bbox="588 518 967 603">ICC resistance to draw even on human rights treaties in its jurisprudence prior to reparations stage</p> <p data-bbox="588 624 981 735">Reticence across parties to ICC trials to invoke novel and potentially progressive legal arguments for women's rights based on IHRL</p> <p data-bbox="588 756 981 836">CEDAW silence on many issues of most pertinence, for example, the definition and rights of girl soldiers in diverse roles</p>
<p data-bbox="281 1034 393 1059">ICL-UNSC</p> <p data-bbox="140 1096 535 1208">Human rights treaty-bodies urging state parties to take account, where relevant, of findings and recommendations from the UNSC 'listing' mechanisms</p> <p data-bbox="140 1228 519 1340">Human rights treaty-bodies urging state parties to adopt actions plans on Women, Peace and Security and child soldier recruitment and use</p> <p data-bbox="140 1361 501 1441">UNSC drawing on IHRL to devise sanctions regimes, peacekeeping and peace enforcement mandates</p>	<p data-bbox="725 1034 837 1059">ICL-UNSC</p> <p data-bbox="588 1096 911 1208">Impunity of UN peacekeepers for violations of WRAC, including for perpetrating sexual exploitation and abuse</p> <p data-bbox="588 1228 964 1372">UNSC thematic agendas proceeding without meaningful regard to relevant human rights treaty systems, in particular CEDAW and Convention on the Rights of the Child</p>

POSITIVE INTERACTIONS	ADVERSE INTERACTIONS
UNSC-IHL	UNSC-IHL
<p>ICRC providing IHL training to UN peacekeeping and peace enforcement missions</p> <p>UNSC drawing on IHL to devise sanctions regimes, peacekeeping and peace enforcement mandates</p>	<p>Impunity of UN peacekeepers for violations of IHL, including for perpetrating sexual exploitation and abuse</p>
UNSC-ICL	UNSC-ICL
<p>ICC jurisprudence relying on UNSC Chapter VII resolutions to determine that threshold for conflict met</p> <p>ICC and OTP drawing on Secretary-General 'listing' of perpetrators to UNSC as documentation of sexual violence in a conflict</p>	<p>UNSC apparent reticence to refer cases for preliminary examination to the ICC-OTP</p> <p>ICC-OTP apparent reticence to proceed to investigation without either UNSC referral or state self-referral</p>

Recommendations

National Governments should

- ▶ Work proactively to avoid siloes in state reporting structures, for example, ensuring that reporting mechanisms for WPS are integrated with human rights treaty-reporting. National Action Plans on WPS provide worthwhile means to institutionalise this practice.
- ▶ Use their influence with the UNSC, including in Thematic Open Debates, to encourage improved alignment between the UNSC's WPS commitments and its country-specific activities.
- ▶ Resource civil society to advance this work, for example Shadow Reporting to human rights treaty-bodies on state implementation of WPS commitments.

The United Nations Security Council should

- ▶ Work urgently to improve alignment between its WPS agenda and its country-specific activities. In particular, more effective mechanisms are needed for ensuring that 'listing' of perpetrators through MARA and MRM directly informs the UNSC's country-specific activities.
- ▶ Institutionalise the WPS agenda, for example through establishing a Working Group on WPS. Further, the UNSC should consider a mechanism for imposing sanctions on 'listed' perpetrators of children's and women's rights in jurisdictions without a dedicated Sanctions Committee.
- ▶ Institutionalise mechanisms for excluding women's rights violators from UN peacekeeping forces. In the case of troop contributions from the Nepal, the Office of the High Commissioner for Human Rights was able to ensure that known human rights violators were excluded. There may also be potential in the MARA system to deduce information about UN peacekeeper complicity in sexual violence.

The Human Rights Treaty-based System should

- ▶ Pursue more collaborative working across treaty-bodies addressing issues of joint concern. The 2017 Joint General Recommendation on Harmful Traditional Practices between CEDAW and Committee on the Rights of the Child a useful precedent.
- ▶ Consider the potential to bring greater enforcement to IHL through its state party monitoring, interpretative and individual communities activities, in particular around gender-based violations that are concurrently IHL and IHRL violations.

The International Committee of the Red Cross should

- ▶ Pursue proactive engagement with feminist actors at all levels, in particular those engaged with cognate regimes of international law, in order to encourage and enable more sustained feminist engagement with IHL.
- ▶ Reflect on the practical implications of its stance that efforts to change 'gender power relations' are a breach of its impartiality. The Committee should investigate how this stance is impacting its operations in practice, and whether such limitations are strictly required, in particular as the Committee is increasingly active in contexts in which distinctions between humanitarian relief and development are not necessarily clear.

The International Criminal Court should

- ▶ Conduct a full review of the implementation of the OTP's Policy Paper on Sexual and Gender-based Crimes. In particular, this review should ascertain whether crimes of a sexual- and gender-based nature are being treated differently from other international crimes in terms of the OTP's charging strategy, the determination whether the article 17 'unwilling or unable' threshold is being met, the Pre-Trial Chamber's discretion to request the Prosecutor to conduct further investigations or amend charges, and the Trial Chamber's authority to re-characterise the facts.
- ▶ The OTP and the judiciary should consider the potential for greater use of IHRL to drive gender-sensitive jurisprudence.
- ▶ The OTP and the judiciary should give more careful consideration to the implications for IHL of charging and prosecution strategies and judicial reasoning more broadly.

Civil society should

- ▶ Consider more fully the entire suite of monitoring and enforcement mechanisms attached to women's rights in conflict under international law and strategise to maximise their comparative advantage.
- ▶ Actively pursue reinforcement across different regimes and institutions of international law of legal protections for WRAC with weak legal status.
- ▶ Hold institutions to account for their own existing gender equality and WRAC commitments.
- ▶ Engage more proactively with the ICRC on questions of IHL promotion, encouraging compliance by non-state actors, documenting IHL violations, and advocating for more progressive development of the law.

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