



Catherine O'Rourke

April 19th, 2018

## UK in 'grave and systematic' violation of rights due to restrictive abortion laws in Northern Ireland

0 comments

Estimated reading time: 10 minutes



*Following a critical UN report on access to abortion in Northern Ireland, Catherine O'Rourke explores the potential for synergies between the UN Committee on the Elimination of Discrimination against Women and the Women, Peace and Security architecture in advancing women's rights in conflict.*

On February 23, 2018, the UN Committee on the Elimination of Discrimination Against Women (the CEDAW Committee) made public its [inquiry report into access to abortion in Northern Ireland](https://blogs.lse.ac.uk/wps/2018/04/19/uk-in-grave-and-systematic-violation-of-rights-due-to-restrictive-abortion-laws-in-northern-ireland/). The Committee

concluded definitively that the limitations on access to abortion in Northern Ireland constitute both 'grave and systematic' violations of the rights guaranteed under the [CEDAW Convention](#). The UK government has to date failed to include post-conflict Northern Ireland within its Women, Peace and Security (WPS) activities. Consequently, this locally important determination by the CEDAW Committee to Northern Ireland also illustrates the globally important potential of [improved synergies between the WPS framework and CEDAW](#). In their recent [LSE WPS working paper](#), Pierson and Thompson identify a failure to advance abortion and reproductive rights in the WPS resolutions and implementing National Action Plans. CEDAW and the Committee's [General Recommendation number 30](#) on the rights of women in conflict prevention, conflict and post-conflict situations (GR30), by contrast, offer a comprehensive framework for the reproductive rights of women in conflict-affected and post-conflict settings.

*Protest in London calling for reform of abortion laws in the Republic of Ireland and Northern Ireland. [London Irish Abortion Rights Campaign](#)*

The pursuit of synergies between CEDAW and WPS has gathered pace in recent years, most notably since the Committee's adoption of GR30. In particular, the added value of CEDAW in bringing a clear mechanism of state accountability to women's rights in conflict, combined with the women's rights focus of the Convention and monitoring Committee, offers clear promise. This blog post will focus on the recent determination by the CEDAW Committee that restrictive access to abortion in Northern Ireland constitutes 'grave and systematic' violation of rights guaranteed under CEDAW. The post will use the Northern Ireland experience with the inquiry procedure to illustrate some of the potential benefits of improved synergies between WPS and CEDAW in order to advance women's rights. (For those who are interested, I have addressed

the detail of the Committee's findings and recommendations more fully [here](#)).

The potential utility of the inquiry procedure to advocates of women's rights in conflict lies in the opportunity it provides to local civil society to articulate and evidence the nature and extent of the CEDAW violations and to make recommendations for appropriate ways to redress the violation. The inquiry report on Northern Ireland is only the 4<sup>th</sup> time that the Committee has found a state party to be in 'grave or systematic' violation of the Convention under [the inquiry procedure](#). Importantly, the Committee cannot activate the inquiry procedure on its own initiative; it can do so only in response to a request to conduct an inquiry. [The Northern Ireland experience](#) was that the collaborative civil society working and process of compiling the request for an inquiry, as well as [the submission](#) document itself, proved to be critically important with several unanticipated benefits. Moreover, in the submission, there was an opportunity to provide contextual information about how the CEDAW violations resulting from restrictive access to abortion are closely linked to the conflict legacy, such as high levels of poverty (paragraph 3.23), widespread poor mental health (3.26), limited progress on women's rights under the institutions established by the Belfast/Good Friday peace agreement (paragraph 3.22), and the enduring broad discretion of schools in determining relationship and sexual education (paragraph 4.41). Thus, the inquiry procedure provided a unique opportunity for local articulation of the women's human rights situation, its relationship to conflict and post-conflict dynamics, in addition to locally-crafted recommendations to redress the situation. This local articulation was ultimately vindicated and endorsed by the CEDAW Committee. This is an opportunity with little apparent equivalent within the WPS framework.

A further benefit of the inquiry procedure to advocates for women's rights in conflict derives from the Committee's attention to potential adverse implications of devolved and decentralised governance arrangements on overall compliance with the Convention. A feature common to the four

state parties scrutinized to date through the inquiry procedure is the operation of devolved or decentralised administrations. The Committee has emphasised throughout its inquiry reports that state parties cannot hide behind decentralised systems in order to negate state responsibility for grave or systematic violations. In the case of Northern Ireland, the Committee determined:



*Availability of abortion in other parts of the State party does not absolve it of its responsibility under the Convention to ensure accessibility in NI. (para 82)*



This feature of the inquiry reports carries particular significance for distribution of political power after a peace agreement. As the [PA-X Gender Peace Agreement Database](#) evidences, innovative arrangements for power-sharing and decentralisation of power are a popular conflict resolution measure and are thus [common in peace agreements](#). Such provision is typically made without much consideration of the potential adverse implications for women's rights. The CEDAW Committee's determined rejection of state party efforts to abdicate responsibility for non-compliance is consistent with its articulations elsewhere of state responsibilities under the Convention, most notably [General Recommendation 28](#). Moreover, the Committee's approach provides a practical and unambiguous response to one of the most common state party justifications for violations of women's human rights.

There is emergent evidence that the Committee is utilizing the inquiry procedure to redress areas of repeated non-compliance with CEDAW by state parties, which offers a further clear benefit of the inquiry procedure for women's rights in conflict. State parties to CEDAW report periodically to the Committee on their performance under each of the articles of the Convention. Out of this process, the Committee makes a large number of recommendations in order to improve state compliance with the Convention and identifies two recommendations for priority 'follow-up' by the state party. In Northern Ireland, (as in Canada), the inquiry is procedurally important because its activation was directly connected to the state's failure to implement the Committee's recommendations in earlier Concluding Observations. In Northern Ireland, after repeated recommendations to the UK since 1999 calling for action on access to abortion, the Committee's Concluding Observations in 2013 prioritised recommendations on abortion in Northern Ireland for priority 'follow-up'. In November 2014, after determining that the UK had failed to implement its priority 'follow-up' recommendations, the Committee opted to proceed with the inquiry.

A relationship between the implementation of 'follow-up' recommendations and the Committee's determination to proceed with an inquiry offers particular relevance to women's rights in conflict-affected and post-conflict settings. As [my previous research](#) (with Aisling Swaine) has found, the CEDAW Committee routinely prioritises recommendations to remedy conflict-related CEDAW violations for 'follow-up'. Further, evidence of a relationship between non-compliance with the Committee's previous recommendations to the state party and the determination to proceed with an inquiry speaks in potentially important ways to the need to provide practical responses to CEDAW's under-enforcement. If non-implementation of the Committee's recommendations that are identified for priority 'follow-up' carries the credible risk of the Committee activating the inquiry procedure, this development introduces consequences for the state party engaging in persistent non-compliance with the Committee's

recommendations. It also stands to create a useful and constructive relationship between state periodic examinations, shadow reporting, and requests for an inquiry.

*The views, thoughts and opinions expressed in this blog post are those of the author(s) only, and do not reflect LSE's or those of the LSE Centre for Women, Peace and Security.*

### About the author



#### Catherine O'Rourke

Catherine O'Rourke is Senior Lecturer in the School of Law and Gender Research Coordinator at the Transitional Justice Institute. She researches, teaches and engages in policy work in the fields of gender, conflict, transitional justice and international law. Her monograph Women's Rights in Armed Conflict under International Law is currently in-press with Cambridge University Press and an output of the UK DFID-funded Political Settlements Research Programme. She works with the Irish and UK governments, the United Nations and several non-governmental organizations in policy work related to her expertise. She is regularly commissioned by intergovernmental and non-governmental organizations to conduct expert research, such as UN Women and the Office of the High Commission on Human Rights, and the International Criminal Court Trust Fund for Victims. @DrCORourke

**Posted In:** Legal Analysis | WPS in Practice

---