

in Armed Conflicts

Investigating Women's Rights Violations



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GLOSSARY OF ACRONYMS

AFDL	Alliance of Democratic Forces for the Liberation of Congo-Zaire
AI	Amnesty International
CAT	Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CID	Cruel, inhuman or degrading
CERD	International Convention on the Elimination of All Forms of Racial Discrimination
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CODESRIA	Council for the Development of Social Science Research in Africa
CRC	Convention on the Rights of the Child
DRC	Democratic Republic of the Congo
ECOMOG	Economic Community of West African States Peace Monitoring Group
FAC	Congolese Armed Forces
FAO	Food and Agriculture Organization
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICHRDD	International Centre for Human Rights and Democratic Development*
ICRC	International Committee of the Red Cross
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
IDP	Internally Displaced Persons
IHL	International Humanitarian Law
IOM	International Organization for Migration
IPTF	International Police Task Force
KFOR	NATO Kosovo Force
LRA	Lord's Resistance Army
MLC	Movement for the Liberation of Congo
NATO	North Atlantic Treaty Organization
NGHA	Non-Governmental Humanitarian Agency
NGO	Non-Governmental Organization
OAU	Organization of African Unity
OCHA	United Nations Office for the Coordination of Humanitarian Affairs
PTSD	Post-Traumatic Stress Disorder
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNCIVPOL	United Nations Civilian Police
UNDP	United Nations Development Programme
UNDPKO	United Nations Department of Peacekeeping Operations
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNITA	National Union for the Total Liberation of Angola
UNMIBH	United Nations Mission in Bosnia and Herzegovina
UNOHCHR	United Nations Office of the High Commissioner for Human Rights
UPDF	Uganda People's Defense Force
VWU	Victims and Witnesses Unit
WHO	World Health Organization

* On April 1, 2000, the International Centre for Human Rights and Democratic Development adopted a short name, Rights & Democracy.

PREFACE

The international community has increased its efforts towards the integration of women's rights in human rights systems. There have been many developments towards a gender-sensitive interpretation of human rights law, including the 1981 Convention on the Elimination of All Forms of Discrimination against Women; the Declaration on the Elimination of Violence Against Women adopted in December 1993; the appointment of a United Nations Special Rapporteur on Violence against Women, its Causes and Consequences in 1994; and the Platform for Action of the September 1995 Fourth UN World Conference on Women.

In monitoring the adherence of governments and the international community to these agreements and treaties, it is important to have accurate and consistent documentation of women's rights violations. In 1999, Amnesty International-London, Amnesty International Canada and Rights & Democracy joined forces to produce a series of publications that address this need for standardized methods of research and analysis.

Written by Agnès Callamard of Amnesty International-London, this series includes one manual, *Gender Sensitive Research Methodology*, which was published in 1999, and two case-study booklets: *Documenting Human Rights Violations by State Agents: Sexual Violence* (1999) and this current booklet *Investigating Violations of Women's Human Rights in Armed Conflicts* (2001). There are three other case studies to be published in this series on 1) women's human rights violations by private actors, 2) women's human rights violations in the community, and 3) the economic and social causes of human rights violations.

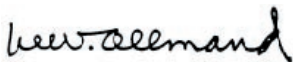
The manual provides a step-by-step description of a gender-sensitive approach to research and suggests ways of addressing the specific challenges faced by women's rights workers. The booklets each focus on the monitoring and documenting of specific categories of women's rights violations. They help the reader prepare for fact-finding missions, provide guidelines for the collection and analysis of evidence, and include a checklist for conducting interviews.

The series is geared to local activists and non-governmental organizations, as well as governmental and United Nations agencies who work to collect and disseminate information on violence against women. The booklets are published in a practical format for field workers.

We are very proud to be contributing to the global efforts to recognize women's rights as human rights. This initiative represents our desire to acknowledge the importance of gender-sensitive research and the standardized methods of documenting violence against women. We hope that this series continues to be a useful tool for our partners and colleagues in the field who help ensure that women's rights violations do not go unnoticed or unpunished.



Alex Neve, Secretary General
Amnesty International-Canada (English Section)



Warren Allmand, President
Rights & Democracy

Overview

WOMEN'S EXPERIENCES IN ARMED CONFLICTS

1. Women experience armed conflicts mostly as civilians and constitute the majority of refugee and internally displaced adult populations. They face increased responsibilities in a context of increased vulnerability and economic hardship.
2. As civilians, women, along with children and elderly people, are often the primary victims of deliberate or indiscriminate attacks or bombings of villages and cities.
3. Violence against women in armed conflict situations is predicated on the sexualization of women and their role as transmitters of culture and symbols of nation or community: women experience armed conflicts as sexual objects **and** as female members of ethnic, racial, religious, or national groups.
4. Women in war are the victims of deliberate 'gendered' forms of violence and persecution, such as rape and sexual slavery, which are weapons of war. They are also subjected to deprivation of food and eviction from their homes.
5. The consequences of having experienced any, or all, of these violations remain for many years and, for a significant number of women, for the rest of their lives. These consequences may be medical problems, psychological disorders, infertility, life-threatening diseases such as AIDS, forced impregnation, etc.

6. There is a world-wide regime of impunity characterized by violence against women in armed conflicts, which stems from, or includes, several dimensions:
- a world-wide regime of gender discrimination and the existence of a continuum of violence that ties conflicts and non-conflict situations together;¹
 - a world-wide regime of silence surrounding gender-based violations and sexual violence in particular;
 - a lack of recognition that many of the violations occurring in armed conflict situations constitute violations of human rights and humanitarian law;
 - a lack of governmental accountability in bringing perpetrators to justice;
 - an absence of legal redress, compensation or reparation for female victims.

It is therefore important for human rights and women's activists to document women's rights violations in armed conflict situations, and to disseminate knowledge about women's experiences in conflict situations.

1 "The war does not create the conditions whereby women are invisible, whereby gendered-based violations are not recognized as such, whereby rape is a stigma, whereby women are ostracized if they dare report on sexual violence; these are all present "before" and "after" the conflict begins. These are all present in countries that will not necessarily qualify as societies in a state of war. What evidence and testimonies are pointing out to is that women do face extraordinary forms of violence in times of war and armed conflicts but that this violence is also somehow related to their status as women, their situations within the home, the community and the society at large." See Agnès Callamard, "Breaking the Collusion of Silence" in *Common Grounds: Violence Against Women in War and Armed Conflict Situations*, edited by Indai Lourdes Sajor (Quezon City: Asian Center for Women's Human Rights, 1998), p.63.

INTRODUCTION

It is now common knowledge that the majority of people killed in modern warfare are civilians. Current estimates are that about 75% of those killed in war are civilians, a proportion that has risen steadily from 10% to 15% at the beginning of the century.²

Less commonly known, but just as daunting, is the fact that the majority of the civilian population in conflict situations, and therefore the majority of those targeted for abuses, is composed of women, girls and boys, either inside the region at war or displaced outside. Armed conflicts are not (or not only) about men in battlefields nor are they gender-neutral exercises in destruction. In fact, throughout the duration of a war and thereafter, women and men, and indeed, femininity and masculinity, play very specific roles which are subsumed, described and determined by military and political objectives. Furthermore, common to almost all experiences of warfare is the intersection between gender and nationalism or other identity markers such as ethnicity, race or religion. Women and children are especially likely to be targeted for a whole range of abuses, many of which (such as sexual violence or abduction of children) are based on the military and political use that can be made of the gender or age of the victims, in addition to their race or ethnicity.

Indeed, recent investigations conducted by human rights activists and the International Criminal Tribunal for the Former Yugoslavia and for Rwanda have clearly demonstrated that the targeting of victims and the forms of the abuse were

2 D. Smith, *War, Peace and Third World Development*, Occasional Paper 16, Human Development Report Office, UNDP, New York, 1994.

based on gender as well as being compounded or determined by other identity markers, such as ethnicity or race. Hence, the men and boys of Srebrijca were specifically targeted by Serbian troops because of their gender, ethnicity and religion, then killed and “disappeared,” while Rwandan Tutsi women were raped in the thousands, many of them also mutilated, before being killed during the 1994 genocide.

Violence against women in the context of an armed conflict is not accidental: it is, indeed, a weapon of war, that is, a tool used to achieve military objectives such as ethnic cleansing, spreading political terror, breaking the resistance of a community, rewarding soldiers, intimidation or for extracting information. *“The threat and the act of rape is often used as a weapon against community identity, especially where ethnic or religious purity is at stake.”*³

The gender-based nature of armed conflicts is nothing new. Historical accounts of warfare, from antiquity to today are replete with incidents and evidence highlighting the gender-based victimization of women and men and the specific abuses suffered by individuals because of their gender⁴. But it has taken many centuries for these accounts to penetrate the hegemonic and ideological construction of warfare (men on a battlefield) and to begin reforming the dominant analysis of war, peacemaking and post-war reconstruction. This progress is recent, far from complete, and owes much to the existence and relentless campaigns of the global women’s movement. Especially concerned with the prevalence of gender-based discrimination and

3 Panos Institute, 1995, p.8.

4 See for instance the various articles in *Gender and Catastrophe*, Ronit Lentin, ed., London and New York: Zed Books, 1997; *What Women Do in Wartime*, Meredith Turshen and Clotilde Ywagirariya, ed., London and New York: Zed Books, 1998 . See also Jeanne Vickers, *Women and War*, London and New Jersey: Zed Books, 1993.

violence, women activists have struggled to bring a gender-based analysis and actions to the male-dominated and masculine world of warfare. Their combined efforts have allowed many formerly ignored women’s voices to be heard and for their calls for justice, redress and reparation to break the wall of silence⁵. Such efforts have also revealed the situation of women in the context of peacekeeping operations and post-conflict situations,⁶ and highlighted the persistence of gender-specific abuses and the absence of a gender-sensitive perspective in post-conflict reconstructions⁷.

This manual is part of that global effort. It seeks to provide human rights defenders with some of the tools necessary to monitor and document women’s rights abuses in a context of armed conflicts and immediately thereafter, and more generally, to strengthen the capacity of individuals and organizations to monitor and document abuses, and to integrate a gender perspective into their work. It is based on the realization that these objectives constitute essential elements in the global effort of ensuring a gender perspective not only with respect to the prevalent understanding of armed conflicts, but also peacekeeping efforts and opera-

5 See the articles in *Common Grounds: Violence Against Women in War and Armed Conflict Situations*, Indai Sajor, ed., ASCENT: Quezon City, Philippines, 1998.

6 See, for example, the results of the gender audit conducted in Kosovo: Chris Corrin, *Gender Audit of Reconstruction Programmes in South Eastern Europe, the Case of Kosovo*, Montréal and New York: Urgent Action Fund and the Women’s Commission for Refugee Women and Children, 2000.

7 Some of the problems identified include gender and cultural stereotypes; the failure to appoint women to key decision-making positions; the failure to acknowledge women’s roles within the emergent political system; the marginalization of female heads of households; the international community’s lack of interest in mainstreaming issues of gender within their political and policy-making processes; the serious lack of suitable feminist trainers in all areas within the staffs of local and international NGOs and UN agencies; the lack of gender balance in the jobs available with NGOs, UN and OSCE operations; etc.

tions, post-conflict reconstruction, and more generally victims' access to justice, redress and remedies.

This manual is, arguably, incomplete — it does not claim to cover all abuses suffered by women during warfare, and neither does it purport to provide the readers with a critical analysis of the legal framework and jurisprudence pertaining to conflicts. Instead, it aims to present human rights activists with some guidance to monitor and document women's rights abuses, and to assist them in overcoming some of the problems they will meet in their work. It is a fact that documenting abuses in armed conflict situations is an activity full of risks and challenges.

In the first place, human rights activists and the survivors they wish to meet and interview face many security risks and practical difficulties because of the war itself. Human rights defenders all over the world face enormous pressures and dangers as a direct consequence of their activities on behalf of human rights. These pressures and dangers are especially heightened in situations of armed conflicts. Activists on the ground and survivors of abuse face the entire gamut of risks associated with remaining in a war zone, such as indiscriminate attacks, as well as those arising directly from the monitoring work, including reprisals against themselves, or their families. Access to regions at war may be dangerous and difficult, even impossible, and gathering testimony and meeting victims or witnesses may be especially complicated and risky both for the monitors and the individuals they seek to meet. The extreme polarization and divisions within the society, along with the propaganda generated by all parties to the conflict, greatly complicate the task of verifying and assessing information, and of identifying the perpetrators. Some violations of international humanitarian law, such as indiscriminate

killings, are difficult to document with accuracy in all circumstances but especially so if access to the scene and to witnesses is not possible.

The second challenge has to do with the nature of the legal framework within which human rights workers must operate. Although there exists an impressive body of law regulating the conduct of armed conflict, documentation and public reporting of and public advocacy on violations to the rules of war have been neglected (especially when compared, for instance, with reporting on violations of human rights law). A key obstacle to an enhanced and effective reporting role is the absence of any framework or methodology for applying abstract legal norms to concrete factual situations, an obstacle further complicated by the fact that many of these rules were drafted by military experts, and therefore may require some military expertise to understand their meaning and implications in real-life situations.

The third challenge is linked to the nature of the violations being investigated, namely women's rights abuses. Many victims of gender-based violence in armed conflicts are reluctant to talk about their plight. Reasons for the silence have been well-documented. They include pressure from the parties to the conflict, the government, the family or community; continuing violence or conflict that prevents women from reporting; fear of reprisals; shame and social stigma attached to certain types of violence against women, such as rape; fear of the consequences of reporting, such as facing rejection and alienation, divorce, being declared unfit for marriage as a result of rape, and severe economic and social obstacles to their livelihood.

The aforementioned challenges have informed the writing of this manual. All of its sections aim to provide the reader with an understanding of the international legal framework, in the first place although not exclusively, international humanitarian law, legal definitions of some types of abuse, and methodological advice for documenting such abuses. This manual also identifies general principles and advice on security and monitoring, documentation, and fact-finding.⁸

The first chapter of this manual seeks to provide activists with an overview of international human rights standards and International Humanitarian Law (IHL), which governs the conduct of warfare. An understanding of both human rights law and IHL is essential to the task of human rights monitors, as they identify what is and what is not permissible in an armed conflict situation, and constitute the norms against which allegations of abuses are assessed.

The second chapter, written by Barbara Bedont, concentrates on the International Criminal Court, a major breakthrough in the struggle against impunity.

The third chapter of this manual focuses on monitoring. It identifies the various subjects that may require monitoring and the key questions guiding the work.

The fourth chapter presents some advice and steps pertaining to documentation. This work includes systematic reporting, identifying patterns, conducting fact-finding, and assessing the information.

8 To be read in conjunction with Agnès Callamard, *Ukweli: Monitoring and Documenting Human Rights Violations in Africa*, Amsterdam and Oxford: Amnesty International and CODESRIA, 2000; and *Gender-Sensitive Research Methodology*, Montréal: Amnesty International and ICHRDD, 1999.

In the following two chapters, the manual focuses on specific abuses: deliberate and indiscriminate attacks on civilians and sexual violence, and provides the readers with definitions and examples, and advice on how to document these abuses.

Chapter Seven, written by Madeleine Rees, deals with trafficking in humans, with special reference to the context of peacekeeping operations.

Chapter Eight of the manual discusses a specific category of victims (displaced women) and the conduct of investigations into the types of abuse they may face in the context of displacement and in camps.

The final chapter, written by Dyan Mazurana, identifies and defines some of the types of abuse suffered by women in post-conflict situations, and provides guidance for documentation.

It is the wish and hope of all those who have contributed to this manual that it will facilitate the research and advocacy work of human rights activists who, through the investigation of allegations and public reporting of their findings, seek justice for the victims, and an end to the abuse.

Through our combined efforts, we can ensure that the voices of women in armed conflicts and post-conflict situations are not silenced, we can gather evidence for the time when justice can be served. We can also shape knowledge and human memory, overturn traditional versions of warfare and history, and fill those gaps left unheard, uncovered, or unspoken, except, often enough, by the victims and the perpetrators themselves.



Agnès Callamard

STANDARDS FOR DOCUMENTATION OF ABUSES IN ARMED CONFLICT SITUATIONS

The main body of standards governing investigation of abuses in armed conflict situations is provided in international human rights law and international humanitarian law (hereafter IHL). The principles enshrined in IHL and human rights law are essential to the task of documenting women's rights abuses in armed conflict situations. They identify what is and is not permissible regarding the conduct of warfare, and therefore provide the necessary framework to assess whether abuses have been committed.

Individuals should be entitled to the most protective provisions of applicable international (or national) laws. Human rights law and IHL should be regarded as providing cumulative protection in situations of internal or international conflict.

This chapter begins with an overview of the main bodies of law and texts that may guide your work and then turns to a further exploration of some of the principles and prohibitions laid out in IHL.

1. Body of Law and Standards

1.1 International human rights law

Human rights law proclaims broad guarantees for the fundamental rights of all human beings. These guarantees are found in the International Bill of Human Rights, which is comprised of the Universal Declaration of Human Rights (UDHR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights (ICCPR) and the optional Protocol to the International Covenant on Civil and Political Rights. The provisions of the covenants are binding on states parties.

In addition, the United Nations (UN) has more specifically defined international human rights law in a number of treaties relating to various subjects or specific populations. They include the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the Convention on the Prevention and Punishment of the Crime of Genocide, the Convention relating to the Status of Refugees, the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), and the Convention on the Rights of the Child (CRC).⁹

Human rights standards are universal and indivisible: all human rights apply to all human beings.

⁹ For further information on international human rights, please refer to *Women's Human Rights Step by Step*, Women's Rights Project, Women, Law & Development International and Human Rights Watch, Washington DC, 1997.

However, there are certain periods, referred to as public emergencies (such as international or internal armed conflicts), when a government may suspend the application of certain rights. The suspension or cessation of these rights is referred to as *derogation*.

Such derogations are strictly limited in terms of the rights that can be suspended, the reasons for the derogation, and the period of time during which these derogations occur.

- **Discrimination** on the grounds of race, colour, sex, language, religion or social origin **is strictly prohibited** under all circumstances, including public emergencies;
- Some human rights can never be suspended, such as the right to life, freedom from torture, freedom from slavery, freedom of thought, conscience and religion, recognition as a person before the law, freedom from imprisonment for debt and freedom from retroactive penal legislation. These rights are referred to as **non-derogable rights**.
- Derogation from other obligations under international law, and from international humanitarian law in particular, is prohibited (see below).
- Suspension of rights must be confined strictly to the demands of the situation, i.e., a public emergency threatening the viability of the nation.

In other words, even during periods of armed conflict, fundamental human rights standards continue to apply. For instance, armed conflicts do not deprive women of their right not to be killed or to suffer crimes of sexual violence or other forms of torture.

ARTICLE 4 OF THE ICCPR

1. In times of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the states parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.
2. No derogation from Articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision.
3. Any state party to the present Covenant availing itself of the right of derogation shall immediately inform the other states parties to the present Covenant, through the intermediary of the Secretary General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

1.2 International humanitarian law (IHL)

Humanitarian law and human rights law are two separate branches of public international law, but they do share a common goal: to protect all human beings.

Because IHL was designed specifically to prevent violations during periods of armed conflict, it covers in greater detail specific situations and categories of persons, such as wounded soldiers or *hors de combat* and civilian populations, and identifies specific obligations of parties to a conflict. (For instance, IHL has numerous provisions for the medical care of persons).

Humanitarian law safeguards the most basic human rights in the extreme situation of armed conflicts. IHL is also known as law of war or law of armed conflict. International humanitarian law has two main objectives:

- It seeks to protect people in time of war who are not, or no longer, participating in the hostilities.
- It seeks to limit the means and methods of warfare.

IHL applies during international armed conflicts, i.e. conflicts involving two or more national armies and non-international armed conflict such as civil war.

The main instruments of humanitarian law are found in the **four Geneva Conventions** of August 12, 1949 and their **two additional protocols** of June 8, 1977.

1.3 The International Convention on the Prevention and Punishment of the Crime of Genocide

The International Convention on the Prevention and Punishment of the Crime of Genocide defines genocide as:

Any of the following acts committed with the intent to destroy, in whole or in part, a national, ethnic, racial or religious group, as such [...]. (b) causing serious bodily harm to members of the group; (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) imposing measures intended to prevent births within the group.

Genocide is a crime under international law in times of peace and armed conflict, irrespective of whether the conflict is deemed international or internal.

Under certain circumstances, acts of rape, sexual slavery or other sexual violence may also be characterized as constituent acts of the crime of genocide as defined in Article 2 of the Convention on the Prevention and Punishment of the Crime of Genocide (the Genocide Convention). The key element of the crime of genocide is the specific intent on the part of the perpetrator to physically destroy, in whole or in part, a protected group, namely a national, ethnic, racial, or religious group. Gender is not listed as a protected group under the Genocide Convention. Nonetheless, targeting a protected group through attacks against its female members is sufficient to establish the crime of genocide.¹⁰

The Office of the Prosecutor for both the International Criminal Tribunal for the Former Yugoslavia and the International Tribunal for Rwanda has filed charges based on

¹⁰ *Contemporary forms of slavery*, E/CN.4/Sub.2/1998/13.

sexual violence and rape as constituent acts of the crime of genocide. These charges have been brought against persons accused of actually committing the acts as well as against higher authorities in the same chain of command.

ICTR, Decision of September 2, 1998
THE PROSECUTOR VERSUS JEAN-PAUL AKAYESU
Case No. ICTR-96-4-T

Trial Chamber I also defined the crime of rape, for which there is no commonly accepted definition in international law. “The Chamber defines rape as a physical invasion of a sexual nature, committed on a person under circumstances which are coercive. Sexual violence, including rape, is not limited to physical invasion of the human body and may include acts which do not involve penetration or even physical contact,” the court elaborated. It noted that coercive circumstance did not need to be evidenced by a show of physical force. “Threats, intimidation, extortion and other forms of duress which prey on fear or desperation could be coercion.”

Numerous Tutsi women seeking refuge at the Taba communal office from the massacres were systematically raped and regularly subjected to multiple acts of sexual violence by armed local militia. As one female victim put it during her testimony in the Akayesu trial, “each time you met assailants, they raped you.” Mr. Akayesu encouraged these acts by his attitude and utterances, the Trial Chamber found. One witness testified that Mr. Akayesu addressed the Interhamwe militia who were raping female victims thus: “Never ask me again what a Tutsi woman tastes like.”

In its judgement, the Trial Chamber underscored the fact that rape and sexual violence also constitute genocide in the same way as any other act, as long as they were committed with intent to destroy a particular group targeted as such. The court

held that sexual violence was an ‘integral’ part of the process of destruction of the Tutsi ethnic group. “The rape of Tutsi women was systematic and was perpetrated against all Tutsi women and solely against them,” the Chamber concluded. Furthermore, these rapes were accompanied by a proven intent to kill their victims. At least 2,000 Tutsis were killed in Taba between April 7 and the end of June 1994, while Mr. Akayesu held office as bourgmestre.

1.4 The Convention on the Rights of the Child

The Convention on the Rights of the Child (CRC) is also an important legal tool for monitoring and documenting abuses. The CRC, the most universally ratified international instrument, provides for the protection of children’s rights to life, education, health and other fundamental needs. These provisions apply equally in times of armed conflict and in times of peace.

Article 1 of the CRC and most national legislation considers anyone under the age of 18 a child. However, Protocol 2 of the Geneva Convention stipulates a minimum age of 15 for enrolment in the armed forces. On January 21, 2000, a working group of the UN Commission on Human Rights completed a draft optional protocol to the CRC to establish 18 years as the minimum age for participation in hostilities. The draft optional protocol would also prohibit the compulsory recruitment by governments who subscribed to it of persons below 18 years and ban recruitment or use in hostilities of persons under 18 by non-governmental armed groups.

1.5 The Convention Relating to the Status of Refugees¹¹

If most of your work and investigations take place with refugee populations (persons displaced outside their country of origin), the UN Convention Relating to the Status of Refugees will constitute an important legal tool for your work. The goal of the 1951 Convention and 1967 Protocol is to provide protection to all refugees. The Convention defines a refugee as someone who “[...] owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion is outside the country of his [sic] nationality and is unable or, owing to such fear, unwilling to avail himself of the protection of that country [...]”

The Convention also identifies the various forms of protection offered to refugees, such as being protected against *refoulement* (the principle of *non-refoulement* prohibits states from sending anyone against their will to a country where they would be at risk of serious human rights violations) and being provided with assistance. The United Nations High Commissioner for Refugees (UNHCR) has also sought to develop specific measures for refugee women. They are included in *Guidelines on the Protection of Refugee Women* (1991) and *Sexual Violence against Refugees: Guidelines on Prevention and Response: Guidelines on the protection of refugee women* (1995). Both sets of guidelines stress that gender-related persecution is valid grounds on which to make an asylum claim. They also identify the various forms of abuse suffered by refugee women during their flight and in refugee camps, such as sexual violence

¹¹ Please refer to Chapter Eight of this manual, *Documenting Abuses of Refugee Women*.

and discrimination, the causes of this abuse and possible remedies. Although the UNHCR guidelines do not form part of the legally-binding Convention, they provide the human rights activist with essential tools to investigate refugee women's rights abuses.

1.6 Guiding Principles on Internal Displacement

Another important tool, which, however, is not yet legally binding, is the recently developed *Guiding Principles on Internal Displacement* (see Appendix One).¹² The purpose of the *Guiding Principles* is to address the specific needs of internally displaced persons (IDPs) worldwide by identifying rights and guarantees relevant to their protection. The Principles reflect and are consistent with international human rights law and international humanitarian law. They apply to the various phases of displacement, providing protection against arbitrary displacement, access to protection and assistance during displacement, and guarantees during return or alternative settlement and reintegration. The *Guiding Principles* will enable the human rights activist to monitor situations of displacement and abuses against the IDPs.

2. IHL: Differences in the Laws of War

There are a number of differences in the laws of war, depending on whether the conflict is international or not (see below). The laws related to non-international armed conflicts developed later and are less extensive than those related to international armed conflicts.

¹² E/CN.4/1998/53/Add.2: *Guiding Principles on Internal Displacement*, February 11, 1998.

Hence, the four Geneva Conventions apply almost in their entirety to *international* armed conflicts, with the exception of a single article, Article 3, which can be found in all four conventions and which deals with non-international conflicts.

The first Geneva Convention relates to the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field.

The second Geneva Convention is entitled the Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea.

The third Geneva Convention is relative to the Treatment of Prisoners of War.

The fourth Geneva Convention is particularly important to the work of the human rights monitor as it is relative to the protection of civilian persons.

Common Article 3 of the Geneva Convention applies to armed conflict *not of an international character*. It expressly prohibits the following under any circumstances:

- (i) violence to life and person;
- (ii) taking of hostages;
- (iii) outrages upon personal dignity, in particular, humiliating and degrading treatment;
- (iv) the passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court.

In 1977, two protocols were adopted which contain rules to further protect the civilian population against the effects of hostilities.

Additional Protocol 1 covers international armed conflicts.

Additional Protocol 2 applies to non-international armed conflicts, i.e. to all armed conflicts not covered by Protocol 1 in the territory of a High Contracting Party between its armed forces and dissident armed forces, or organized armed groups that exercise control over a part of its territory.

You can therefore use IHL (Common Article 3 and Additional Protocol 2) even when dealing with situations involving armed groups rather than national armies.

3. Nature of the Conflict: Differences between International and Non-international Conflict

The application of IHL depends on the type of armed conflict. The rules that apply are different depending on whether the conflict is of an international or internal character. Therefore, determining the nature of the conflict is an important preliminary task.

In some circumstances, there can be no reasonable dispute as to the nature of a conflict, or authorities may have already decided what type of conflict it is. For example, the government(s) and insurgent(s) involved may have themselves agreed on the nature of the conflict. An authoritative outside body [i.e. ad hoc tribunal, Security Council, International Committee of the Red Cross (ICRC)] may have given its opinion on which law is applicable.

You may therefore agree with how parties to the conflict or others have characterized the conflict (i.e. international or non-international). One would hope that, in most cases,

your information and analysis would support this characterization.

However, there are circumstances in which characterizing a conflict as international or internal may be difficult and controversial.

In some situations, governments may strongly deny that their armies are involved in a conflict on the territory of another state. They may use armed groups to disguise the direct involvement of their national armies in a conflict and deny any responsibility for the situation. For instance, the government of Rwanda has long denied that its army has ever been directly involved in the conflict being waged in the eastern part of the Democratic Republic of Congo (DRC), in which the national army of the DRC is opposing armed groups. Under such circumstances, the international community, through the UN Security Council, for instance, may refrain from calling the conflict international.

In other situations, a conflict may begin, strictly speaking, as a non-international conflict, in which the national army opposes armed groups, but may evolve into a conflict considered of an international nature when parties to the conflict seek to establish an independent state and/or when outsiders intervene (i.e. the NATO operation allied force in Kosovo).

In yet other situations, governments may deny that an armed conflict is being waged within the territory of the state. They fear that accepting the application of the law of armed conflict would grant legitimacy to the armed groups that they are fighting inside the country.

As human rights activists, you may therefore face situations in which you disagree with the prevalent characterization of the conflict because the facts as you know

them contradict the proposed characterization. This may be especially the case when governments deny that their troops are involved in a conflict outside their territory.

Under such conditions, you may decide that referring to a conflict as international, and therefore countering the dominant propaganda, could be one of the important roles you can play.

Similarly, you may also decide that Common Article 3 and/or Protocol 2 may apply even where the government has repeatedly denied that an internal conflict was being waged within its territory.

4. IHL and States Which Have Not Ratified the Geneva Conventions and/or the Protocols

Virtually every State is party to the Geneva Conventions of 1949 and the tendency towards universal acceptance of the Additional Protocols has increased. As of March 31, 1995, 137 states were party to Protocol 1, and 127 were party to Protocol 2.

Furthermore, many principles enshrined in the four Geneva Conventions and the two Protocols are considered 'customary' law. This means that they should be considered as applicable whether or not a state has ratified these instruments and in situations involving armed groups rather than national armies.

In other words, the IHL is an instrument that all national armies and/or armed groups must respect. For instance, the International Court of Justice, in *Nicaragua v. USA*, held that Common Article 3 is an accepted element of customary international law in addition to being a treaty provision.

It is thus binding on all parties to a conflict, whether they are states or armed groups, irrespective of whether or not they are a party to the Geneva Conventions.

The International Committee of the Red Cross (ICRC) considers that one of the main principles embodied in Protocol 1 (and therefore applied to international conflicts), namely the principle of distinction between civilians and military targets, constitutes a customary rule with respect to the conduct of hostilities. This means that the principle of distinction applies to all parties to a conflict, whether or not they have ratified Protocol 1, and it applies to non-international armed conflicts.

5. Peacekeeping Forces¹³

Since the UN deployed the first force in 1956, the use of international peacekeeping forces has steadily increased. By the end of 1994, 17 new missions had been launched with over 80,000 peacekeepers. Today's peacekeeping forces vary in their composition, and there is an increasing practice of carrying out joint peacekeeping operations, in which the UN cooperates with regional or other multilateral structures to put armed forces on the ground. Members include different national militaries operating under the United Nations Department of Peacekeeping Operations (UNDPKO), police forces operating under the United Nations Civilian Police force (UNCIVPOL), and various military or security forces jointly operating through structures such as the UN and NATO in Europe, or through regional associations such as the Economic Community of West African States Peace Monitoring Group (ECOMOG) in Africa.

¹³ This section was written by Madeleine Rees.

The composition of the security elements of the peacekeeping forces depends on a Resolution of the Security Council. For example, in Bosnia and Herzegovina and Kosovo, the security presence involves both NATO and non-NATO troops and, of course, takes political interests into account. The roles and powers given to both military and civilian peacekeepers also vary according to the Resolution of the Security Council.

While peacekeeping missions include armed forces, they also often include humanitarian assistance and protection, as well as rights monitoring components (particularly as the peacekeeping missions evolve into peacebuilding and long term development efforts) through UN agencies such as UNHCR, UNICEF, UNDP, FAO, UNOHCHR, WHO and others, and may involve the ICRC, as well as international, national and local NGOs and aid agencies.

The rapid growth of peacekeeping missions in all their forms necessitates vigilant training and monitoring of all involved international and national personnel to ensure their activities conform to international humanitarian and human rights standards, as applicable. Key protections and prohibitions that would benefit women found in all these standards include the prohibitions against slavery and forced labour, including sexual slavery or forced domestic work, coerced or servile marriage, forced prostitution, rape and other forms of sexual assault, and other prohibitions against gender-based violence.

National forces are bound by international humanitarian and human rights law as applied through their own state's legislation, and should be prosecuted for abuses under the relevant criminal law provisions. Practically speaking, however, few governments have had the political will to

investigate or prosecute these individual abuses by their forces when part of peacekeeping operations. Documentation and advocacy is needed to ensure this takes place. One welcome development in 1999 that should contribute to activists' abilities to remedy abuses against women by peacekeeping forces under the UN is the announcement by the UN Secretary General of regulations on the observance by UN forces of the principles of humanitarian law.

Human rights defenders should be able to prove that peacekeeping forces are obliged to respect human rights or humanitarian law. This may require investigating the type of conflict (international or internal), as well as the agreements under which the forces operate at the national and international level. As a practical matter, you can refer to the principles of individual criminal responsibility for abuses, in conformity with customary and human rights treaty law for the protection of all persons, regardless of the nature of the conflict, and to the application of customary or humanitarian treaty law.

6. Prohibitions Under IHL

The provisions of the Geneva Conventions of August 12, 1949 and Additional Protocols 1 and 2 of 1977 include a number of prohibitions.

The following is an ICRC summary of certain important rules of conduct that apply to all armed conflicts:¹⁴

14 Extract from Jean-Philippe Lavoyer, "Refugees and internally displaced persons: international humanitarian law and the role of the ICRC" in *International Review of the Red Cross*, March-April 1995, Geneva, p.164. Founded in 1863, the ICRC has been mandated by the community of states, under the Geneva Conventions to work for the faithful application of international humanitarian law.

- **Protection of non-combatants:** People who are not or are no longer taking an active part in hostilities (such as the wounded and sick, prisoners and civilians) must be respected and protected in all circumstances.
- Civilians must be treated humanely, and the following are especially prohibited:
 - violence to their life and person,
 - all kinds of torture and cruel, inhuman or degrading (CID) treatment,
 - the taking of hostages, and
 - the passing of sentences without a fair trial.
- The armed forces must always distinguish between civilians and combatants, and between civilian objects and military objectives. It is prohibited to attack civilians and civilians' objects, and all precautions must be taken to spare the civilian population.
- It is prohibited to attack or destroy objects necessary to the survival of the civilian population (i.e. foodstuffs, crops, livestock, drinking water installations and irrigation works), and it is prohibited to use starvation as a method of warfare.
- The wounded and the sick must be picked up and cared for; hospitals, ambulances, and medical and religious personnel must be respected and protected; the emblem of the Red Cross or Red Crescent, which symbolizes this protection, must be respected in all circumstances; any abuse or misuse thereof must be punished.
- Parties to a conflict must agree to relief operations and the humanitarian, impartial and non-discriminatory

nature of it on behalf of the civilian population, aid agency personnel must be respected and protected.

This code of conduct also identifies the following general categories of abuse, which are, unfortunately, commonly perpetrated in armed conflict situations.

- Killings of civilians or persons *hors de combat* (i.e. prisoners of war);
- Deliberate or indiscriminate attacks against civilians;
- Torture of civilians and prisoners;
- Attacks on hospitals and other medical infrastructure;
- Hostage-takings;
- Unfair trials;
- Destruction of livelihood, etc.

When committed, many such abuses may constitute war crimes, crimes against humanity, or grave breaches of the Geneva Conventions.

6.1. War crimes

War crimes are violations of the laws of war which are committed by persons 'belonging' to one party to the conflict against persons or property of the other side.

The abuses considered as war crimes include wilful killing, torture, rape and other forms of sexual violence, taking of hostages, intentionally directing attacks against civilian populations or civilian objects, attacking or bombarding undefended towns or buildings that are not military objectives and conscripting children under the age of 15 into the national armed forces.

A *single* act can constitute a war crime. War crimes include crimes committed in both international and non-international armed conflict.

6.2. Crimes against humanity

Crimes against humanity are crimes that are so egregious that they are considered crimes against the international community as a whole.

A crime against humanity is defined in the Nuremberg Charter as follows:

Murder, extermination, enslavement, deportation, and other inhuman acts committed against any civilian population before or during the war, or persecutions on political, racial, or religious grounds in execution of or in connection with any crime within the Jurisdiction of the Tribunal whether or not in violation of domestic law of the country where perpetrated.

Crimes against humanity can be perpetrated during peace or international and internal wars. For one or more of the abuses listed above to qualify as a crime against humanity, it must be committed as part of a widespread or systematic attack directed against any civilian population. In addition, there is no requirement that the inhuman acts be motivated by an intent to discriminate on political, racial, or religious grounds, unless the crime of persecution is involved.

6.3. Grave breaches to the Geneva Conventions

You may often hear lawyers, judges, or activists talk about grave breaches. They are important because anyone who commits a grave breach is subject to individual criminal liability and universal jurisdiction.

The grave breaches are enumerated in Article 147 of the fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War. They include the following:

- wilful killings;
- torture or CID treatment;
- wilfully causing great suffering or serious injury to body or health;
- unlawful deportation;
- taking of hostages;
- extensive destruction and appropriation of properties;
- forced conscription into the forces of a hostile power.

7. Protection of Women Under IH

Many of the prohibitions under IHL and especially those related to the protection of civilians have direct implications for women. Women, along with children and older people, are particularly vulnerable to indiscriminate and deliberate attacks against civilian targets by parties to conflicts and wars. These include food blockades as well as attacks on or destruction of foodstuff, crops, livestock, and drinking water installations.

In addition to measures meant for all civilians, IHL has taken some steps to include gender-specific measures and prohibitions. In all, there are some 50 provisions in IHL that relate to non-discrimination or provide special protection for women.

Non-discrimination, one of the fundamental principles of international human rights law, is also a key concept of the Geneva Convention. IHL provides for the immunity of all civilians without discrimination based on gender, from

any attack, and respect for persons who have fallen into the hands of the enemy. Men and women are thus equal before the law.¹⁵

The Geneva Conventions include specific and detailed rules concerning the special treatment of female prisoners of war and civilian detainees. They can be summarized as follows:¹⁶

PROTECTION OF FEMALE PRISONERS

- A detained woman may be searched only by another woman.
- Women must be held in separate quarters, dormitories or premises and their immediate supervisors must be women.
- Separate sanitary facilities must be reserved for them.
- The authorities must take account of the gender of prisoners when using them for labour.
- The gender of the person concerned must be taken into account in the event of disciplinary punishment.
- Pregnant women and mothers of small children are entitled to supplementary food rations and regular medical attention. Women in labour must be admitted to a qualified institution where they will receive care equal to that given to the population as a whole.

However, as many women's rights activists have consistently noted, the text of the Geneva Conventions and the additional protocols are lacking in gender-sensitivity. Neither Common Article 3 nor what are considered as grave breaches explicitly include sexual violence. Furthermore, throughout the Geneva Conventions, sexual violence is referred to as a crime of honour or against personal dignity

15 ICRC, *Women and War*, Geneva: ICRC Publications, August 1995, p.6.

16 *Ibid.*, p.11.

and a distinction is drawn between torture and rape. The fourth Geneva Convention, in its Article 27 states that "Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution or any form of indecent assault." Article 4, paragraph 2 (e) of Additional Protocol 2 expressly prohibits "outrages against personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault."

Do not find yourself limited by the language of the Geneva Conventions.

Since they were first drafted, these texts have been interpreted to mean recognizing that gender crimes are implicitly included in all prohibitions.

Tribunals and experts have clearly demonstrated that many acts of sexual violence are torture and have included them within the parameters of Common Article 3, war crimes, crimes against humanity and grave breaches.

For instance, a UN Commission of Experts established to investigate rape and sexual assault in the former Yugoslavia concluded that "under international humanitarian law, rape and other sexual assaults are in most cases either expressly prohibited as such or can be categorized as 'torture or [...] other forms of CID treatment' 'wilfully causing great suffering' or other terms of this nature."¹⁷ The experts especially argue that the enumeration of grave breaches should not be considered as exhaustive. They further point out that during the Tokyo trials, rape was considered a violation of "the laws and customs of war." Although the

17 Final Report of the United Nations Commission of Experts established pursuant to Security Council Resolution 780 (1992), *Annex II: Rape and Sexual Assault: A Legal Study*, S/1994/674/Add.2 (Vol. I), December 28, 1994, p. 5.

Geneva Conventions did not yet exist, the charges indicate that rape was seen as a crime as serious as torture and killing. Today, such a crime would be considered a grave breach.

The International Criminal Tribunal for the former Yugoslavia has approved the indictments of individuals for torture based on allegations that the accused raped women in detention. The indictment against Dragan Gagovic and others alleged that the accused committed numerous acts of rape, which constituted torture under the definitions in the Statute of Crimes Against Humanity (Art.5(f)), grave breaches of the Geneva Convention (Art.2) or violations of Common Article 3 of the Geneva Convention (Art.3).

This evolution in thinking has been given further pre-eminence in the context of the creation of the International Criminal Court (discussed in the next chapter of this manual).

In fact, the ICC has sought to include a list of crimes of sexual and gender violence under the definitions of both crimes against humanity and war crimes. The listed crimes are rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, other forms of sexual violence, gender-based persecution and enslavement.

8. Overview: Principles and Prohibitions

In summary, some of the most important principles governing the conduct of war and whose abuses you may need to investigate can be stated as follows:

Non-combatants must be protected in all circumstances:

People who are not or no longer taking an active part in hostilities, such as the wounded and sick, prisoners and civilians, must be respected and protected in all circumstances.

Civilians must be treated humanely, and the following actions are especially prohibited:

- **violence to their life and person;**
- **all kinds of CID treatment;**
- **the taking of hostages;** and
- **the passing of sentences without a fair trial.**

Sexual and gender crimes are specifically prohibited. They may constitute torture or CID treatment, as well as war crimes, crimes against humanity, grave breaches of the Geneva Convention or aspects of genocide. Some of these crimes include **rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, other forms of sexual violence, gender-based persecution and enslavement.**

The armed forces must always distinguish between civilians and combatants, and between civilian objects and military objectives. It is prohibited to attack civilians and civilians' objects, and all precautions must be taken to spare the civilian population. **Deliberate or indiscriminate attacks against civilians are prohibited, as is the use of indiscriminate weapons such as landmines.**

The recruitment and use in hostilities of children under the age of 15 is prohibited.¹⁸

18 Please note that the Convention on the Rights of the Child (which is now almost completely ratified) generally defines a child as any person under the age of 18, but was adopted in 1989 with the lower age limit of 15 as the minimum age for recruitment and participation in hostilities. On May 25, 2000, the UN General Assembly adopted by consensus the Optional Protocol to the CRC on the involvement of children in armed conflict. The new protocol raises from 15 to 18 years the minimum age for direct participation in hostilities, for compulsory recruitment and for any recruitment by non-governmental armed groups. However, under the Optional Protocols, the minimum age for voluntary recruitment into government armed forces remains 15. At the time of writing, a total of 68 countries had signed this Optional Protocol.

It is prohibited to attack or destroy objects indispensable to the survival of the civilian population (i.e. foodstuff, crops, livestock, drinking water installations and irrigation works); it is prohibited to use starvation as a method of warfare.

The wounded and the sick must be picked up and cared for; hospitals, ambulances, and medical and religious personnel must be respected and protected; the emblem of the Red Cross or Red Crescent, which symbolizes this protection, must be respected in all circumstances; and any abuse or misuse thereof must be punished.

Parties to a conflict must agree to relief operations of a humanitarian, impartial and non-discriminatory nature on behalf of the civilian population; aid agency personnel must be respected and protected.

THE INTERNATIONAL CRIMINAL COURT AND THE PROTECTION OF WOMEN

The international community is currently experiencing a window of opportunity in which several mechanisms are being created to enforce compliance with international humanitarian law (IHL). In the 1990s, two temporary tribunals were set up by the United Nations Security Council to prosecute individuals responsible for egregious crimes committed in Rwanda and the former Yugoslavia. Now, an effort is underway to create a permanent court that will investigate and prosecute genocide, war crimes and crimes against humanity, including crimes of sexual and gender violence.

The following gender crimes are explicitly included as crimes within the jurisdiction of the Court:

- rape;
- sexual slavery;
- enforced prostitution;
- forced pregnancy;
- enforced sterilization;
- other forms of sexual violence;¹⁹
- gender-based persecution;²⁰ and
- enslavement, which includes trafficking in persons, in particular women and children.²¹

¹⁹ The *Rome Statute for the International Criminal Court*, UN Doc A/CONF.183/9 (July 17, 1998) [hereinafter *Rome Statute*], Art. 7(1)(g).

²⁰ *Rome Statute*, Art. 7(1)(h).

²¹ *Rome Statute*, Art. 7(2)(c).

1. The International Criminal Court

Once it is created, the International Criminal Court (ICC) will constitute a mechanism for enforcing IHL and for seeking redress for crimes against women at the international level. The ICC will be created once 60 states have ratified the ICC's Statute, which was adopted in Rome on July 17, 1998 (the *Rome Statute*). This ratification is expected to occur by 2003. The ICC will be located at the Hague, Netherlands, which also hosts the two temporary tribunals on Rwanda and the former Yugoslavia, and the International Court of Justice.

The ICC will differ from the International Court of Justice, which is a court that adjudicates conflicts between states regarding violations of state obligations. The ICC, on the other hand, will be a criminal court that will take action against individuals. It will be independent of the United Nations and the UN Security Council. It will be staffed by people with legal expertise in many areas, including violence against women or children.

Two supplementary documents will be adopted which, together with the *Rome Statute*, will comprise the body of law the ICC will draw on. These documents are entitled *Elements of Crimes* (Elements) and the *Rules of Procedure and Evidence* (Rules)²². The Rules deal with the procedures governing the conduct of proceedings and the rules relating to the disclosure and use of evidence. The Elements describe what must be proven for the crime to be established by the Prosecutor.²³

²² *Rome Statute*, Art. 21.

²³ These documents have been drafted by the Preparatory Commission for the International Criminal Court (PCNICC/2000/WGRPE/L.1-L.15 and PCNICC/WGEC/L.1 with addenda and corrigenda) The documents must be adopted by the first Assembly of States Parties to become applicable to the Court.

2. Jurisdiction of the ICC

The ICC will be a 'default' court that will only act if the state that would normally have jurisdiction is unwilling or unable to carry out the investigation or prosecution itself²⁴. This principle will encourage states to investigate and prosecute cases themselves if they prefer the case be handled at the national level rather than by the ICC.

The crimes within the jurisdiction of the Court are genocide, crimes against humanity, war crimes and aggression. All of these, except the crime of aggression (which is undefined in the *Rome Statute* and will not come within the jurisdiction of the Court until a definition is adopted), are contained in the *Rome Statute*.²⁵

Under the *Rome Statute*, crimes against humanity include such acts as murder, enslavement, deportation or forcible transfer of populations, torture, rape and other forms of sexual violence, apartheid and persecution. Some of these acts have been further defined in the *Rome Statute*. The enumerated acts constitute crimes against humanity when committed as part of a widespread or systematic attack directed against any civilian population²⁶.

The war crimes listed in the *Rome Statute* include wilful killing, torture, rape and other forms of sexual violence, taking of hostages, intentionally directing attacks against civilian populations or civilian objects, attacking or bombarding undefended towns or buildings that are not military objectives and conscripting children under the age of 15 into the national armed forces²⁷. These crimes are based upon

²⁴ *Rome Statute*, Art. 17.

²⁵ *Rome Statute*, Art. 6, 7, and 8.

²⁶ *Rome Statute*, Art. 7.

²⁷ *Rome Statute*, Art. 8.

the IHL discussed in the previous chapter. War crimes include crimes committed in both international and non-international armed conflicts.

The ICC will only be able to take action regarding crimes that take place after the *Rome Statute* comes into force. It cannot handle past crimes, unless they are ongoing. For example, the crime of enforced disappearances of persons may be a continuing crime if the refusal to acknowledge the deprivation of freedom or to give information on the fate or whereabouts of disappeared persons continues after the entry into force of the *Rome Statute*.

3. ICC Investigation Procedure

An investigation by the ICC into a situation may be initiated by a referral from the Security Council, from a state party, or by the Prosecutor acting upon his or her own initiative from any source, including victims or non-governmental organizations²⁸. This last method of ‘triggering’ a case will help to ensure that crimes against women are addressed by the ICC by providing an opportunity for individuals and organizations to bring situations to the attention of the Prosecutor. If the Prosecutor then decides to start an investigation, he or she must obtain authorization from a Pre-Trial Chamber to proceed with an investigation.²⁹

4. Accountability Under ICC Jurisdiction

The ICC is primarily meant to hold accountable the military and civilian leaders responsible for the worst crimes. The

28 *Rome Statute*, Art. 13.

29 *Rome Statute*, Art. 15.

Rome Statute explicitly provides that a head of state or any person acting in an official capacity is not exempt from criminal responsibility under the ICC³⁰. Thus, the ICC will have the ability to prosecute all individuals regardless of their status, including political leaders, military officials, and members of international forces, such as peacekeepers. Moreover, a commander or civilian superior can be held responsible for crimes committed by his or her subordinates in certain circumstances.³¹

However, there are several conditions that must be met before the ICC can have jurisdiction over a case. In cases where an investigation is triggered by a state party or by the Prosecutor, the ICC cannot exercise its jurisdiction unless one of the two states is a state party or gives its consent, i.e, the state in which the crime occurred (territorial state) and the state of the nationality of the accused (accused-nationality state)³². If these conditions are not met, the ICC will not have the ability to prosecute an individual responsible for any crimes listed in the *Rome Statute*, unless the UN Security Council has referred the situation to the ICC.

5. Crimes Against Women

A list of crimes of sexual and gender violence is found under the definitions of both crimes against humanity and war crimes. As mentioned above, the listed crimes are rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization and, with respect to war crimes,

30 *Rome Statute*, Art. 27.

31 *Rome Statute*, Art. 28.

32 *Rome Statute*, Art. 12.

other forms of sexual violence also constituting a grave breach/serious violation of the Geneva Conventions³³ or, with respect to crimes against humanity, other forms of sexual violence of comparable gravity.³⁴ These crimes are war crimes if committed in either international or non-international armed conflicts.

Two other gender crimes are included as crimes against humanity: gender persecution³⁵ and enslavement, which includes trafficking in persons, in particular women and children.³⁶

Several of the gender crimes are specifically defined in the *Rome Statute*. In addition to these specific definitions found in the *Rome Statute*, the ICC will have reference to the Elements. These two documents delineate the scope of the crimes.

Please refer to Chapter Four of this manual for a definition of these crimes.

6. The Role of Victims in the ICC

The *Rome Statute* envisages a more active role for victims in the pursuit of justice. Victims will have the ability to participate at appropriate stages of the proceedings, as determined by the ICC. Victims will also have the right to

33 *Rome Statute*, Art. 8(2)(b)(xxii) for international armed conflict, which uses the term “grave breach” and Art. 8(2)(c)(vi) for non-international armed conflict, which uses the term “serious violation.”

34 *Rome Statute*, Art. 7(1)(g).

35 *Rome Statute*, Art. 7(1)(h).

36 *Rome Statute*, Art. 7(2)(c).

participate in specific instances, for example, at the hearing to obtain authorization for the Prosecutor to proceed with an investigation,³⁷ when the ICC determines a question of jurisdiction and admissibility,³⁸ before the ICC orders reparations³⁹ and at appeals regarding orders for reparations.⁴⁰

Under the Rules, victims must apply to the ICC to participate in the proceedings. A victim may choose a legal representative. When there are a number of victims, a common legal representative may be chosen by the victims or by the Registrar. The legal representative may attend and participate in the proceedings according to the orders of the Chamber. The representative’s participation could include questioning witnesses.⁴¹

7. Protection of Female Victims and Witnesses

The *Rome Statute* contains provisions throughout to ensure that female victims and witnesses, particularly victims of sexual violence, will be protected.

7.1 Principle of non-discrimination

The ICC is obliged to apply and interpret the law in a manner consistent with internationally recognized human rights and without any adverse distinction based on grounds such as gender, for example.⁴²

37 *Rome Statute*, Art. 15(3).

38 *Rome Statute*, Art. 19(3).

39 *Rome Statute*, Art. 75(3).

40 *Rome Statute*, Art. 82(4).

41 *Rules of Procedure and Evidence*, UN Doc PCNICC/2000/INF/3/Add.1 (July 12, 2000), Rules 91 (3)(a)(b) and (4).

42 *Rome Statute*, Art. 21(3).

7.2 Special measures

The ICC must also take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses, particularly when the crime involves sexual or gender violence. These measures may include *in camera* proceedings, the presentation of evidence by electronic or other means and the withholding of evidence or information that could gravely endanger the security of a witness.⁴³

7.3 Victims and Witnesses Unit

A Victims and Witnesses Unit (VWU) will be established to provide protective measures and security arrangements, counselling, and other appropriate assistance for victims and witnesses.⁴⁴ The VWU will work for the protection of witnesses, victims who appear before the ICC and others who are at risk because of testimony given by such witnesses. This could include families or persons in a close personal relationship with the victims/witnesses. The VWU will be staffed with individuals experienced in dealing with traumatized victims, including victims of sexual violence.⁴⁵

7.4 Reparations

The Court is also empowered to award reparations to victims. Reparations include money or other measures meant to achieve restitution, compensation and rehabilitation.⁴⁶ A trust fund will be established for the benefit of victims of crimes within the jurisdiction of the ICC and their families.⁴⁷

43 *Rome Statute*, Art. 54(1)(b), 57(3)(c), 64(2) and 68.

44 *Rome Statute*, Art. 43(6) and 68(4)

45 *Rome Statute*, Art. 43(6).

46 *Rome Statute*, Art. 75.

47 *Rome Statute*, Art. 79.

7.5 Rules of procedure and evidence affecting women and victims of sexual violence

Rules have been included that will ensure that irrelevant evidence is not admitted by the defence to re-traumatize victims. In particular, in cases of sexual violence, the ICC cannot infer consent by reason of the following:

- any statements by or conduct of a victim in which force, threat of force, coercion or taking advantage of a coercive environment undermined the victim's ability to give voluntary and genuine consent;
- any statements by or conduct of a victim in which the victim is incapable of giving genuine consent;
- the silence of or lack of resistance by the victim.

In addition, the credibility, character or predisposition to sexual availability of a victim or witness cannot be inferred by reason of the sexual conduct of that person. The Rules further specify that evidence of the sexual conduct of the victim or witness shall not be admitted subject to the ICC's power to admit evidence.⁴⁸

Rules have also been included to allow the ICC to protect the confidentiality of communications made in professional or other confidential relationships, such as counselling records of victims undergoing therapy.⁴⁹ The discriminatory practice in some countries of requiring the corroboration of the testimony of female victims of sexual violence is explicitly prohibited.⁵⁰

48 *Rules of Procedure and Evidence*, Rules 70 and 71.

49 *Rules of Procedure and Evidence*, Rule 73 (3).

50 *Rules of Procedure and Evidence*, Rule 63 (4).

8. The ICC and National Criminal Laws

In addition to being an international mechanism to which victims can turn for redress, the ICC will create an incentive for states to take action nationally against crimes. As part of the process of ratifying the *Rome Statute*, states must adopt legislation to implement their obligations to fully cooperate with the ICC. This legislation will often be accompanied by changes to national laws that will enable the states themselves to investigate and prosecute the crimes under the jurisdiction of the ICC. Thus, for most states ratifying the *Rome Statute*, national laws regarding genocide, war crimes and crimes against humanity, including the gender crimes discussed above, will be strengthened.

9. General Advice to Human Rights Defenders

Although the ICC will not be set up for another few years, human rights defenders should monitor egregious violations of international law in order to be prepared when the ICC is established. If the crimes have continued and continue to occur after the entry into force of the *Rome Statute*, the ICC would potentially have jurisdiction over such crimes. A collection of well-documented information will place human rights defenders in a better position to bring cases to the immediate attention of the Prosecutor.

Human rights defenders also may draw upon the *Rome Statute* and the supplementary documents when working to change national standards. The *Rome Statute* was adopted by 120 states at the end of a diplomatic conference, and as such, reflects a broad consensus regarding the current status of international criminal law. The *Rules of Procedure and Evidence* are also indicative of the procedures and rules of evidence comprising a fair trial.

MONITORING ARMED CONFLICTS

Monitoring is the long-term observation and analysis of the human rights situation in a country or region. It enables you to build an important data-base that can then be used to gain an understanding of the situation and its evolution in a country or region, to identify patterns of violations, and it permits an informed assessment of individual allegations.

Monitoring consists of a systematic and consistent gathering of information that may be related to human rights or humanitarian violations, from a variety of sources.

MAIN SOURCES OF INFORMATION FOR MONITORING

- print media
- radio broadcasts
- government statements or reports
- military reports
- statements or reports from armed groups
- NGO reports
- UN Agencies' reports
- UN Security Council statements
- statements and interviews of witnesses and victims
- individual allegations of human rights violations, etc.

The more detailed and complete your knowledge of the local and regional political and military climate and changes

to it, legal procedures, military events, structure and composition of the military forces present, the more informed and empowered you will be to assess allegations of abuse and to establish responsibilities.

Ideally, you should seek to gather information as regularly and from as many sources as possible. Events occur rapidly in war situations, and reports and interpretations of a single event may vary a great deal.

The following is an overview of some of the information you must gather and analyze.

1. Status of Women in the Country or Region

Armed conflicts cause dramatic changes and upheavals within the regions concerned. These circumstances do not mean, however, that the 'pre-conflict' situation is irrelevant to your research. To the contrary, information on the 'pre-conflict' dynamic is essential to retrace the origin of the conflict, to determine whether, why and how specific individuals or communities are being targeted, and to understand the consequences of abuse on individuals and communities. From a gender perspective, information on the situation of women in the years or months preceding the outbreak of hostilities may allow you to better understand the impact of the conflict on the status of women, why women may be specifically targeted, the consequences of abuse for women, how communities may deal with sexual violence, whether there are local or national remedies and infrastructure available to the victims, etc.

The following is a list of possible indicators related to the status of women. It is not exhaustive, and you should feel

free to add any other elements that may be particularly relevant to your countries.

1.1 International ratifications and implementation

- Ratification by the government of instruments such as the ICCPR, the ICESCR and the CAT;
- Ratification by the government of the Geneva Convention, its position on the use and sale of landmines, or on other weapons that kill indiscriminately;
- Ratification and implementation by the government of CEDAW and/or the CRC;
- Presence of any reforms, following ratification, to ensure that domestic laws and the Constitution respect the international principles adopted by the state.

1.2 Legal status of women

- Existence of a constitutional equality provision;
- Whether women are treated equally in court;
- Whether they can serve in the judiciary, in civil, customary, and religious courts, and whether they do, in practice;
- Women's treatment under family laws, including provisions concerning divorce.

1.3 Political expression

- Women's voting rights and the extent to which they exercise these rights;
- The percentage of women in political parties, government, parliament, etc.;
- Women's contribution to civil society and whether they can express any dissatisfaction within their own political and social movements.

1.4 Citizenship

- Women's access to citizenship and whether it is controlled by father or husband;
- Whether a woman can pass her citizenship on to her children.

1.5 Work and mobility

- Women's place in the formal labour force (percentage and evolution);
- Taking into account the invisibility of women's contribution to labour, their role in agriculture and the informal sector of the economy.

1.6 Family

- Formation, duration and size of families;
- The age of marriage for women;
- Possibility of women to divorce their husbands;
- Status of single women and widows;
- Whether women have freedom of movement, and how much.

1.7 Education

- Access of girls and women to education;
- The level to which can they continue their education;
- Whether the curriculum is the same for girls and boys, and for women and men.

1.8 Health

- Female mortality rate;
- Main causes of female deaths;
- Fertility rate;
- Whether women have control over their own fertility.

1.9 Cultural expression

- Prevalent images of women and their place in the society.

2. Military and Political Context

In order to fully understand the conflict, you should seek to identify all the belligerents in the conflict and other actors, outside or within the region at war. This type of monitoring is essential to determine the nature of the conflict, i.e. whether it is international or non-international. The more detailed and complete your knowledge of the structure and composition of the armed forces, the more qualified and empowered you will be to establish responsibility for allegations of violations.

2.1 Gather information on the legal and constitutional context

- Legislation that may have been introduced immediately before or during the conflict;
- Declared states of emergency and their implication on individuals' rights;
- Laws regulating investigations, such as provisions for immunity from prosecution;
- Role of military courts;
- Any provisions for amnesty laws and their past use;
- Whether certain armed groups have their own systems of justice.

2.2 Gather information on the organization of the armed forces and monitor changes

- Identify all participants in the conflict, such as governmental armed forces, armed groups, paramilitary forces

and civilian defence forces;

- Monitor alliances between the armed factions;
- Identify the various troops belonging to each of the parties to the conflict;
- Number of soldiers and names of troops;
- Main commander and chains of command — especially establish who is responsible for holding the military accountable;
- Procure codes of conduct and rules of engagement.

2.3 Gather information on methods of operation and means of identification

- Identify the type of weapons usually used by specific units;
- Discover whether they rely on anti-personnel mines;
- Identify the different uniforms and uniform colours of each troop;
- Identify the ranking system;
- List the various types of transportation used by each troop or belligerent;
- List any other visible signs of identification (i.e. some troops may be dominated by one linguistic group or they may use specific expressions);
- Discover whether there any preferred strategies or ways of engaging;
- Monitor the reactions of the military and/or political leadership to allegations of abuses.

2.4 Gather information on the international dimension of the conflict

Armed conflicts involve many actors besides the armies engaged in combat. All conflicts, even those described as non-

international, have, nevertheless, regional and international dimensions characterized by the covert or more open support and assistance of third parties, military and economic transfers, and the involvement of the United Nations.

Third parties, in general other governments, may provide parties to the conflict with political and diplomatic backing in international fora, military or economic assistance, financial support, safe haven for refugees or forces, etc.

Mass human rights abuses are being carried out in many armed conflicts around the world by governments and armed groups that are given virtually unrestricted access to small arms, light weapons and associated military equipment and training. In many countries there is virtually no effective public monitoring of the arms and security trade, and there is almost no monitoring or accountability of the end use of such arms in terms of international human rights and humanitarian law criteria.

In many instances of armed conflict, credible evidence reveals that military forces acquire arms financed through trade in raw materials, such as diamonds,⁵¹ copper and oil. Multinational corporations, with economic interests in the regions at war, have been said to play a role by directly supporting one or the other parties to the conflict in order to protect their operations.

⁵¹ In recent years, the international community has begun to address this issue. The UN Security Council Resolution 1173 (1998) specifically sought a ban on diamonds from mines controlled by UNITA in Angola. UN Security Council Resolution 1306 (2000), passed on July 5, 2000, imposes an embargo on the export of all rough diamonds from Sierra Leone for 18 months, until the government of Sierra Leone can establish a proper certification system for diamonds and regain full access to the diamond producing areas currently under the control of rebel forces. The resolution also asks the UN Secretary General to create a five-member panel to study links between the diamond trade and arms trafficking.

Some of the key issues guiding your monitoring of the international dynamics of armed conflict may include the following:

- Identification of international or regional backers, and the nature of their support (political, military, economic, etc.);
- The presence and functions of foreign military advisers;
- Type of military assistance (i.e. military training or arms transfers) provided to the parties to the conflict before war erupted, and during;
- Identification of the national and/or international economic actors in the region, such as mining companies, or diamond traders, and the international ramifications of the trade;
- Developments occurring within the United Nations or regional organizations (such as the Organization of American States or the Organization of African Unity), including resolutions, personal involvement of the UN Secretary General, peace negotiations;
- Any restrictions to arms transfers, such as a UN Security Council arms embargo, and its enforcement;
- Bans on certain types of trade, such as the UN Security Council ban on diamonds from mines controlled by the National Union for the Total Liberation of Angola (UNITA).

Possible sources: local and international media, local contacts in the government, the armed forces, civil society, journalists, UN Internet sites, military reference materials and journals, public reports from foreign countries, military experts, etc.

3. The Role of Women in the Armed Forces

In general, women are less likely than men to be combatants, and even when they are, they are less likely to engage in actual combat than their male counterparts. Research tends to show that women's participation in war efforts is far more traditional (nursing, cooking, etc.) than what is portrayed by many armed movements and the media. According to the Panos project, which interviewed some 200 women in war situations, the women's roles usually consisted of providing support and care for male combatants and victims, although they occasionally also worked as couriers and in intelligence (Panos Institute, 1995).

Some of the questions guiding your monitoring of the role of women in the armed forces may include the following:

- Are there any women among the armed forces, including the armed political groups?
- What are their main functions?
- Are there any 'women fighters' on the front line? How many?
- What is the role of women behind the front line?
- Has the role of the women in the governmental armed forces and those of armed political groups evolved? How? Why?

Possible sources: local and international media, journalists, survivors of attacks and abuses, refugees, local women's NGOs, medical personnel, ex-combatants, etc.

4. The Discourse of War and Gender

Armed conflicts are also waged through the media, which are usually controlled by parties to the conflict. Monitoring of the media can often give you an overview of nationalist or ethno-nationalist ideologies, and their evolution. Articles and speeches may target specific individuals or communities, and incite or justify violence against them. They also provide an avenue to analyze the treatment, persecution and role of women during the conflicts.

Some of the specific issues guiding your review and analysis of speeches, declarations, written statements, etc., made by war or governmental leaders, journalists, and opinion-makers include the following:

- The ‘construction’ of the role of women in the struggle, and/or justification of persecution against the women belonging to the other camps, such as whether women (on the leaders’ side) are primarily seen as child-bearers, fighters, etc.; whether women from the other camp are regarded as whores, etc.; what types (if any) of stereotypes or images regarding women inform this discourse;
- How the media and speeches ‘construct’ the role of men and their use of stereotypical masculine images;
- How women themselves (appear to) participate in constructing these images and/or respond to them. (i.e. whether there are any women, NGOs, or other organizations questioning nationalist frameworks, or if there are any women, NGOs, etc., endorsing or contributing to this framework and the role of women).

Possible sources: local and international media, including television and radio broadcasts, print media, journalists, official reports and speeches, women’s activists and NGOs.

5. The Impact of War

Armed conflicts have an impact on *all* aspects of life in the regions at war. The impact may be best measured in terms of peoples’ enjoyment of their political, civil economic, social or cultural rights. Civilians fall victim to deliberate or indiscriminate attacks, abductions, disappearances, torture, etc. In many war situations, whole populations are displaced and families separated. Governments or armed forces may impose a state of emergency and curtail civil, political or labour rights. Economic infrastructure (such as roads, bridges or factories) may be destroyed and social services unable to perform their duties. Conflict often destroys or damages the manner in which a family earns money or feeds itself. Factories may no longer be in operation, farming may no longer be viable, salaries may not be paid, and the transport and marketing system may be destroyed.⁵²

5.1 Right to life and physical integrity

- Monitor the abuses and casualties reported in the media or through other sources (see next section).

5.2 Political rights

- Has a state of emergency been declared?
- Have specific rights and liberties been curtailed?

52 OXFAM UK/I-ACORD, *Development in conflict: the gender dimension*, London, OXFAM, 1993, p.23.

5.3 Displaced populations

- Monitor the reports and Internet sites of the UNHCR and various humanitarian NGOs to track the number of internally displaced persons (IDPs) and refugees and gather data on the percentage or number of women and children and unaccompanied minors.
- Monitor the ability of displaced persons to access basic services and amenities.
- Monitor the impact of conflict-related displacement on citizenship rights.

5.4. Health and other social services

Some of the issues you may wish to research include the following:

- Data on mortality rate, mortality during pregnancy, during labour, child mortality;
- Whether hospitals and other social services have been destroyed or left inoperative;
- Access to medicine and medical services;
- Access to education.

5.5. Economic infrastructure

Monitoring the local media may allow you to determine the extent of the destruction of economic infrastructure such as factories, roads and bridges.

Possible sources: local and international media, including television and radio broadcasts and print media, journalists, official reports and speeches, UN agencies and international and national humanitarian actors.

6. The Impact of War on Women

As we state throughout this manual, armed conflicts have different impacts on men and women. Women are more likely to experience war as civilians and too often as displaced persons outside their homes and communities. In fact, the UNHCR estimates that 70 to 80% of the world refugee and internally displaced population is composed of women and children.

Although women are less likely than men to be combatants, women are more likely to form the greatest proportion of the adult civilian population killed in war and targeted for abuse. In many situations investigated by human rights activists, women find themselves the victims of attacks on villages because of their domestic functions: *“the majority of women are targeted for abuse simply because they are easily located in their homes by army and paramilitary patrols.”*⁵³

In the Maela camp for persons displaced by large-scale killings in the Rift Valley [Kenya], women were frequently raped by security personnel when they left the camp in search of food or to work as casual labourers. One woman told Amnesty International (AI), *“Even though we knew this was likely to happen, we continued to do this work because our children were hungry and we had no choice.”*

The economic impact of an armed conflict is also often gender-specific. Women’s burdens in times of war are especially heavy because their usual functions within households (i.e. feeding the family, fetching water and wood, feeding livestock, etc.) are more difficult to carry out,

⁵³ AI, *Women in Colombia*, 1995, (AMR/23/41/95).

often because of the absence of male relatives. Women are especially vulnerable to the destruction of health services resulting from wars: pregnancy and childbirth are left unattended, care for their children is no longer available. As the majority of the civilian population, women, children and older persons are particularly vulnerable in cases of food blockades as well as attacks on or destruction of foodstuffs, crops, livestock, and drinking water installations. *“Although women are generally not directly involved in the hostilities, they are the most affected by the trauma of displacement. The 1994 report of the Colombian Episcopal Conference showed that 58% of the displaced are women. The majority are heads of families and have fled rural zones affected by the armed conflict.”*⁵⁴

If a woman has become the sole person responsible for the well-being of the family, the absence of proper infrastructure will impose additional stress on her (failure to feed the children) and additional work (looking for alternative resources). Faced with a chronic absence of resources and in periods of extreme necessity, women may engage in activities that may not be socially acceptable (such as prostitution or dealing in the black market).

All these domestic functions are also carried in the midst of great anguish, continuous fear and stress, and trauma. Women may have been the victims of abuses themselves or have witnessed abuses, often committed against family members. Their male relatives may be fighting or may have ‘disappeared’.

The following sections discuss what you should focus on in your monitoring activities.

⁵⁴ AI, *Colombia’s internally displaced: dispossessed and exiled in their own land*, October 1997 (AMR 23/48/97), p.19.

6.1 Right to life and physical integrity

- Incidents of killings, torture including rape, other forms of sexual violence, abduction, etc. (See next section);
- Independently of casualties directly resulting from armed clashes, you may be able to find information on the impact of the conflict on the incidence of domestic violence and other forms of violence against women in the family or the community.

6.2 Legal status

- Has the conflict had an impact on the legal status of women?

6.3. Family life

Seek data and information on the following:

- Changes in the number of single-headed households and of widows;
- Changes in the age of marriage, instances of polygamy, divorce rate.

6.4 Women’s workload

Monitor whether the conflict has had an impact on any or all of the following:

- Women’s domestic tasks, such as fetching water or wood;
- Access to food;
- Women’s farming activities;
- Women’s access to land;
- Women’s access to income-generating activities, such as trading, market activities, marketing of common resources (wood), pottery-making;

Questions you should ask include the following:

- Has limited access to land caused a greater impact on women? Why?
- Has limited access to food especially affected women and/or children?
- Has loss of income resulting from the war especially affected women? Which women?
- Are there any reports that women have resorted to activities such as prostitution, black marketeering, making alcohol?

6.5 Health

Monitor public health indicators such as the following:

- Changes in the rates of tuberculosis and other transmissible diseases;
- Changes in child mortality rates;
- Changes in mortality rates of women in childbirth;
- Malnutrition rates;
- Fertility rates;
- Prevalence of sexually transmitted diseases (STDs), including HIV.

Possible sources: local and international media, including television and radio broadcasts, and print media, journalists, official reports and speeches, UN agencies, international and national humanitarian actors, women's NGOs and women activists, survivors and refugees.

DOCUMENTING INCIDENTS OF ABUSES

The first chapter of this manual identified some of the abuses perpetrated in armed conflict situations. The following is a list of some of the types of abuse that are most likely to affect women.

- Killings of civilians and non-combatants;
- Deliberate or indiscriminate attacks;
- Torture and CID treatment;
- Hostage taking;
- Sexual and other crimes based on gender, including rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, other forms of sexual violence, gender-based persecution and enslavement;
- The use of child soldiers.

This list is, however, far from complete, and you should refer to the Geneva Conventions and other instruments identified in the first chapter of this manual for a complete list of prohibitions.

It is beyond the ability of most individuals and organizations to document allegations of all abuses in armed conflict situations. You may be obliged to focus your efforts on those abuses that you are best equipped to investigate and/or which meet the mandate of your organization.

This chapter recommends approaches to some of the steps involved in the documentation of specific abuses, namely,

recording allegations, identifying patterns, fact-finding and assessing the allegations.

It begins with some suggestions regarding your own security and that of the contacts and witnesses you meet with and interview. Security concerns should remain a constant concern throughout the monitoring and documentation phases, and especially in the context of fact-finding.

SECURITY SUGGESTIONS

These suggestions are minimal ones. If you are working in a conflict zone or planning to travel to one, you should consult the security manuals and security guidelines developed by humanitarian organizations, local organizations and media, United Nations agencies, and others.

a. Conduct a thorough risk assessment

- List all possible security concerns for yourself, your team, your contacts, victims and eyewitnesses.
- Develop contingency plans to deal with each one of them.
- If possible, provide yourself with special communication and protective equipment (i.e. satellite phone; flak jackets).
- Develop an evacuation plan.
- Establish clear lines of communication within the team, including emergency contacts outside the country or area.
- Ensure that your insurance policy covers the risks involved.

b. Seek up-to-date and informed advice

- **Local knowledge** is key. Sources of such knowledge may include contacts in the area or country, local

journalists, humanitarian NGOs, UN agency field offices, the ICRC field offices, embassies and consulates. In addition, you should also contact the international offices or headquarters of organizations and agencies present in the field.

- **Ensure that your information is up to date.** Situations can change rapidly and you must ensure that the information you are receiving is up to date. For instance, if you decide to travel to a specific area, make sure that the itinerary proposed is the safest at the time you wish to travel.

c. Identify alternatives

- If access to and your presence on the scene entails many risks, identify alternative means of carrying out the research. For instance, you may be able to rely on a confidential local contact to bring possible witnesses outside the area. In addition, you may be able to interview people who have recently fled the areas where the abuses have taken place. They may be in refugee or IDP camps, where access may be easier.

d. Precautions when planning to travel

- Find up-to-date information on the hierarchy of military and political authority in the area.
- Find up-to-date information on the level of hostilities (with respect to aerial bombing, indiscriminate attacks, landmines, etc.).
- Find up-to-date information on the locations of conflict and how it is spreading.
- Make sure that the proposed itinerary is safe.
- Find out how many check-points you will have to go through, whether or not you need to disguise yourself, people's reactions and feelings, whether it

would be safer to send someone of a different ethnic group or political profile, etc.

- Be prepared with responses regarding the reasons for your visit and what you are doing, in case people ask you difficult questions or appear suspicious of you.
- If necessary, get official written authorization.
- Assess the implications of going to the scene as part of a convoy (it may be safer but you may not be able to conduct interviews as you wish).
- Respect curfews.
- Never travel after dark.

e. Precautions to take when meeting sources

- Do not pressure sources into meeting with you if they are afraid.
- Let your sources know you may be under surveillance.
- Ensure that your sources are aware of the risks involved in meeting with you.
- Be careful about choosing where to meet your sources; let the contact suggest a meeting place.
- Never keep confidential information in a hotel room or divulge such information over a hotel telephone.
- When going to meet your sources, ensure to the best of your ability that you are not being followed — use more than one taxi, walk part way, etc.
- Discuss security risks with your sources; do not make promises you will not be able to keep.
- Alert trusted individuals or organizations (i.e. the ICRC, international human rights organizations) of possible security risks to your sources.

f. Precautions with information

- Carry information and interviews with you.
- Ensure that the sources of your information are never mentioned or revealed.
- Be prepared to destroy information and films.
- Memorize confidential information, encrypt others.
- Use technology to transmit encoded and encrypted data.

1. Recording and Monitoring Allegations of Abuse

Once the focus of your work has been established, it is important to monitor all cases of abuse that come to your attention through the media, witnesses' accounts, survivors of incidents or refugees. You will not always be able to investigate all these incidents. In fact, it may only be possible to collect evidence long after the conflict has ended. However, keeping track of all allegations of abuse is an essential task. It enables you to assess the evolution of the conflict, to assess whether the allegations or cases of abuse are increasing or decreasing, to understand the patterns of incidents (see below), to alert the international community of allegations, to build cases that may be useful for investigators when the circumstances allow for proper fact-finding to take place, in addition to aiding national or international trials against perpetrators.

To facilitate systematic recording, it is a very good idea to design a form to record individual cases of alleged violations of international humanitarian law that are brought to your attention through the media, family members, witnesses, etc.

You will find an example of such a form below. You will need to adapt it to the specific abuses being recorded, the circumstances of the incident and the nature of the conflict.

ABUSE REPORT FORM

1. General data

Date:

File number:

Information compiled by:

Type of incident (rape, killing, abduction etc):

Primary source of information:

Visit to the scene: No ___ Yes ___

Carried out by _____ on _____

Witness interviews: No ___ Yes ___

Carried out by _____ on _____

2. Nature of the incident

Number of victims:

Precisely what happened to them?

Was anyone

- killed?
- raped or the victim of other forms of sexual violence?
- a victim of other forms of torture?
- taken hostage?
- abducted?
- a victim of other abuses?

Was any property

- damaged?
- destroyed?
- stolen?
- confiscated?

3. Victim identification information (one for each victim)

Name (last and first names, nickname):

Date of birth or age:

Gender:

Occupation:

Family status:

Address:

Nationality:

Religion:

Ethnicity:

Other identification markers:

Physical description or photograph:

4. Time and location of the incident

Date, time and year of the alleged incident:

Province:

District:

Town/village or nearest town/village:

Street address if applicable:

5. General circumstances surrounding the incident

Which armed faction was in control of the area?

What is the profile of the local population?

Are they more aligned to one faction than another?

Did any specific incidents precede the reported abuses?

Did the incident happen at a time of hostilities between armed factions?

If so, what form did these hostilities take?

Was it at a time of negotiations between factions?

6. Alleged perpetrators

Who is allegedly responsible for the incident?

Reported evidence supporting this allegation:

7. Evidence

Are there any witnesses? If yes, get names, addresses, etc.:

Forensic evidence:

Photographs (for instance, from a newspaper):

Other:

8. Official responses

Has either of the armed forces made any statements about the incident?

How did they react?

Were any measures subsequently taken?

Did they promise any investigation?

Has anyone been arrested?

Have you been able to contact representatives of the alleged perpetrators to encourage a response?

2. Identifying Patterns

Patterns constitute one or several typical features of the abuses you have recorded. You identify patterns by reviewing and analyzing a number of cases over a given period of time and identifying the common elements among all cases, such as where the abuses took place, data and time and circumstances.

The identification of patterns serves three main purposes. First, it allows you to build a 'typical' picture of how, why and where certain types of abuses are taking place, which

helps you to assess whether allegations reported to you are consistent with what you know of such abuses. Second, it permits more informed interviews of witnesses and victims: if you know that certain types of abuses are likely to follow a given scenario, you may ask (more) relevant questions. Interviews are always easier when you have an idea of what you are looking for (Beware, however, of guiding the interviewee towards specific answers). Thirdly, it allows you to assess the evolution of a conflict: you may record more abuses, or more specific abuses occurring at certain periods; You may notice that public advocacy has an impact on the incidence of some forms of abuses; etc. This section provides some examples of patterns.

2.1 Patterns respecting the identity of the victims

The victims themselves may have aspects in common, such as the type of political activities they are involved in, their professional activities or occupations, ethnicity, age group, gender, sexual orientation, or whether they are residents of clearly defined areas.

2.2 Patterns respecting the locations abuses are committed

The abuses that have been reported may overwhelmingly take place in specific places, such as regions, cities, villages or localities, neighbourhoods, specific detention centres, national borders, refugee or IDP camps and certain sites within the camps, marketplaces, fields, roads, wells, and other locations where women are likely to go in the course of their domestic activities.

2.3 Patterns respecting the methods used to commit the abuses

Quite often, the methods used by the perpetrators are consistent, in that the same or similar methods may be used to commit killings, sexual and gender-based crimes, other forms of torture, arbitrary arrests, etc.

For instance, all killings reported to you may have been preceded by similar forms of torture or mutilation, or the same weapons may have been used.

Acts of sexual violence may involve a similar ‘scenario’: acts, rituals, threats, behaviours and statements, all of which must be recorded.

2.4 Patterns respecting the circumstances of abuses

The circumstances immediately preceding or following abuses may also be quite similar and, as such, present a pattern. For instance, they may especially take place during, after or following the declaration of a state of emergency, elections, curfews, declarations by the leadership of one or the other parties to the conflict, media reports of abuses or incitements to violence, military presence nearby (especially important in the investigation of indiscriminate attacks), troop movement, military operations or reprisals in or around the location abuses were committed, military victory or defeat.

In some cases, the time of the year (season or month) in which abuses have been committed may also present a pattern. For instance, during rainy seasons or in winter, you may notice a decrease in some instances of abuse, linked in part to the difficulties in moving, travelling, and escaping. You may also notice that farming cycles may effect

the incidence of abuse: armed forces may wish to prevent farming activities or they may wait until after harvest time, so they can loot food.

2.5 Patterns respecting the identity of alleged perpetrators

By systematically recording abuses, you may also be able to identify a pattern with respect to the identity of the alleged perpetrators, including specific troops or forces, specific individuals, specific ranks (i.e. commander or soldier), individuals with or without uniforms and the number of individuals involved in the abuses.

2.6. Patterns respecting official responses to alleged cases

A pattern may emerge over time in terms of the responses of the armed forces to the allegations of abuses, including statements following the allegations, official investigation or lack of investigation, nature of the investigations, nature of the procedures, the absence or nature of prosecutions, the identity of the courts responsible for the prosecution and the absence or nature of the verdict.

3. Conducting Fact-finding⁵⁵

Fact-finding consists of investigating a specific incident or allegation of human rights violations, collecting or finding a set of facts that proves or disproves the occurrence of an incident and how it occurred and verifying allegations or rumours. You should ask yourself the following four questions in your investigation of the alleged abuses:

⁵⁵ This section is based on: Agnès Callamard, Ukweli: *Monitoring and Documenting Human Rights Violations in Africa*, Amnesty International Dutch Section and CODESRIA: Amsterdam and Oxford, 2000, pp.11- 14.

- Is it safe to go to the scene, and if not, are there alternative places where I can gather further information and evidence?
- What kind of evidence do I need in order to assert that an abuse took place?
- Who is most likely to give me access to this evidence?
- How can I assess the reliability of my data?

3.1 Risk-assessment

Carrying out a thorough assessment of risks is primordial. For details on what steps you should take, you should refer to the box at the beginning of this chapter.

3.2 Information and evidence required

As highlighted in the first chapter of this manual, IHL provides for many prohibitions, each one of them with a specific definition and standard of proof. Consequently, the evidence required differs, depending on whether you are investigating a deliberate killing of a civilian, an indiscriminate attack, rape, sexual slavery, or any other types of abuse.

One of the most difficult aspects of the investigation consists of establishing responsibility: victims may have been killed, there may be several armed forces in the area, victims may be unable to identify the individual perpetrators by name, etc.

In order to prepare for fact-finding, you must therefore ask yourself the following questions:

- What do I already know about the case?
- What do I know about the patterns of such types of abuse?

- What information is missing?
- What kind of evidence do I need to demonstrate that such abuses have taken place?
- How can I get the information and evidence?
- Who is most likely to give me the information and evidence required?

3.3 Background preparation

You must be knowledgeable about IHL and more specifically, the IHL standards (and others as appropriate) related to the abuses you are going to investigate. A thorough knowledge of the patterns related to the allegations under investigation is also essential. To that end, a useful plan of attack consists of listing everything you already know about the abuses, and everything you already know about the particular location or region, recent military incidents, security questions, etc. Before arriving on the scene, be prepared by gathering all necessary information. It is also a good idea to seek expert advice. To that end, consult with forensic pathologists, military experts, and lawyers. Prepare your interview format and seek input from contacts and experts. If possible, have pictures or sketches of the uniforms used by various parties to the conflict, and information on how ranks are displayed. Eyewitnesses may be better able to identify who the perpetrators were.

3.4 Preparing a delegation

The investigative team should not be constituted of individuals who may be perceived as partial by the informants because of their ethnicity, religion, or known political affiliation. As far as it is possible, identify team members who are impartial but who will also be *perceived* as impartial by the informants.

Your delegation should be formed of experienced people. Send trained and credible researchers.

Identify the type of expertise that will be most needed during the investigation. For instance, to investigate attacks, you may need the assistance of a military or weapon expert. To investigate sexual violence, you may need to be accompanied by women with expertise in such forms of violence.

Your delegation should be gender-balanced, including both women and men.

As far as possible, you should also seek delegates who are representative of the various ethnic and language groups in the area you are investigating. If you have little resources and few delegates, identify the person who will be best equipped to deal with ethnicity, language, or other important factors.

3.5 Contacts and sources of information

Before departure, list all possible contacts and sources of information you may need to interview and meet in order to investigate and corroborate the information.

Identify who it may be more appropriate to meet first, provided, of course, that you have the luxury of setting up and organizing meetings. In any case, you should decide whether and at which point in the investigation you will meet with security officials. (See below for a general list of contacts and material evidence. This list can be adjusted depending on the nature of the abuses being investigated and the local circumstances.)

For information on interviewing victims and witnesses, please refer to Agnès Callamard, *Methodology for Gender-*

Sensitive Research, ICHRDD: Montreal, 1999, Chapter 5, entitled “Gender-Sensitive Approach to the Gathering of Information.”

3.6 Knowledge and awareness of the situation

- Rely on local knowledge, ‘read’ the overall mood, be on your guard and do not hesitate to leave the scene whenever you feel that something is wrong.
- Be observant of your surroundings.
- Be prepared to respond to requests or questions regarding your presence and activities.
- Seek all necessary permission (i.e. from the refugee or IDP camp authorities); pay courtesy visits to officials when it is strategic and safe to do so.
- Inform someone you trust of where you are going and your plans.
- Ensure that you can guarantee confidentiality and anonymity.
- Ensure that you can refer victims and witnesses of abuses to the organizations or individuals in the region that can provide them with the attention, support and services required. If possible, you should organize such services and/or inform relevant organizations.

Individuals and/or groups

- Victims
- Eye witnesses
- Other witnesses
- Relatives
- Community leaders
- Religious institutions
- Lawyers
- Journalists
- Medical personnel
- Civilian personnel, such as Red Cross/Red Crescent personnel
- ICRC personnel
- Local human rights activists
- Members of political parties, civil rights groups, trade unions, ethnic groups, etc.
- Members and officials of the police force
- Prosecutors
- Other police/judicial representatives
- Members and officials of the military forces
- Members and officials of armed opposition groups

Material Evidence

- Hospital and/or autopsy records
- Court records
- Police reports
- Official acknowledgement or response to the alleged violations
- Report of independent investigative bodies
- Weapons and ammunition left behind, bullet shells
- Documents
- Photographs, videos, etc.
- Scars and wounds

4. Assessing Allegations

After you have recorded abuses, identified patterns and possibly conducted fact-finding missions, you must then assess the information, determine the likelihood that the reported abuse took place and identify possible responsibility for it. Once you have reached a conclusion regarding the validity of the allegations, you may decide to go public, launch advocacy campaigns, or seek redress and reparations. Some of the issues guiding your assessment are discussed in this section.

4.1 Violations of international humanitarian standards and/or human rights standards

In order for you to decide whether the allegation or incident violates humanitarian or human rights standards, you need to know the legal standards defining the abuse and the evidence required. You then need to assess how the evidence you have gathered meets the standards established in the legal texts.

For instance, not all killings are prohibited under IHL. Armed forces are not prohibited from killing individuals taking a direct part in hostilities, such as soldiers and members of armed opposition groups. As long as those taking part in hostilities are not prisoners or have not put down their arms, they may be lawfully killed, according to the laws of war (Articles 43-47 from Optional Protocol 1). Whenever you investigate killings in armed conflict situations, you therefore need to ask yourself whether the victims could be considered as 'legitimate' targets according to the laws of war.

The previous chapters, and Chapter One in particular, provide information regarding the type of evidence required

under IHL and/or human rights law and the assessment required to prove specific abuses.

4.2 Reliability of primary sources

The allegations of violations of humanitarian or human rights standards will often come from organizations and individuals who have conducted their own fact-finding, or from the media. You should establish a record of these contacts with respect to the consistency or accuracy of information they have provided in the past, their political agenda and whether it may have affected the nature of the allegations.

4.3 Consistency of the allegation

You should compare an allegation with the information you have and your knowledge, i.e. whether an allegation ‘fits’ with what you know about the specific aspects of these types of abuse.

4.4 Validity or consistency of medical and other evidence

If you have gathered material evidence, such as medical reports, you must also check their validity. If you are not satisfied with the official medical report, you may need a second opinion.

Whenever possible, you should get the assistance of medical experts.

4.5 Reliability of testimony

If you have interviewed eye-witnesses, you must assess the interviews and cross-check the facts. Ask yourself if the testimonies are similar, or if they contradict each other.

Pay special attention to the following:

- The witnesses’ accounts of the circumstances, location, procedures, individuals involved, etc. Are they consistent with what others who witnessed similar events at the same time and place say or with the patterns known to you?
- The witnesses’ accounts of the sequence and timing of the events.
- Whether the testimony is consistent with other testimony and with any previous pattern of political killings in the country/region. Whether the witnesses contradict each other when asked the same or similar questions.
- If there are inconsistencies in testimonies, whether they are the result of the witnesses’ dishonesty or of memory lapses, exaggeration, unsubstantiated rumours, cultural differences and misunderstandings between the interviewer (or interpreter) and the interviewee.

4.6 Assessment of responsibilities and identification of perpetrators

This section discusses the various aspects involved in assessing the responsibility of the armed forces.

4.6.1 The context

You should investigate whether there are indications of increasing targeting of civilians, specific individuals or groups by the armed forces. Information about this is often available from the following sources:

- Statements made by the leadership of armed forces and media reports;
- New laws or decrees or police measures suggesting that specific individuals are targeted or activities are prohibited;

- Declaration of a state of emergency;
- Previous attacks and/or killings of specific individuals (i.e. patterns);
- Targeting of members of certain social or political groups, or people in a particular geographical area.

4.6.2 The circumstances

There are often circumstances that point to the involvement of specific armed forces or troops. The following questions are useful in guiding your investigation:

- Were specific troops seen around the location of the abuses? Where? When?
- Were 'strangers' seen around the scene? What were their characteristics (motor vehicle, clothes, etc.)?
- Did the perpetrators operate with apparent impunity, for example, by travelling during curfews or driving vehicles through check-points without difficulty?
- Was the area where the abuse took place under the authority, surveillance or control (formal or informal) of a specific troop?
- Have victims been detained, then 'disappeared' for a period and finally been found dead? Has there been any formal or informal acknowledgement of detention?

4.6.3 The method

Abuse often occurs in a particular manner or specific methods are used. You can use knowledge of patterns to discern whether it suggests the involvement of specific security forces or opposition groups. You should investigate whether a particular method of abuse had been used before by a specific branch of security forces or opposition groups

and whether the methods of sexual violence or other forms of torture are ordinarily used by specific forces.

4.6.4 The victim(s)

In some cases, you may be able to discern whether there was something about the victims that suggests specific armed forces may have targeted them. For instance, there may be an apparent motive for the abuse. You should verify if these individuals had been previously threatened or targeted and by whom. You should also verify whether the victims had been subject to regular short-term detention or questioning by police or military forces and whether they were killed shortly after a visit to a police station or army camp.

4.6.5 Responses of military or political authorities

In situations of abuse, the response of military or political authorities can give you insight into whether these authorities condone the abuse. Questions that you can ask yourself include the following:

- Did the political or military leadership try to 'justify' the abuses in any way, or vilify the victims?
- Did it claim responsibility for the abuse? Did it deny any responsibility for the abuses?
- Did it admit or agree to carrying out an internal investigation?
- In the case of killings or attacks, did it claim that the target was 'legitimate' according to the laws of war? Did it claim that all precautions had been taken to avoid unnecessary civilian casualties but that collateral damages can never be fully avoided?

DOCUMENTING DELIBERATE AND INDISCRIMINATE ATTACKS

As the majority of the civilian population, women, children and older people are particularly vulnerable to attacks by either party to the conflict, which often result in death, maiming or other injuries. Some of these attacks may be deliberate, while others are indiscriminate. The definitions and differences between the two are highlighted below.

Civilian casualties (what military spokespersons refer to as 'collateral damage') are to be expected in war. But there are clear principles that set limits on the conduct of hostilities and in particular outlaw the use of certain methods of warfare. These principles are designed to protect civilian lives to the maximum extent possible. They can be summarized as follows:

Killings and Attacks According to the Laws of War KEY PRINCIPLES

Prohibitions

- **The civilian population, including individual civilians, shall not be targeted for attacks or killings.**
- **Prisoners of war, the wounded and the sick and, more generally, anyone who is not or is no longer engaged in combat, shall not be the subject of attacks or killings.**

Not all killings and attacks are prohibited by IHL. Armed forces are not prohibited from attacking or killing individuals taking a

direct part in hostilities, such as soldiers or members of armed opposition groups. As long as those taking part in hostilities are not prisoners or have not put down their arms, they may be legally killed according to the laws of war.

Principle of Distinction

- **Parties to a conflict should at all times distinguish between the civilian population and combatants and between civilian objects and military objectives. Accordingly, they shall direct their operations only against military objectives.**

“Military objectives are limited to those objects, which, by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.” (Article 52(2) of Protocol 1)

Under international law, if it is unclear whether a target is used for military purposes, it should be assumed and treated as if it is not.

1. Deliberate Attacks or Killings

Deliberate killings are those that are intentional and have not occurred by accident or because of ignorance or self-defence. They are unlawful when the victims are civilians or persons *hors de combat*.

A deliberate attack on civilians results when an armed force intentionally targets and attacks civilians. Women and children often find themselves the victims of attacks because they are easily located in their homes by army and paramilitary patrols.

Example: Attacks on villagers in the eastern part of the Democratic Republic of Congo (DRC)

In the attacks reported below, there is very little doubt that all parties to the conflict in the DRC intentionally targeted civilians for attacks and killings, in many cases in revenge for defeat or losses. According to the authors of the report, most of the victims appear to be women, children and the elderly who had not been able to flee or who thought they would not be targeted by combatants.

“[...] After being defeated in battle by a combination of MLC (Movement for the Liberation of Congo) and Ugandan forces in July 1999, retreating FAC (Congolese Armed Forces) soldiers in Kodoro and Boso-Ngombo areas of Basankusu territory, Equateur province, reportedly killed many unarmed civilians, including women and children. Most of those killed were reportedly from the Ngombe ethnic group which the government soldiers accused of supporting the MLC. The victims included Pius Andapongo, a local chief of Boende-Moera, who was reportedly found by FAC soldiers in possession of a letter in which he had allegedly asked the MLC to intervene and stop human rights violations by the FAC in his area. The soldiers also reportedly raped many women, including Claire Mokbulu who was raped by 12 soldiers at Djombo and a 12-year-old girl who was raped by two soldiers at Boso-Nduku.

“[...] On 17 March 1999, members of the RCD (*Rassemblement Congolais pour la Democratie*) reportedly killed at least 109 people at Budaha in Burhinyi county. The massacre **followed** several days of fighting in nearby Mukungwe and neighbouring villages of Ngweshe country between members of the RCD and mayi-mayi, during which many RCD combatants were reportedly killed [...] The killings at Budaha were apparently **in revenge** for the losses the RCD suffered during the fighting [...]

“Between 15 and 20 October 1999, RCD soldiers publicly killed at least 12 women — some of whom were buried alive after being tortured, including raped — accused of witchcraft in Mwenga, South-Kivu.

“According to several human rights groups and other sources in eastern DRC, on 23 October 1999 RCD-Goma combatants shot dead at least 50 unarmed civilians, many of them women traders, at Kahungwe market which is situated some 40 kilometres north of Uvira in South-Kivu province.

“[...] In late July to early August 1999 Burundian government soldiers attacked the villages of Bulunga and Buzimba, setting many houses on fire. Some of the victims were lepers living in Buzimba.”⁵⁶

2. Indiscriminate Attacks

An indiscriminate attack on civilians results when an armed force attacks a military objective with reckless disregard for the likely impact such an attack will have on civilian lives. Its main characteristics are as follows:

Circumstances: Presence of both military objectives and civilians within a given area.

Purpose of the attack: civilians and civilian deaths are not the purpose of the attack. The attack is arguably directed at the military objective in the area. (If the attack was aimed at civilians, then it would be a deliberate rather than an indiscriminate attack).

⁵⁶ Amnesty International, *Democratic Republic of Congo: Killing Human Decency*, May 31, 2000, AI Index: AFR 62/07/00, p.20.

Consideration of the impact of the attack: The attack is launched without any or sufficient consideration of its likely impact on civilians. The means or weapons used prove that the attack forces did not properly consider the impact of the attack on civilians.

Precautions to prevent civilian casualties: The attack is launched without any precautions taken to avoid civilian casualties. IHL specifically identifies a number of precautions that parties to the conflict should take before launching an attack on an area in which civilians are present.

2.1 Types of indiscriminate attacks

Indiscriminate attacks may include the following (in accordance with article 51 of Additional Protocol 1):

2.1.1 Attacks that are not directed at a specific military objective

These attacks include engaging in ‘blind fire’ into enemy territory, firing without any reliable information on supposed targets, orders for aircrews to release bombs anywhere over enemy territory before returning to base, attacks which treat as one military objective, and subject to ‘area bombardment’, a number of clearly distinct and separated military objectives located among the civilian population.

Example:

In the case below, the two girls narrowly escaped death, having found themselves caught in an armed confrontation.

“[...] *They almost killed two of my daughters in an armed confrontation. The girls had gone to wash clothes in the stream and the guerrillas arrived to bathe. Then an army*

patrol arrived and the girls ran back to the house with the patrol firing at them [...]"⁵⁷

Example:

The attack described below reveals a reckless disregard for civilian lives by the armed forces. In some cases, soldiers from the other party to the conflict had already evacuated the areas before the attack took place, in others, civilians fled early in the course of the attack. In addition, there does not appear to have been any attempt to distinguish between civilians and specific military targets.

*"From mid-October onwards, the AFDL (Alliance of Democratic Forces for the Liberation of Congo-Zaire) attacked the refugee camps in South-Kivu, one after another [...] Some or all of the camps had a military presence. The United Nations High Commissioner for Refugees (UNHCR) had sponsored a contingent of Zairian soldiers to provide security in the camps, and some Zairian troops had been sent to areas near refugee camps as part of the counter-insurgency operations. In at least some instances, the Zairian soldiers fled before the attack started. The camps also contained armed members of the former Rwandese army and interahamwe militia responsible for the genocide in Rwanda in 1994, and members of a Burundian armed opposition group. However, the assaults were not confined to military objectives, and there is evidence of indiscriminate killings of unarmed victims in the course of some of the attacks."*⁵⁸

57 Extract from Amnesty International, *Just what do we have to do to stay alive? – Colombia's internally displaced: dispossessed and exiled in their own land*, London: Amnesty International, AMR 23/048/1997, 1997.

58 Extract from Amnesty International, *Zaire: Hidden from Scrutiny*, 1996 (Index: 62/029/1996)

2.1.2 Attacks that employ a method or means of combat that cannot be directed at a specific military objective

The weapons used can be said to be indiscriminate by their very nature because they are not accurate, such as anti-personnel landmines and cluster bombs. The use of some weapons is strictly prohibited under IHL.

Example: mines

Scores of civilians, even after the war has ended, are killed or maimed because of the use of indiscriminate weapons such as anti-personnel mines or anti-tank mines by all parties to a conflict. In the large majority of cases, armed forces do not erect warning signs to prevent unlawful casualties among civilians. They also often lay mines where they are most likely to injure or kill civilians, such as on roads, near wells, around villages and in fields. They also do not always keep records of where mines have been laid, rendering any de-mining efforts after the war has ended very difficult and dangerous. In addition to being indiscriminate in their effect, anti-personnel or anti-tank mines also cause unnecessary suffering to those taking an active part in a conflict.

In 1997, the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction (Mine Ban Treaty) was signed by 122 countries and came into force on March 1, 1999. By May 25, 2000, 137 states had signed the Mine Ban Treaty, but there are still many that have not yet signed. Some of these countries are major producers or stockpilers, such as China, India, Pakistan, Russia and the USA.

Example: cluster weapons

Cluster weapons are not banned under international law, but by their nature they are very likely to violate the prohibition against indiscriminate attack. In addition, unexploded submunitions are a continued threat to anyone who comes into contact with them. According to press reports, dozens of civilians have been killed in Kosovo since the end of the air campaign by the accidental detonation of unexploded cluster bomblets and landmines. One year after the conflict, there are still thousands of unexploded canisters in Kosovo alone. Many of these bomblets are embedded beneath the surface of the soil and are not easily detected.

2.1.3 Attacks that are likely to hit military objectives and civilians or civilian objects without distinction because of the method or means of combat employed

This category refers to the use of weapons that affect wide areas, or attacks on military objectives whose destruction is likely to impact on civilians.

Example: Attacks on chemical plants or nuclear power plants.

3. Evidence and Information Required

In essence, the investigation of attacks and killings require the following actions to be carried out:

- Monitoring of the armed conflict;
- Keeping track of all allegations of attacks and killings and their evolution;
- Identifying patterns regarding attacks and killings;

- Identifying patterns regarding the identity of the victims, the locations of the attacks, the methods used, the circumstances, the alleged perpetrators, official responses;
- Conducting fact-finding missions, and asking yourself the following key questions:
 - Is it safe to go to the scene? Are there alternative places where I can gather further information and evidence?
 - What kind of evidence do I need in order to establish that abuse took place? (see below)
 - Who is most likely to give me access to this evidence?
 - Assessing information, including the following key issues:
 - Whether the reported allegation or incident violates international humanitarian standards (see below);
 - Reliability of the primary (and at times only) source;
 - Consistency of the allegation with the pattern of abuse;
 - Validity or consistency of medical and other evidence;
 - Reliability of testimony;
 - Responsibilities and identification of the perpetrators.

In addition to the general steps identified in Chapters Three and Four of this manual, to which you should refer, the investigation and assessment of attacks and killings require the following specific set of information and evidence:

3.1 Identity of the Victims

Evidence

You must prove that the victims were civilians or persons *hors de combat*

Information required

- Victims' names, occupation, occupation at the time of the attack or killing, age, ethnicity, possible links to armed forces, etc.;
- Number of civilians killed or wounded;
- Number of armed forces' members killed or wounded.

Assessment

Did the victims belong to any of categories considered to be illegitimate targets under IHL? (see p. 112)

3.2 Military objectives

Evidence

You must discover whether there were any military objectives in the area.

Information

Military objectives in the area; how far they are from civilians; presence of military objectives in the area in the past and how long ago they were there; timing and duration of the attack.

Tips

Ask witnesses to identify the approximate location of the civilian population, the military presence and potential targets, or to assess the approximate distances. If you are outside the area where the attack took place, refer to a detailed map.

Assessment

- If there were no military objectives at the time of the attack, you can safely conclude that the civilians were deliberately targeted.
- If there were military objectives at the time of the attack, then the attacks may have been indiscriminate.

3.3 Precautions taken before the attack

Evidence

You must prove that no or insufficient precautions were taken before the attack.

Information

- Ask witnesses whether they received any warning (i.e. leaflets dropped from airplanes asking civilians to leave; broadcasts informing them that they would be attacked) and how much time after these warnings they had to leave.
- Ask attacking forces what type of precautions they took to prevent loss of civilian life, i.e. how much knowledge did they have of the area under attack, and what, if any, type of system they used to locate their target (i.e. forward observers, aerial surveillance, radar systems).

Assessment

- Compare the precautions taken with the list of precautions required according to IHL (provided at the end of this section). If no warnings were issued to civilians, you can argue that the attack was indiscriminate (unless it appeared that warning them was totally impossible).

3.4 Nature and accuracy of the weapons

Evidence

You may need to prove that the weapons used were inherently indiscriminate or that they lacked in accuracy.

Tips

Military personnel who were present at the time of the attacks are your best sources for this type of inquiry. If you are unable to interview them, ask other eye-witnesses to describe the attacks (i.e. the noise made by the bombs, their effects, etc.). Their information may allow your contacts who have military expertise to draw conclusions on what kinds of weapons were used.

Information

- The type of weapons system used and its accuracy, taking into account the range at which it was fired, the size of the military objective, the weather or other conditions (including any immediate threats faced by those firing it);
- The type and quantity of ammunition used in the attack;
- If the attack was from the air (warplane, helicopter), the type of aircraft used in the attack and height and distance from the target.

Assessment

- If the weapons used were prohibited under IHL or considered as inherently indiscriminate such as landmines, you can conclude that the attack was indiscriminate and the killings unlawful.
- If the weapons used were inaccurate because of the circumstances (i.e. bad weather), the forces attacking were under the obligation to stop the attack. If they failed to do so, the killings should be considered as unlawful.

4. Challenges to Documentation

In your investigation of killings and attacks, you are likely to face many challenges. The following section aims to provide you with possible solutions to address these challenges.

4.1 Logistical and security risks

The best way to analyze any particular incident in which allegations of unlawful civilian killings are made is to send a research mission to the site to investigate as soon as possible after the attack. The promptness of the mission is essential in order to assess the damage suffered before the evidence is removed or altered.

However, in many cases, you will be unable to get to the area where the attack took place because of logistical or security risks. You will be unable to interview survivors, gather material evidence, such as bullets or bomb shells, or assess the distance between the possible military objectives and the civilians.

Possible solutions

- Please refer to the section on fact-finding in Chapter Four of this manual.
- Attempt to interview those who have fled the area. They include eye-witnesses to the attack (who may have found refuge in other regions or in IDP or refugee camps. Some key witnesses may be able to escape and you may gain access to them through your contacts). Others who you may find it useful to interview include military or civilian personnel who have left the area, especially ICRC or Red Cross/Red Crescent personnel, medical staff who treated casualties and UN and NGO staff.

- Procure and study detailed accurate maps of the area.
- Gather and study the armed forces' public statements and reactions to allegations, its reports on how it conducted the air campaign, its accounts of particular incidents and general explanations of operational practices.
- Gather and study news reports, government and UN reports.
- Consult with experts.
- Meet with official delegations to discuss your concerns and to listen to their version of the attacks.

4.2 Lack of military or weapon expertise

You may find yourself unable to assess the nature of the methods or weapons used, whether their effect could be described as inherently indiscriminate, and whether they may even be unlawful weapons by their very nature.

Possible solution

The only approach to this challenge, besides building your own expertise over time (through researching such abuse and consulting specialized journals), is to seek assistance from experts in military engagement and weapons. Only then will you be able to reach some conclusions regarding the weapons or the methods used, i.e. whether they may have been indiscriminate. To assist these experts in their analyses and conclusions, you should gather as much information as possible and get detailed testimony from eye-witnesses.

4.3 Deliberate versus indiscriminate attacks

You may investigate many situations in which it is not always clear whether the forces deliberately targeted civilians or whether they sought to attack a military objective

without sufficient consideration of the impact of the attack on civilians.

Solution

Remember that it may not always be necessary to determine conclusively whether a particular attack was deliberate as opposed to indiscriminate — if it was either, any civilian deaths resulting from it were unlawful.

4.4 Legitimate versus illegitimate targets

Parties to the conflict may argue that the individuals targeted for killings were legitimate, in other words, that they were not civilians or persons *hors de combat*. This line of argument may be especially used in the case of civilians who may have some links with the armed forces, such as public servants, or, indeed, those providing shelter to armed forces.

Possible solutions

Please refer to the list at the end of this section, which includes persons who should always be considered as illegitimate targets, according to IHL and human rights work.

Most importantly, you should remember that there must be a presumption of civilian status unless shown otherwise. The alleged perpetrators should explain why they consider that their target was a legitimate one. It will then be up to you to prove that this was not the case.

4.5 Collateral damages

Parties to the conflict may argue that an attack was aimed at a legitimate military objective and that the deaths of civilians were unfortunate but that the laws of war do not

preclude collateral damages. For instance, NATO has argued that its attack on the Serbian state television and radio station (RTS) on April 23, 1999 was legitimate because RTS was a propaganda organ and that propaganda is direct support for military action. Both the ICRC and AI have convincingly demonstrated that the target was not a legitimate military objective, that the resulting civilian casualties were unlawful, and therefore that the attack constituted a war crime. They relied on the definition and expert interpretation of military objective provided by Article 52(2) of Protocol 1.⁵⁹

Possible solutions

Familiarize yourself with the definition of military objectives provided by IHL (see above).

Many IHL standards have been interpreted by the ICRC, legal or military experts. You should study their interpretations, review the literature on the subject, if available, ask legal students to find legal documentation on the subject, etc. Whenever possible, you should contact ICRC representatives, or legal or military experts for their opinion.

Even if the target was indeed legitimate as argued, this does not necessarily imply that the killings of civilians were legal. Two questions must be asked: Were the means or weapons used accurate enough? Were all necessary precautions taken to prevent civilian casualties?

4.6 Precautions taken to avoid civilian casualties

Parties to the conflict may argue that they took all necessary precautions to avoid civilian casualties.

⁵⁹ Amnesty International, NATO/Federal Republic of Yugoslavia. *Collateral Damage" or Unlawful Killings? Violations of the Laws of War by NATO during Operation Allied Force*, June 2000, AI Index EUR 70/18/00.

Possible solutions

Compare the official reports on the precautions taken with the list of measures identified by the laws of war, which parties to a conflict should follow before attacking an area with known civilian presence. Even the official version may indicate gaps in what the forces should have done.

Compare the official reports on the precautions taken with what eye-witnesses are reporting. There may be discrepancies, i.e. the armed forces may claim to have taken precautions that, in fact, were not implemented. The failure on the part of the attacker to take such measures should be seen as demonstrating the unlawful nature of the attack.

4.7 Use of human shields

Force A (responsible for the attack) may argue that Force B was using civilians as human shields.

Possible solution

The laws of war provide you with a response to this type of assertion. The use of human shields to prevent an attack on military targets is prohibited, so Force B would be clearly violating the laws of war. However, this violation does not justify the attack — in other words, under IHL, Force A still has the legal obligation not to attack civilians. Furthermore, again by virtue of IHL, the presence within the civilian population of individuals who do not fall under the definition of civilians does not deprive the population of its civilian character.

4.8 Difficulty in determining responsibility

You may find it difficult to determine which forces were responsible for the attacks or the killings, whether deliberate or indiscriminate. In some situations, all parties to the

conflict may deny responsibility for particular attacks or killings, or accuse the other parties to have launched the particular attack or to be responsible for the particular killings.

Possible solutions

Here, your knowledge of patterns is essential. Although you may never be able to reach definite conclusions, you may be able to link the attack to an overall pattern and *allege* where responsibility lies. The circumstances and targets of the attacks, the methods and type of weapons used, the identity of the civilians, etc. may all fit a particular pattern.

Please refer to Chapter Four of this manual for a list of patterns and key issues, and questions to guide the assessment of responsibilities.

4.9 Exposing the gender dimension of the attack

Although an increasing number of reports on violations of the laws of war list the gender and age of victims, or highlight the fact that many victims were women and children, many other gender-based dimensions of the attacks and the killings are overlooked. The reasons may include lack of time, too many abuses to document and absence of a gender-sensitive approach.

Possible Solutions

As stressed throughout this manual, abuses in armed conflicts are not gender-neutral. Some of the objectives of your monitoring and advocacy work, besides seeking redress and justice for the victims, is to ensure that the voices of women in armed conflicts and post-conflict situations are not silenced, to shape knowledge, and to question

traditional versions of warfare and history. It is therefore essential that in the course of your documentation and reporting, you always seek to expose the gender-specific dimensions of the attacks or killings, as well as their possible interaction with other identity markers such as ethnicity, religion and race.

The key issues that guide this exercise have been identified in another manual.⁶⁰ They can be summarized as the research and analysis of the impact of gender and other identity markers on the circumstances, causes and consequences of attacks, the identity of the victims and their access to remedies.

5. List of Illegitimate Targets of Attacks

Individuals killed who belong to any of the following categories are considered to be illegitimate targets. Their killing is therefore unlawful.

- Civilians who have no direct link to armed forces, the government, or armed opposition groups;
- Civilian officials who perform a public function which is not directly related to the conduct of hostilities (such as mayors of cities or villages);
- Civilians performing contract work for armed forces, provided that this work is not directly related to the conduct of hostilities (such as construction workers);
- Public servants (provided they are not members of the armed forces);
- Workers in factories related to the war (such as armament factories);

60 Agnès Callamard, *Methodology for Gender-Sensitive Research*, AI-Canada and ICHRDD, Montréal, 1999.

- Civilians who voluntarily or involuntarily provide shelter or food to members of armed forces;
- Medical personnel (such as Red Cross and Red Crescent personnel);
- Civil defence personnel (meaning persons involved in organizing assistance to the civilian population);
- Soldiers who are *hors de combat* (such as wounded, sick or captured soldiers, or soldiers who have surrendered);
- Religious personnel, whether military or civilian, attached to the armed forces and exclusively engaged in offering spiritual assistance;
- Civilian journalists who are attached to or who accompany armed forces.

6. Standards Related to Precautions to Prevent Civilian Casualties or Collateral Damages

Articles 57 and 58 of the Additional Protocols to the Geneva Conventions relating to the Protection of Victims of International Armed Conflicts state the following:

1. *In the conduct of military operations, constant care shall be taken to spare the civilian population, civilians and civilian objects.*
2. *With respect to attacks, the following precautions shall be taken:*
 - (a) *those who plan or decide upon an attack shall*
 - (i) *do everything feasible to verify that the objectives to be attacked are neither civilians nor civilian objects*

and are not subject to special protection but are military objectives within the meaning of paragraph 2 of Article 52 and that it is not prohibited by the provisions of this Protocol to attack them;

(ii) take all feasible precautions in the choice of means and methods of attack with a view to avoiding, and in any event to minimizing, incidental loss or civilian life, injury to civilians and damage to civilian objects;

(iii) refrain from deciding to launch any attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated;

(b) an attack shall be cancelled or suspended if it becomes apparent that the objective is not a military one or is subject to special protection or that the attack may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated;

(c) effective advance warning shall be given of attacks which may affect the civilian population, unless circumstances do not permit.

3. When a choice is possible between several military objectives for obtaining a similar military advantage, the objective to be selected shall be that the attack on which may be expected to cause the least danger to civilian lives and to civilian objects.

4. In the conduct of military operations at sea or in the air, each Party to the conflict shall, in conformity with its rights and duties under the rules of international law applicable in armed conflict, take all reasonable precautions to avoid losses of civilian lives and damage to civilian objects.

5. No provision of this Article may be construed as authorizing any attacks against the civilian population, civilians or civilian objects.

Art. 58. Precautions against the effects of attacks

The Parties to the conflict shall, to the maximum extent feasible:

(a) without prejudice to Article 49 of the fourth Convention, endeavour to remove the civilian population, individual civilians and civilian objects under their control from the vicinity of military objectives;

(b) avoid locating military objectives within or near densely populated areas;

(c) take the other necessary precautions to protect the civilian population, individual civilians and civilian objects under their control against the dangers resulting from military operations.

DOCUMENTING SEXUAL VIOLENCE

Violence against women, sexual violence in particular, is neither an accident of war, nor an incidental adjunct to armed conflicts. Individual and historical accounts, court testimony, and NGO reports all testify to the readiness with which parties to a conflict resort to violence against women in the conduct of warfare. Its widespread use in armed conflicts reflects the individual, political and military gains it gives the perpetrators, and the terror it holds for women and their communities. All acts of sexual violence constitute a weapon of war that is being used for one or several purposes: rewarding soldiers, spreading political terror, destabilizing a society, intimidating, humiliating, and extracting information and as a method of ‘ethnic cleansing’.

These acts of violence and domination are committed within a context characterized by the breakdown of the policing or judicial system, of the family or of the community, all of which may have provided women some degree of protection or redress before the conflict erupted. In fact, in many situations, the breakdown of these mechanisms and networks may prove to further increase women’s vulnerability to sexual violence, as perpetrators are likely to be found not only within the regular armed forces, but also within paramilitary groups, the police or the community. Evidence from camps for displaced persons also indicate that armed conflicts and flight are likely to result in an increase in violence against women within the family, while an overall situation of deprivation means that women take more risks to feed

their family and may 'submit' to non-consensual sexual relations out of pressure or necessity.

The consequences of sexual violence remain for years, sometimes an entire lifetime. They include psychological trauma, wounds, maiming, children resulting from rapes, infertility and life-threatening diseases. To the absence of readily available medical care and medical consequences should be added social pressure and stigmatization of the victims and the political unwillingness or inability to address violence against women. These dynamics persist long after the conflict has ended, further contributing to the trauma, alienation, and the sense of injustice that women experience.

The consequences of sexual violence are further explored in Chapter Nine of this manual on post-conflict situations. But knowledge of these consequences should guide every step of your work, from monitoring the status of women and allegations, interviews of the victims and witnesses, to assessment of the information.

1. Definitions

Sexual violence includes many different types of acts, such as rape, indecent assault (i.e. fondling a woman's breasts), sexual slavery, forced marriage, forced impregnation and forced maternity and sexual mutilation.

Acts of sexual violence are prohibited under both international human rights law and humanitarian law.

CRIMES OF SEXUAL VIOLENCE

- Under customary international law, rape and other forms of sexual violence committed by any parties to a conflict, whether international or non-international, constitutes **torture**.
- Rape and other forms of sexual violence by combatants in the conduct of both types of armed conflict are now recognized as **war crimes**, most recently in the Rome Statute of the International Criminal Court.
- When acts of sexual violence are committed on a systematic basis or a large scale, or, as upheld in the Rome Statute, when they are committed as part of a widespread or systematic attack directed against any civilian population, they are considered as **crimes against humanity**.
- Acts of sexual violence constitute a **grave breach of the Geneva Conventions**.
- Sexual violence may also constitute an element of **genocide**.
- In all the above cases, acts of sexual violence are subject to **universal jurisdiction**.

The Geneva Conventions do not define what constitutes sexual violence. Human rights law provides definitions of some acts of sexual violence, such as slavery, but not of others, such as rape.

This situation, however, evolved considerably in the 1990s with the judgements of the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR), and with the negotiation and adoption of the *Rome Statute* for the International

Criminal Court (ICC), and the ensuing work in determining the Rules of Procedures and Evidence for each of the crimes identified by the *Rome Statute*. The definitions arising from the work of the ICTY and ICTR and those included in the *Rome Statute* are especially useful to your documentation work and have filled a fundamental international legal gap.

1.1 Rape

The ICTR, in its Akayesu decision of September 2, 1998, has provided the international community with the widest interpretation of the crime of rape at the time of writing and one which is considered hard law, that is, binding on the parties. The court further noted that coercive circumstances did not need to be proven by a show of physical force. Threats, intimidation, extortion and other forms of duress that prey on fear or desperation could be considered coercion.

DEFINITION

Rape consists of a physical invasion of a sexual nature, committed on a person under circumstances which are coercive. Sexual violence, including rape, is not limited to physical invasion of the human body and may include acts which do not involve penetration or even physical contact.

The ICC has defined rape as the invasion of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body. The invasion must be committed by force, threat of force, coercion, by taking advantage of a coercive environment, or against a person incapable of giving genuine consent.

The key elements to keep in mind are that (i) rape may include vaginal, anal or oral penetration; (ii) a single act of rape is sufficient to be prosecuted and to constitute a war crime; (iii) a coercive environment is not limited to the use of physical force but may include threats, intimidation, extortion, etc.

Example: Sierra Leone

Mariatu (not her real name), now aged 16, was abducted from the village of Mamamah, some 40 kilometres from Freetown, as rebel forces retreated from the capital in January 1999. Both her parents were killed by rebel forces when they attacked the village. Mariatu was repeatedly gang-raped by a number of rebels. If she attempted to resist rape she was denied food and beaten.

*Often victims of rape have suffered further brutality, including having objects inserted into their vaginas. A 14-year-old girl was stabbed in the vagina with a knife because she had refused to have sex with the rebel combatant who abducted her. Another woman had small pieces of burning firewood put into her vagina. One 16-year-old girl was so badly injured after repeated rape that, following her escape, she required a hysterectomy. Beatings have been common and most victims who have subsequently been released have bruising.*⁶¹

Example: Chechnya

“Musa” witnessed a 14-year-old girl being raped by a dozen prison guards in the corridor outside the cells in which he and other detainees were held. The girl had come to visit her detained mother and for the price of 5,000 roubles she was permitted a five-minute meeting. Her five-minute meeting

⁶¹ Amnesty International, *Sierra Leone: Rape and other forms of sexual violence against girls and women*, London: AI, 2000 (AI Index: AFR 51/35/00).

became a four-day ordeal during which she was locked in a cell, beaten and repeatedly raped by guards.⁶²

1.2 Sexual Slavery

According to the 1926 Slavery Convention, slavery should be understood to be the status or condition of a person over whom any or all the powers attached to the right of ownership are exercised, including sexual access through rape or other forms of sexual violence.

The ICC defines the crime of ‘enslavement’ as the exercise of any power related to the right of ownership over a person, including in the course of trafficking in persons, in particular women and children. Sexual slavery is not specifically defined in the ICC Statute.

Although the ICC does not detail the crime of sexual slavery, prosecutors for the ICTY have sought to indict eight men on various grounds, including on the grounds of sexual slavery, in the so-called Foca indictment, first issued on June 26, 1996. At the time of writing, the judgement, and the definition of sexual slavery, were not yet known.

The circumstances leading to the Foca indictment are described in this section, along with a description of sexual slavery in another context, that of the Northern Uganda conflict.

The review of both situations allows some conclusions to be drawn regarding the crime of sexual slavery.

Sexual slavery consists of women and girls being the property of one or several persons and forced to engage in sexual acts with their owner or owners.

62 Amnesty International, *Chechnya: Rape and torture of children in Chemokozovo “filtration camp”*, News Service: 056/00; AI INDEX: EUR 46/19/00; March 23, 2000.

Example: Foca, Former Yugoslavia

*Sexual assaults, rapes, gang rapes and humiliation were a daily occurrence from the outset of their detention [...] they found themselves in different numbers at different houses, moved to and from, but they would always have to serve the men sexually as well as to perform household chores.*⁶³

As they are considered ‘property’, their ‘owners’ may sell, barter, or lend them to others to provide sexual services or for forced labour.

Example: Foca, Former Yugoslavia

*Usually the girls and women were taken out from the detention centres, were kept for a couple of hours and then returned. But while most women were eventually transferred to Montenegro and released mid-August 1992, several girls and young women were kept as slaves in different houses and apartments up to February 1993. They had to perform household chores and were kept as private property of some of the men. Some of them were eventually sold to Montenegrin soldiers who, again, kept them as slaves.*⁶⁴

The sexual slavery of women and girls is regulated and organized.

Example: Foca, Former Yugoslavia

The testimonies of witnesses showed that the soldiers would mostly come at night to select women and girls when they were off-duty from fighting on the front line or mopping up surrounding villages. Not every soldier, however, was allowed to do so. There are indications that soldiers needed permis-

63 From Amnesty International, *Bosnia-Herzegovina: How can they sleep at night?*, September 1997 (Index: EUR 63/022).

64 Ibid.

sion from either the Chief of Police in Foca or from their paramilitary leaders, who were in charge of the houses in which the girls and women were raped.⁶⁵

The enslavement of women and girls is preceded by their abduction, and the use of various forms of violence against the victims and others, including killings of family members.

Example: Northern Uganda

*“One afternoon [in 1996], the rebels came and asked for my two children, a boy and a girl. My daughter was 14 years old and had already developed breasts. My son was 13 years old. My daughter was captured and remained with the rebels for 2 days. My son remained in the bush for 2 months and was rescued [by the UPDF (Uganda People’s Defense Force)] after an ambush [...] The day the rebels captured my children they beat me terribly and raped me. There were many of them. I was left unconscious in my compound. [...] My daughter was raped as well: the commander took her as his wife the same day she was abducted.”*⁶⁶

Sexual slavery is often accompanied by forced labour, including domestic chores. In some situations, women and girls are also forced to fight.

Example: Northern Uganda

Life with the rebels is one of unrelenting hardship and privation for both girl and boy abductees. It begins immediately following the abduction when the newly captured children are forced to carry heavy loads that have just been looted from the villages or are part of the typical logistical equipment

65 Ibid.

66 Amnesty International, *Uganda: Breaking God’s Commands: The Destruction of Childhood by the Lord’s Resistance Army*, 1997 (AI Index: AFR 59/01/97).

*of armed forces, including cooking pots, water, jerrycans, clothes, etc. Whether in Sudan or Uganda, both boys and girls are expected to provide domestic services, including carrying heavy loads, cooking, fetching water and wood, etc. After military training, girl soldiers continue to provide domestic services, whether in military campaigns or not, assisted in their tasks by newly abducted girls and boys.*⁶⁷

In some cases, as in Northern Uganda or Sierra Leone, sexual slavery of women and girls may also involve them being forced to marry their owners.

Example: Sierra Leone

*Studies by UNICEF have shown that 75% of abducted girls and young women have been sexually abused; other estimates put the figure at 90%. In some cases girls and women have been forced to become the sexual partner or ‘wife’ of a single combatant. In other cases they have been abused by several combatants.*⁶⁸

1.3 Other Acts of Sexual Violence

Forced pregnancy is defined in the *Rome statute* as the unlawful confinement of a woman forcibly made pregnant with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law.

Example: Foca

Fikreta’s four-year-old daughter was also taken with her; she was able to watch through an open door as her mother was stripped, searched for valuables, and as a pistol was put

67 Ibid.

68 Amnesty International, *Sierra Leone: Rape and other forms of sexual violence against girls and women*, London: AI, 2000 (AI Index: AFR 51/35/00).

to her head. She reported that she was then raped by four men. "They told me they would like us to give birth to Cetnik children [...] They told me 'we will do everything so that you never even think of returning.'"⁶⁹

Persecution: According to the *Rome Statute*, gender-based persecution involves the intentional and severe deprivation of fundamental rights by reason of the victim's gender [*Rome Statute*, Articles 7(1)(h) and 2(h)]. Gender persecution may be based solely on gender or be combined with other grounds, such as political opinion or ethnicity. Persecution may involve acts which, in and of themselves, are less atrocious than other crimes, but when taken together amount to an extreme deprivation of fundamental rights so as to reach the level of a crime against humanity. The crime of persecution must be "in connection with any act referred to in [the crimes against humanity section under the Rome Statute] or any crime within the jurisdiction of the Court."

Example: Afghanistan

The most extreme example of gender-based persecution is the sexual apartheid regime maintained by the Taliban in Afghanistan.

Enforced Sterilization

According to the *Rome Statute*, enforced sterilization occurs when the perpetrator deprives one or more persons of biological reproductive capacity which was not justified by medical or hospital treatment or carried out with the victim's genuine consent.

69 From Amnesty International, *Bosnia-Herzegovina: How can they sleep at night?*, September 1997 (Index: EUR 63/022).

Examples

Direct deprivation of reproductive capacity would include forcing women to undergo hysterectomies. Indirect deprivation could include affecting women's reproductive health through the deployment of chemical weapons, nuclear weapons testing, or environmental damage.

According to the *Rome Statute*, other acts of sexual violence consist of the perpetrator carrying out an act of a sexual nature with one or more persons, or causing such persons to engage in an act of a sexual nature by force, threat of force, coercion, or by taking advantage of a coercive environment or of such person's inability to give genuine consent.

Examples: fondling a woman's breasts or other parts of the body, forced nudity, etc.

1.4 Coercion

Coercion includes fear of violence, duress, detention, psychological oppression or abuse of power. Thus, the crime of rape could include situations in which the victim submits to a sexual act to avoid harm, to obtain the necessities of life, or for other reasons that have effectively deprived her/him of the ability to consent.

Example: Sierra Leone

*Girls and women abducted by rebel forces have been raped as a matter of course. Many have been threatened that they would be killed if they tried to resist rape. One rape victim quoted the combatant who abducted her as saying: "You don't understand. This is the reason we go and capture you people. If you don't sleep with me today, I'll kill you."*⁷⁰

70 Amnesty International, *Sierra Leone: Rape and other forms of sexual violence against girls and women*, London: AI, 2000 (AI Index: AFR 51/35/00).

Example: East Timor

*“Indonesian academic George Aditjondro [...] has conducted extensive research on the social and environmental impact of Indonesia’s invasion of East Timor. He concluded that circumstances surrounding the military occupation have resulted in sexual harassment being rife. Aditjondro’s research led him to conclude that the more prevalent form of sexual relations between soldiers and East Timorese women was as a result of military pressure.”*⁷¹

2. Specific Cases

2.1 Systematic rape and sexual enslavement in Foca⁷²

The conflict in Foca, a town in the south of Bosnia-Herzegovina near the border with Montenegro, began in early April 1992. As Bosnian Serb and Yugoslav armed forces took control of the town and surrounding villages, Bosniacs (Bosnian Muslims) and Bosnian Croats were rounded up and arrested or kept confined in their homes. Men were taken to a number of detention centres, including one where hundreds if not thousands were detained, the *Kazneni Popravni Dom* (KPD) prison in Foca; many are still ‘missing’ from that prison, although it is likely they were killed. Women and girls were held in those centres as well as in places organized specifically for sexual enslavement or rape.

One place where scores of women, children, and the elderly were held in inhuman conditions was the Partizan Sports Hall. According to testimony of those who were detained

there, women were taken every night to be raped, both within the premises of the Partizan Sports Hall and to other locations. Furthermore, women and girls who were injured because of sexual abuse or because of beatings received no medical care, the prisoners were denied blankets or towels and given only meagre amounts of food. Two women reportedly died there due to beatings.

One 12-year-old girl was detained at the Partizan Sports Hall in August 1992. During her 10-day detainment, she said that she was taken from the centre 10 times to be raped; her mother was taken twice.

One night in September, a group of Bosnian Serbs took a group of women and their children from the Partizan Sports Hall to a nearby apartment building; three of them were Sanela, Fikreta and Nusreta [these names are pseudonyms; their real names are known to AI]. Sanela reported: “I was raped by two of them. Then they brought in more *Cetniks*⁷³ who wanted to rape me. I said no. They said that they would throw my child out the window. I cried and screamed, and they did nothing.”

Rape was a systematic practice in Foca. The ICTY has issued an indictment against eight men, several of whom are alleged to have directly participated in the repeated rapes over several months of two victims who were allegedly detained and repeatedly and systematically raped for more than six months. Both were held in numerous detention centres, including the Buk Bijela settlement, the Foca High School and the Partizan Sports Hall (where they were held

71 Amnesty International, *Women in Indonesia and East Timor*, ASA 21/51/95, p.14.

72 Source: Amnesty International, *Bosnia-Herzegovina: How can they sleep at night?*, September 97 (index: EUR 63/022).

73 *Cetniks* were Serbian fascists in the Second World War. Although some Serb paramilitary troops used the term to refer to themselves in the recent conflict, most find the term derogatory. The term is also sometimes used to distinguish Bosnian Serbs supportive of Republika Srpska from those loyal to the Federation of Bosnia-Herzegovina.

with scores of other detainees), as well as being held in sexual enslavement with several other women in private residences, including Nusret Karaman's house and an apartment in the Brena apartment complex.⁷⁴

The eight men indicted by the Tribunal are accused of committing gang rape, systematic rape, sexual assaults, torture and enslavement of Bosnian women and girls. According to the indictment, "Acts of forcible sexual penetration of a person, or forcing a person to sexually penetrate another [...] can constitute an element of a crime against humanity, violations of the laws and customs of war, and a grave breach of the Geneva Conventions."⁷⁵

This is the first trial at the ICTY in which the rape and sexual enslavement of Bosnian Muslim women was seen as a crime against humanity. In previous cases, rape has been regarded as a violation of the rules or customs of war. In his opening statement, prosecutor Dirk Ryneveld stated, "What happened to these Muslim women occurred purely because of their ethnicity and their religion and because they are women."

The trial of three of the indicted men began on March 20, 2000. The three are jointly accused of 33 counts of crimes against humanity and violations of the rules and customs of war, and charges against them include rape, torture, enslavement and deprivation of dignity.

All three men are accused of personally committing rape, and of bringing women to locations where they were raped by others, and of taking part in an organized campaign

of rape of Bosnian Muslim women in Foca. Several of the women who were raped have already testified at the ICTY; others are testifying in secret to guard their identity and to protect them from retribution from other indicted men still at large, or their associates.

Extract from the ICTY Indictment COUNTS 45-48

Enslavement and Rape of FWS-75, FWS-87 and Seven Other Women in Karaman's House

8.1 Pero Elez, a Serb paramilitary leader in a position of regional authority commanded an elite unit of Vukovar fighters. Pero Elez's headquarters were in the Miljevina Hotel. On 2 August 1992, Dragoljub Kunarac, in concert with Pero Elez, took FWS-5, FWS-87 and D.B. from the Montenegrin headquarters in Foca to the Miljevina Hotel because the women had spoken to journalists the day before about the living conditions in Partizan Sports Hall. Pero Elez ordered the detention of the three women in a house, which was close to the Hotel [...] Some were as young as twelve and fourteen years of age. The number of women and girls detained at Karaman's house between 2 August 1992 and at least until 30 October 1992 totalled nine. RADOVAN STANKOVIC, a soldier from the elite unit commanded by Pero Elez, was in charge of Karaman's house after the death of Pero Elez. RADOVAN STANKOVIC ran Karaman's house similar to a brothel.

8.2 In contrast to Partizan Sports Hall, the detainees at Karaman's house had sufficient food. They were not guarded or locked inside the house. The detainees even had a key they could use to lock the door and prevent soldiers, not belonging to Pero Elez's group, from entering. The detainees were also given the telephone number of the Miljevina motel, and were told that they should call this number if any soldier without authorization tried to enter the house. When

74 Information from the indictment of eight people confirmed on June 26, 1996 by the Tribunal, Case No. IT-96-23- I.

75 Foca indictment, at paragraph 4.8.

the women did call this number, either RADOVAN STANKOVIC or Pero Elez would come to prevent other persons from entering the house. Although the detainees were not guarded, they could not escape. They had nowhere to go as they were surrounded by Serbs, both soldiers and civilians.

- 8.3 FWS-75 and FWS-87 were detained in Karaman's house between or about 3 August until or about 30 October 1992, together with 7 other women. Pero Elez treated the women as his personal property.
- 8.4 During the entire period of their detention at Karaman's house, FWS-75, FWS-87 and the other female detainees were subjected to repeated rapes and sexual assaults at night. All the perpetrators were Serb soldiers who belonged to Pero Elez's group. Among the soldiers who frequently raped FWS-75 and FWS-87 (vaginal and anal penetration) was RADOVAN STANKOVIC.
- 8.5 The first time both women were raped in Karaman's house was on or about 3 August 1992, shortly after their arrival. An unidentified soldier raped FWS-75 (vaginal penetration) while RADOVAN STANKOVIC raped FWS-87 that day.
- 8.6 In addition to the rapes and other sexual assaults, all the female detainees were forced to work for the Serb soldiers, washing uniforms, cooking and cleaning the house. FWS-87 was taken three times from Karaman's house to other buildings in Miljevina. On these occasions, she was forced to clean rooms in the buildings, cook for the soldiers and paint the window-frames. On one of the three occasions, when she was taken out with another woman, two Montenegrin soldiers sexually assaulted both women.
- 8.7 At Karaman's house, the detainees constantly feared for their lives. If any woman refused to obey orders, she would be beaten. Soldiers often told the women that they would be killed after the soldiers were finished with them because

they knew too much. FWS-87 felt suicidal during the entire time of her detention in Karaman's house.

8.8 By the foregoing acts and omissions, RADOVAN STANKOVIC committed:

COUNT 45 (Enslavement)

Count 45: Enslavement, a CRIME AGAINST HUMANITY punishable under Article 5 (c) of the Statute of the Tribunal.

2.2 Rape and sexual slavery in the northern Uganda conflict⁷⁶

Both boys and girl abductees are human livestock owned by the Lord Resistance Army (LRA) leadership, but within the strict and hierarchical organizational structure of the rebels, girls and women, as a group, are at the bottom; they are chattel denied every right, and subjected to forced marriage amounting to institutionalized rape.

The right of ownership over the girls and women is exercised first by Kony himself, as the supreme leader of the LRA, followed by the leader and commanders of the group who abducted the girls, and then the boy or man to which the girl has been allocated, either as wife or as 'helper'.

The powers exercised by the 'owners' of girls as wives or helpers are enormous. They include the power to allocate and rape girls (and women) in total impunity, including raping the girl helper, as well as the power to transfer them to another owner.

⁷⁶ From Amnesty International, *Uganda: Breaking God's Commands: The Destruction of Childhood by the Lord's Resistance Army*, London: AI, 1997 (AI Index: AFR/59/001/1997).

Both boy and girl abductees are subject to other forms of power: the imposition of hard labour and physical punishment amounting, in the worst cases, to torture, and the power to kill, a power that can be exercised by the girl or boy's owner, a higher commander within the group or Kony himself.

Wife ownership, polygamy, a husband's exclusive sexual rights over his wife, including rape, and various forms of violence against women are not specific to the LRA social system. These and other practices have been acknowledged by recent governmental reports that point to women's vulnerability through marriage and to Ugandan women and girl's lower status within the family, community, and society at large.⁷⁷ What is specific to the LRA is the extent, nature, and functions of violence against women, and the particularly brutal, hierarchical and institutionalized conditions in which violations of women's human rights are carried out.

Ownership of women and girls resulting from forced conscription and forced marriage is part and parcel to both the military strategies of the LRA and the social order devised by the leadership. It is a reward distributed to people who are rigorously carrying out the orders of their commanders, including the killing of prisoners of war and captured villagers, and as such may be said to constitute an incentive for such behaviour. It is also a source of prestige and proof of status, the reflection and foundation of the LRA social order, as the higher the rank within the LRA hierarchy, the greater the number of 'wives' and domestic 'helpers'.

77 The Government of Uganda, *Uganda National Council for Children, Equity and Vulnerability: A Situation Analysis of Women, Adolescents, and Children in Uganda*, 1994. Ministry of Gender and Community Development, Country Reports in Preparation for the fourth World Conference on Women 1995.

The nature and function of forced marriage within the LRA social system is further demonstrated by the strict regulations imposed on the sexual behaviour of both boys and girls. The moment a girl has been forced into the ranks of the LRA, rape or consensual sexual relationships outside the forced marriage are strictly forbidden and punished by the killing of both boys and girls (in the case of consensual sex) or of the boy (in the case of rape). Such rules, however, are spatially bound, in that they do not apply to the villages. Amnesty International has gathered testimony demonstrating the frequent occurrence of the rape of women and girls during the attacks and looting of villages, and the total impunity surrounding it.

Within the political and military space constituted by urban and rural communities, rape is clearly considered, along with killings and torture, as a strategy of warfare, a means of intimidation and control over the populations. It does take, however, another dimension and function within the LRA ranks: once a girl has been forced to join the rebel group, she becomes the property of the movement, and rape through forced marriage a regulated and naturalized activity fundamental to the socio-military engineering and functioning of the group.

3. Steps Involved in Documentation

Documenting sexual violence requires several steps to be carried out, which are summarized in this section.

3.1 Preliminary stages

- Monitor the armed conflict and the situation of women.
- Keep track of all cases brought to your attention.
- Identify patterns regarding acts of sexual violence.

These patterns may refer to the identity of the victims, the location of the attacks, the methods used, the circumstances of the abuses, the alleged perpetrators and the official responses.

Conduct fact-finding within or outside the area. The key questions guiding fact-finding activities include the following:

- Is it safe to go to the scene? Could my presence endanger the lives of the witnesses and contacts? Are there alternative places where I can gather further information and evidence?
- What kind of evidence do I need to assert that an act of sexual violence took place?
- Who is most likely to give me access to this evidence?
- How best can I interview victims and witnesses?

Assess information. The key questions include the following:

- Does the abuse violate IHL?
- How reliable is my primary source of information?
- Is the allegation consistent with the patterns regarding such abuses?
- How valid or consistent is medical and other evidence?
- How reliable and consistent are the testimonies?
- Who is responsible?

In addition to these general steps, the investigation and assessment of sexual violence require specific precautions, preparations, evidence and information. The following is a summary of what is involved with regard to this subject, which has been discussed in other booklets to which the reader should refer.⁷⁸

3.2 Knowledge of the medical and social consequences of sexual violence

Understanding the nature of sexual violence and its impact on victims will allow you to conduct proper interviews and to refer the victims to medical or legal experts who may be in a better position to help the female victim. The following are key steps:

- Familiarize yourself with the medical consequences of sexual violence, referred to as *Rape Trauma Syndrome*, a form of *Post-Traumatic Stress Disorder (PTSD)*.⁷⁹
- Collect information on the medical consequences for the victim in the context of her country (i.e. high prevalence of sexually transmitted diseases, including HIV).
- Find out whether there are any facilities and provisions for medical check-ups for sexually transmitted diseases, (including HIV), and reproductive health.
- Identify institutions or professionals working with victims of sexual violence.
- Learn about the social and economic consequences for victims of sexual violence (i.e. rejection, alienation, pressure, divorce, prostitution, etc.).
- Seek expert advice and possibly assistance to conduct the interviews: medical practitioners specializing in sexual violence, members of women’s NGOs offering support to victims of sexual violence, etc.

78 Agnès Callamard, *Methodology for Gender-Sensitive Research*, AI-Canada and ICHRDD: Montréal, 1999; *Documenting Human Rights Violations by State Agents: Sexual Violence*, AI-Canada and ICHRDD: Montréal, 1999; Ukweli: *Documenting Sexual Violence*, AI-Netherlands and CODESRIA: London, 2000.

79 *Documenting Human Rights Violations by State Agents: Sexual Violence*, pp.23-24.

3.3 Necessary precautions and preparations for interviewing victims and witnesses

It cannot be overemphasized that interviewing survivors of violations requires many precautions and much preparation. Precautions concern the safety and well-being of the survivors, family members and contacts during and after they have agreed to talk to you. Preparations include skills in terms of interviewing and knowledge of the consequences of the abuses the survivors have endured and of the impact of the interview itself.

Be especially aware that it is your obligation to conduct the interviews in the safest, least traumatic, and most respectful manner.

The interview is likely to re-awaken post-traumatic stress. After disclosure, the survivor or witness frequently experiences traumatic reactions, including flashbacks, and nightmares. Ideally, all interview sessions should be followed by a debriefing, the same or next day, in which you ask the survivor or witness, alone or with other interviewees, what it felt like to be interviewed.

Sexual torture is one of the most difficult allegations that can be made because of the social, cultural, moral, and political environment. In almost all societies, a woman, man or child coming forward with allegations of rape, sexual violence or sexual humiliation, has a great deal to lose and is likely to face extraordinary pressures and ostracism from the closest members of her/his family and the society at large.

The victims of sexual violence may be unwilling to report the abuses. It will take all your skills, knowledge and sensitivity as an interviewer to elicit from the interviewee an acknowledgement that sexual violence did take place and

the necessary information to document the allegation. The interview should never reinforce the survivor's feeling of loss of control. She should always be given choices and decisions, including the decision to end the discussion.

INTERVIEWING VICTIMS OF SEXUAL VIOLENCE: PRECAUTIONS

Please refer to “Interview Guidelines” in the booklet *Methodology for Gender-Sensitive Research*.

- Consider all possible risks to the safety of the victims and witnesses or their families; identify and implement protection measures; if necessary, seek assistance from trusted diplomatic missions or governments for relocation and resettlement.
- Rely on trusted local contacts (the so-called gate-keepers) to approach victims and witnesses.
- Assure the victims of the confidentiality of their testimony, explain what will be done with their testimony and do everything to ensure that the victims understand the implications of giving their testimony.
- Ascertain whether they have been interviewed before, by whom and for what purpose.
- If the victims are unwilling to speak about their own ordeal, ask questions about any other abuses they may have witnessed: they may be willing to talk about what happened to others.
- Include debriefing sessions: the interview is likely to re-awaken post-traumatic stress. After disclosure, the survivor or witness frequently experiences traumatic reactions, including flashbacks, and nightmares.
- Be aware of your own fears and reluctance to talk about certain abuses and the hidden messages you may communicate to the survivors.

4. Evidence Required

The quality of the interviews is key to the investigation and assessment of the information. Because of this, it is very important to be well prepared for your interviews, well-versed in the definition of the crimes you are investigating and the nature of the information required from the survivors and witnesses, familiar with the patterns of abuses, and to elicit all required information from the witnesses and survivors.

In most cases, the evidence regarding acts of sexual violence will consist of interviews and testimony, medical records and/or expert opinions, official or semi-official statements, physical marks on the victim's body and photographs.

4.1 Interviews and testimony of the victims themselves and witnesses

Conclusive demonstration that rape, sexual slavery or enforced prostitution (in addition to rape) took place, or that coercion was involved (as subtle as it may be, i.e. food in exchange of sexual services) will rely to a large extent on the quality of the testimony and information provided by the survivors and witnesses.

4.2 Medical evidence: expert evaluation by Rape Trauma Syndrome or PTSD specialists

Evidence of post-traumatic stress disorder is considered valid medical evidence that abuse took place. Whenever possible, you should therefore seek assistance from experts in this area and, provided the victims agree to it, ask them to evaluate the mental state of the survivors. Be aware that evidence of PTSD is not always considered as evidence of rape, other forms of torture or ill-treatment.

4.3 Official or semi-official statements

These statements may be made with reference to a specific allegation or may be of a more general nature, such as statements that incite violence against women or women of a specific community, or that condemn certain types of abuses, such as sexual violence.

Section 4 of Chapter Four of this manual provides details on assessment of allegations.

4.4 Evidence of physical marks of sexual violence

In a smaller number of cases, you may also be able to obtain physical evidence of sexual violence. This evidence may include genital trauma, bruising or other signs of violence, which have been documented by medical doctors or other practitioners. In many cases, however, survivors of sexual violence are unable to seek medical assistance or are only able to do so long after the abuse took place. Physical marks may have disappeared and a medical certificate may be inconclusive.

4.5 Photographs

In some cases, photographs of the victims' bruises or other forms of sexual violence may have been taken after the abuse took place. Again, as with the physical evidence of sexual violence, there are few cases in which victims or their friends or families take pictures of the physical marks of their abuse. In addition, in many situations, access to a functioning police or medical system responsible (in peacetime) for carrying out these activities is very difficult.

5. Key Information Required

The nature of the acts: demonstration that an act of a sexual nature (most often accompanied by other forms of violence) has taken place, such as fondling the breasts and other parts of the body, stripping the victims, penetrating the anal or genital opening, fellatio, etc.

The circumstances surrounding the abuses: demonstration that the act was accompanied by the use of force, threat of the use of force, duress, psychological oppression, abuse of power, etc.

The identity of the perpetrators: by name or nickname, rank, uniform, etc.

In addition, if you are seeking to demonstrate that the victims were the victims of sexual slavery, forced pregnancy, etc., you will need further information from them on the following aspects:

Behaviours and statements of the perpetrators (i.e. “explanations” for the acts, such as making the women pregnant);

Duration of the detention (i.e. until the women become pregnant or give birth);

Nature of the coercive relations

- Statements and acts indicating that women are the property of a specific individual or individuals (i.e. forced marriage, women being sold, bartered or lent by their “owners”).
- Nature of the power and prerogatives allocated to the individuals who are detaining them.

- Whether sexual acts were forced upon women for the financial gain of those who were detaining them.

Forced labour: whether women had to perform forced labour, engage in combat, etc.;

Other abuses: whether women were beaten, ill-treated, victims of other forms of torture, etc.;

Abuse inflicted upon others: description of the abuse and the circumstances.

DOCUMENTING TRAFFICKING IN PERSONS

1. Definition

At present the only definition of trafficking is that contained in the 1949 Trafficking Convention, ratified by only 69 nations and largely irrelevant to present practices. The Draft Convention on Transnational Organized Crime has two Protocols, one of which deals with the trafficking of human beings. Although the exact wording has yet to be agreed upon, this Convention will ultimately provide the international legal definition.⁸⁰ At present, a working definition, and one that has been adopted by the Special Rapporteur on Violence Against Women, brings together the following elements:

Trafficking in persons means the recruitment, transportation, purchase, sale, transfer, harbouring or receipt of persons by threat or use of violence, abduction, force, fraud, deception or coercion (including the abuse of authority), or debt bondage, for the purpose of placing or holding such a person, whether for pay or not, in forced labour or slavery-like practices, in a community other than the one in which such a person lived at the time of the original act.

Clearly, there are a variety of offences under both national and international law committed during the trafficking process. The distinction is the element of coerced transport and coerced end labour.

⁸⁰ Discussions resumed in October 2000.

The lack of a specific international definition of trafficking in persons should not mean that it cannot be prosecuted, it merely necessitates the identification of the range of offences that are committed during the trafficking process. Many individuals voluntarily choose to leave their country of origin, notoriously because of economic necessity, and some choose to work in the sex industry. To exclude these persons from protection because they do not fall into the original, coerced category would be to perpetuate the discrimination and to fail to apply human rights norms.

1.1 Forced prostitution

Forced prostitution⁸¹ generally refers to conditions of coercive control over a person who is held by another for the purposes of sexual activity.

During armed conflict, forced prostitution is considered a violation of the Geneva Conventions and the Additional Protocols as they apply to the combatant states.

Forced prostitution, in all situations, while not specifically listed in the principal human rights treaties, is a violation

81 The crime of enforced prostitution is listed in Articles 7(1)(g), 8(2)(b)(xxii) and 8(2)(e)(vi) of the *Rome Statute* for an International Criminal Court. The ICC Elements of Crimes states the following elements for enforced prostitution:

1. The perpetrator caused one or more persons to engage in one or more acts of a sexual nature by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or persons or another person, or by taking advantage of a coercive environment or such person's or persons' incapacity to give genuine consent.
2. The perpetrator or another person obtained or expected to obtain pecuniary or other advantage in exchange for or in connection with the acts of a sexual nature.

See Article 7 (1) (g)-3 and Article 8 (2) (b) (xxii)-3, Finalized draft text of the Elements of Crimes, Report of the Preparatory Commission for the International Criminal Court, 6 July 2000, UN Doc. PCNICC/2000/INF/3/Add.2

of national law, prosecutable as rape, assault, sexual assault, illegal detention, etc., depending on the circumstances of each case. If not prosecuted, then such practices constitute human rights violations under various provisions of the international conventions, among others, relating to the right to freedom from torture and other CID treatment, the right to bodily integrity, prohibitions on forced labour, privacy, and freedom of movement.

There is a tendency to apply the concept of trafficking only to women and children and only for the purposes of forced prostitution. This ignores the violations faced by the men and women who work in sweat shops, as domestic labourers, women who are bought for marriage and for a multiplicity of other uses. The broad definition that includes all forms of coerced labour is the one that human rights defenders should seek to uphold.

1.2 Prostitution of minors

The CRC defines a minor as anyone under the age of 18. Under the CRC, necessary protection for minors is provided on the basis of their changing capacities without discrimination.

Most states have legislation that makes a distinction with respect to the legal liability of minors, considering those over the age of 16 to be 'senior minors' with different sentencing regimes. Article 37 of the CRC states that there must be separate detention facilities and that children should not be incarcerated with adults. For all states, regardless of whether prostitution is a criminal offence, national regimes will regulate what is considered a criminal offence, using either an absolute age level or a graduated age scale, with particular concern for the abuse of authority by an adult.

During international armed conflict, there is no derogation from the position stated above. In addition, the Geneva Conventions and Protocol 1 apply to the combatant states and additional obligations are found in Article 38 of the CRC.

During intra-national armed conflict, Article 3 of the Geneva Conventions and Protocol 2 apply together with Article 38 of the CRC.

There is a tendency to treat women and children as a homogenous and vulnerable group. This is both legally and politically incorrect. Human rights defenders must ensure that they apply the relevant sections of humanitarian law and treaty body law as it applies to and affects men, women, girls and boys, taking into account that the manner in which violations occur and the subsequent remedies may well be different, in relation to both gender and age.

According to a study by the UN on the impact of armed conflict on children, in half of the country study reports, “on sexual exploitation of children in situations of armed conflict, the arrival of peacekeeping troops has been associated with a rapid rise in child prostitution.”⁸²

2. Advice for Documentation

Example: Even aid workers make use of sex slaves in Kosovo⁸³

Pristina, Kosovo—Post-war Kosovo has become the latest hotspot in Europe for sexual slavery. Since Yugoslav forces

pulled out of the province last June and turned it over to UN control, thousands of East European women have been lured over Kosovo’s unsettled borders to a life of violence, abuse, starvation and disease that police describe as subhuman. Behind the doors of dimly lit makeshift bars, women are forced to receive 10 to 20 clients a night on filthy backroom cots [...] The criminals, who operate across Europe, kidnapping, terrorizing, and enslaving women, have become a small but particularly dangerous force in Kosovo’s burgeoning underworld. Those who have tried to liberate the women from the lucrative sex trade have been threatened with mob violence. It is believed some of the captives have been murdered trying to escape [...] “Kosovo is a great big marketplace,” says Barbara, an administrator with one of the organizations that help shelter the women on their way back to their home countries, placing them in secret, heavily guarded locations [...] The women are not voluntary sex workers, and they are abused and degraded in a life of daily terror [...] [Survivors describe] being locked into a squalid unheated basement without running water, toilets, or beds to sleep in. Some of the trapped women tried to commit suicide. Others were penned in an attic. All were kept under lock and key, and women who tried to escape said they were beaten [...]

There are 100,000 ‘internationals’ in Kosovo, about 60,000 of them aid workers and the rest members of the military [...] Most disturbing, nearly half of the men who patronize the women are international aid workers and peacekeepers, even though it is obvious from the conditions at the sleazy underground bars that double as local brothels that this is not prostitution, but slavery. And, according to aid workers and KFOR officials who asked not to be identified, members of at least one of the peacekeeping contingents

⁸² United Nations, *The Impact of Armed Conflict on Children: Report of the Expert of the Secretary General*, New York, UN, 1996, p. 22.

⁸³ Excerpts from Olivia Ward, “Falling Prey to Peace: Even Aid Workers Make Use of Sex Slaves as Europe’s Human Traffickers Exploit the War Zone,” Toronto Star, European Bureau, May 7, 2000.

are involved in running a brothel in Kosovo. One bar in the Pristina suburb of Slatina, which was raided by Italian members of the UN police, operated near the headquarters of the Russian forces. Its clients, said police, were American as well as Russian troops [...] Male aid workers, on short-term contracts away from wives and girlfriends, also have little difficulty finding 'action' in notorious bars. "Some of the women have begged the humanitarian workers to help them, and they're just ignored," says Barbara. "We are very shocked by this, and we have urged their organizations to discipline them [...]"

According to the Organization for Security and Co-Operation in Europe "[...]More than 174,000 are estimated trafficked each year from the former Soviet Union and East Europe. Most are under 25 but a lot of them are aged 12 to 18."

As there is no universally accepted definition of trafficking in persons, in pragmatic terms, those working on the issue are best served by analyzing the various abuses that occur during the trafficking cycle, identifying where they constitute violations of human rights, and then using international human rights standards as a framework for intervention at appropriate points in the cycle.

In Bosnia and Herzegovina, the UNOHCHR and United Nations Mission in Bosnia and Herzegovina (UNMIBH) have developed a trafficking project based on a concept of trafficking that is both broad and comprehensive and includes the following operative elements.

- **Exploitation** as an end purpose in the trafficking cycle, which places individuals in conditions of slavery, forced or bonded labour and servitude that violate fundamental human rights. The term slavery should be under-

stood to include what has been defined as "contemporary forms of slavery" such as forced prostitution. References to slavery, forced and or bonded labour, and servitude are consistent with existing international law.

- **Coercion** in the form of threats or use of force, violence, abduction, fraud, deception, or abuse of authority, or the use of other means that result in the lack of informed consent at any point of the trafficking process.
- **Procurement** through various methods of recruitment, including but not limited to sale and purchase.
- **Transportation**, either within national or across international boundaries, which often results in the increased vulnerability of the trafficked persons *vis-a-vis* protection of their human rights. As such, it includes the transfer, harbouring, or receipt of persons being trafficked.

The use of these concepts helps to clarify the nature of the types of violations and thus enables intervention to protect the human rights of those trafficked and to facilitate prosecution of perpetrators under existing domestic legislation.

Protection of the rights of the individual is paramount. Hence, the policy followed by the international community in Bosnia and Herzegovina encompasses persons who voluntarily come to Bosnia and Herzegovina to work, in whatever capacity, but who then become the victims of crimes, which, if not prosecuted, constitute human rights violations.

2.1. The Trafficking Project

The Trafficking Project was launched in March 1999. The gender expert of the UNOHCHR worked with UNMIBH's Human Rights Office to design the project. At the same time the UNOHCHR enlisted the cooperation of the International Organization for Migration (IOM) to develop a complementary programme providing both logistical support and counselling to assist the victims of trafficking in returning to their home countries. The programme became fully operational in August 1999. Implementation of the Trafficking Project was ensured by UNMIBH's appointment of a Human Rights Officer in March to oversee, coordinate, and advise members of the International Police Task Force (IPTF) working throughout the country on the policing aspects of trafficking cases. The UNOHCHR has overall responsibility for developing policy, liaising with government Ministries other than Internal Affairs, and coordinating inter-agency responses to trafficking issues generally.

The goals of the Trafficking Project are as follows:

- To ensure appropriate police response to trafficking cases, through IPTF activities in the field as overseen by UNMIBH's Human Rights Office.
- To monitor the whereabouts and treatment of trafficked individuals and take appropriate action to ensure protection of their human rights.
- To provide a temporary place of safety for those victims who seek assistance.
- To facilitate, where possible, the provision of counselling, health care, and legal advice.
- To provide safe and orderly repatriation for those victims who wish to return home.

- To work with the relevant ministries and the international community to ensure legislative reform and to provide witness protection.
- To assist, through IPTF, in the identification and prosecution of traffickers and procurers.
- To assist in the development of information campaigns.

The main actors in the Trafficking Project are from international organizations. However, this approach could be replicated in jurisdictions where there is no international presence. The work being done by the UN could be done by a combination of local actors, including the police, judiciary, and health authorities, with vital input and monitoring by NGOs.

While the international community has taken the lead in this area, it is also clear that it is in part as a result of its presence that the problem arose in the first place. Women are transported to areas where there is a market, of whatever kind.⁸⁴

2.2 Accountability of peacekeeping forces, the UN and international agencies

All members of peacekeeping forces are under obligation to comply with national law. Most UN and other international agencies have functional immunity, although international NGOs do not. Essentially, this means that the former are immune from prosecution for activities that occur during the course of their work or function in the host country. This means that an individual who commits offences while off-duty could face prosecution. However, in practice this is unlikely to occur; more likely, offending individuals would be repatriated. What happens next depends on the

⁸⁴ There has yet to be evidence of trafficking in Bosnia and Herzegovina for any purposes other than forced prostitution.

policy of the country of origin. In theory, investigation and prosecution should occur in the home state, although obvious problems arise here regarding witnesses, collection of evidence, and so on.

Human rights defenders should obtain the policy of each agency on the treatment of those who commit crimes while on mission. Where possible, follow up cases and ensure information is provided as to whether prosecutions have taken place or not. If the country of origin is a member of the Council of Europe and no action is taken, consider making an application to the Strasbourg court against the state in question.

DOCUMENTING ABUSES OF REFUGEE WOMEN

According to the UNHCR, approximately 70% of the displaced world population is comprised of women and children. This means that between 22 and 28 million women and children have been uprooted and forced to leave their homes in search of safety. Available evidence indicates that women likely constitute the majority of adult displaced populations. Unfortunately, research also points to a gap between what the empirical data reveals and the policies and practices in effect in situations in which populations are displaced. While some progress has been made towards the integration of a gender-specific dimension to refugee protection, this progress has been sporadic and limited. Abuse of displaced women's rights is a constant in all situations, and it will be your responsibility to document it and make recommendations geared not only to providing remedies for the specific abuses you have identified but, more generally and in a longer-term perspective, to assisting a process of radical transformation in how emergency assistance and protection is conceived and implemented.

This chapter focuses on the abuses against women that occur in mass-influx situations, whether outside the country of origin (refugee populations) or within (displaced populations). It begins with an overview of the rights framework within which you will be operating, and in this context includes a brief review of the gender-sensitive approach to the refugee determination process, which many legal scholars and practitioners have been advocating in Western countries.

1. International Standards for the Protection of Displaced Populations

Displaced populations fall within two broad categories: refugees outside their country of origin, and populations displaced within their own country. Whereas the former have been the subject of legally binding standards (the Refugee Convention), the latter have, until recently, been largely neglected by the international community. The protection of IDPs is now the subject of specific principles (Guiding Principles on Internal Displacement), but these are not legally binding instruments and have not been integrated into programmatic and operational work. They remain simply a set of directions and principles to guide the activities of governments and humanitarian actors.

1.1 The Refugee Convention

The UN Refugee Convention of 1951 defines a refugee as [someone who] “[...] owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion is outside the country of his/her nationality and is unable or, owing to such fear, unwilling to avail himself/herself of the protection of that country [...]”

Central to the concept of refugee protection is the principle of *non-refoulement*, which prohibits states from sending anyone against their will to a country where they would be at risk of serious human rights violations.

Article 33(1) of the Refugee Convention prohibits state parties from expelling or returning (*refouler*) a refugee to territories in which his/her life or freedom would be threatened on account of his/her race, religion, nationality, political opinions or membership in a particular social group.

The established principle of non-refoulement is a norm of customary international law, binding on all states irrespective of whether they are party to the UN Refugee Convention, and states cannot derogate from it. Other international human rights instruments also prohibit refoulement in all cases in which a person would be at risk of serious human rights violations. Furthermore, the principle is generally considered to be a rule of international customary law — it is binding on all states, whether or not they have signed any of the treaties governing international refugee law and international human rights law.

The Statute of the Office of the UNHCR, adopted by General Assembly resolution 428 (V) of December 14, 1950, stipulates that the UNHCR shall:

- (i) provide international protection, under the auspices of the UN, to refugees who fall within the scope of the present Statute; and
- (ii) seek permanent solutions for the problem of refugees by assisting governments and private organizations to facilitate the voluntary repatriation of such refugees, or their assimilation within new national communities.

In addition to the Refugee Convention, regional instruments have also been developed, including the 1969 OAU Convention governing the specific situation of refugee problems in Africa, and the 1984 Cartagena Declaration on Refugees. The OAU Convention and the Cartagena Declaration (Latin America) expand the definition of refugees who must be protected. Essentially, refugees in these regions benefit from protection for a wider number of reasons (i.e. if they must flee from generalized violence, foreign domination or other events seriously disturbing public order).

In mass exodus situations, governments may not be in a position to examine each case individually, but will grant temporary protection to the entire group. There is a *prima facie* presumption of refugee status. Before any people who have been part of a mass exodus are returned to the country they fled, they should be given an opportunity to individually state their reasons for fearing persecution if returned.

1.2 Refugees' human rights

The Refugee Convention is meant to address the specific needs of the refugee populations. It does not override other international standards with universal application. It is therefore best to think of the Refugee Convention as an *additional* instrument rather than as the only one protecting refugees and identifying their rights. In fact, one of the standards identified by the Expert Group on Temporary Refuge in Situations of Large-Scale Influx clearly states that refugees should enjoy internationally-recognized fundamental civil rights, in particular those set out in the UDHR, and that they should be treated as persons whose tragic plight requires special understanding and sympathy.

Refugees are therefore covered by all human rights instruments, primarily by the UDHR, ICCPR, ICESCR and others, and by IHL.

With respect to refugee women, their rights are also spelled out by gender-specific international legal texts, such as the CEDAW (1979), the CRC (1989) and the Declaration on the Elimination of Violence against Women (December 1993).

SOME STANDARDS OF PROTECTION FOR REFUGEES

The Expert Group on Temporary Refuge in Situations of Large-Scale Influx has set forth several standards, which form the basis and framework for action by the UNHCR to ensure protection of refugees in an emergency situation.

- a) *they [asylum-seekers] should not be penalized or exposed to any unfavourable treatment solely on the grounds that their presence in the country is considered unlawful and they should not be subjected to restrictions on their movements other than those which are necessary in the interests of public health and order;*
- b) *they should enjoy all internationally recognized fundamental civil rights, in particular those set out in the Universal Declaration of Human Rights;*
- c) *they should be treated as persons whose tragic plight requires special understanding and sympathy;*
- d) *there should be no discrimination on the grounds of race, religion, political opinion, nationality or country of origin;*
- e) *they are persons before the law enjoying free access to courts of law and other competent administrative authorities;*
- f) *the location of asylum-seekers should be determined by their safety and well-being as well as by the security needs of the receiving state;*
- g) *they should be provided with the basic necessities of life including food, shelter and basic sanitary and health facilities;*
- h) *family unity should be respected;*
- I) *all possible assistance should be given for the tracing of relatives;*

j) adequate provision should be made for the protection of minors and unaccompanied children.⁸⁵

1.3 Specific problems facing asylum claimants

Both male and female asylum claimants fleeing armed conflict may face two main problems with respect to their status. However, female claimants fleeing gender-based persecution are likely to face additional problems, identified in the following section. These problems emerge because of a restrictive interpretation of the Refugee Convention.

1.3.1 Human rights violations in civil wars not treated as persecution

Persecution that takes place in the framework of counter-insurgency operations or civil wars is frequently not considered as grounds for asylum, even if the asylum-seekers or their relatives have suffered gross human rights violations. The argument behind this position is that human rights violations in armed conflict situations are generalized, and do not target specific individuals, while the requirement of a “well-founded fear of persecution” implies that a refugee must be individually at risk of persecution. Violations are also viewed as a ‘normal’ by-product of the war, the so-called collateral damages that cannot be avoided. Thus, even victims of rape by military forces face difficulties in obtaining refugee status when the adjudicators of their claim view such attacks as a *normal* part of warfare.⁸⁶ Member states

⁸⁵ Executive Committee of High Commissioner’s Programme, Sub-Committee of the Whole on International Protection, Report on the Meeting of the Expert Group on Temporary Refuge in Situations of Large-Scale Influx, Geneva, April 21-24, 1981, UN Doc. EC/SCP/16 (1981).

⁸⁶ UNHCR, *Guidelines on the Protection of Refugee Women*, Geneva: UNHCR, 1991, par. 36.

of the European Union have adopted a joint position on the meaning of the term ‘refugee’ according to which victims of generalized armed conflicts are seen to fall outside the meaning of the Convention.

Yet, as the UNHCR itself has argued, it is clear that the definition of refugee applies in situations in which an entire group has been displaced and members of the group are at risk of human rights violations because of some shared, albeit individual, characteristic. There is nothing in the definition that excludes its application to claimants who fear returning to situations of civil war.

It will be up to you as a human rights activist to ensure that the correct interpretation of the Convention is followed by national authorities (i.e. through lobbying) so that asylum claimants fleeing armed conflict situations are not rejected on the basis that they are the victims of generalized armed conflict.

1.3.2 Persecution other than by the state

Many countries interpret the UN Refugee Convention criteria for those deserving of protection in such a way as to exclude persecution by people other than state agents, such as armed opposition groups and private individuals, known as ‘non-state actors’. They also deny refugee recognition to those at risk of persecution when the authority of the state has broken down. This approach has major implications for female asylum seekers in general, and those fleeing armed conflicts in particular.

This approach clearly contradicts the stated intention of the UN Refugee Convention that protection should be given to those whom the state is unwilling or *unable* to protect, and runs counter to the spirit of protecting those at risk of persecution.

The UNHCR position is that recognition of refugee status under the Convention is also justified when persecution is perpetrated by non-governmental entities, for example, irregular forces or the local populace, toward an individual because of the grounds enumerated in the 1951 Convention, under circumstances indicating that the state was unwilling or unable to offer effective protection against the threatened persecution. That position is set out in paragraph 65 of the *UNHCR Handbook on Procedures and Criteria for Determining Refugee Status* (1979).

1.4 Gender-sensitive approach to asylum claims

Since the mid-70s, efforts have been made to use a gender-based approach for the definition of 'refugee' and particularly for the definition of 'persecution' through a focus on women's rights. A number of legal scholars, and the UNHCR, have pointed out the gender-biases of the refugee definition and/or its interpretation by immigration officials. They have especially called for a broader interpretation of the definition of persecution, and have stressed the 'gendered' nature of both the 'social groups' and 'political opinions' components in the 1951 definition.

In recent years, a number of countries, most notably Australia, Canada, the USA, and New Zealand have introduced guidelines for the assessment of asylum requests involving gender-related persecution. The intention of these guidelines is to clarify the interpretation of the refugee definition by recognizing the specific forms of persecution encountered by women. These guidelines, along with those of the UNHCR, state that although gender is not specifically enumerated as one of the grounds for establishing Convention refugee status, the definition of refugee may properly be interpreted as providing protection for women who demonstrate a well-

founded fear of gender-related persecution by reason of any one, or a combination of, the enumerated grounds.

This gender-specific approach to the Refugee Convention can be said to be based on three main precepts. The first is that women may suffer *gender-specific forms of harm*. The second is that such harm may constitute *persecution*, provided that the claimant can demonstrate that the state was party to the abuse, or unwilling or unable to offer protection to the victims of the abuse. The third is that such persecution is *based* on one or several of the elements listed in the Refugee Convention, namely race, religion, nationality, political opinions or membership in a particular social group.

1.4.1 Gender-specific forms of harm

As gender-sensitive research methodology indicates,⁸⁷ the harm inflicted upon women is often gender-specific with respect to its form, causes or consequences, or all three. Some gender-specific forms of harm may include various forms of sexual violence, gender-specific social mores amounting to discrimination (i.e. employment or education restrictions, dress codes, voting rights), traditional harmful practices (i.e. female genital mutilation), violence within the family or the community (i.e. domestic violence, forced marriage, dowry deaths, honour killings).

1.4.2 Persecution: failure of state protection

As the UNHCR handbook, the UNHCR guidelines on the protection of refugee women and various national guidelines have demonstrated, many such gender-specific forms of harm constitute serious harm, rising to the level of persecution, with respect to the Refugee Convention. Persecution

87 Agnès Callamard, *Methodology for Gender-Sensitive Research*, Montréal, ICHRDD and AI Canada, 1999.

can be said to occur whenever failure of state protection can be demonstrated.

*Failure of state protection may be noted in the following three types of situations:*⁸⁸

- Serious harm has been committed by state authorities or organizations informally related to them. In the context of armed conflicts, serious harm may include deliberate attacks, sexual violence, forced conscription, abductions, etc. Such acts may be committed by members of the national armed forces or para-military forces.
- Serious harm has been committed by others (i.e. armed groups, private individuals) but the authorities are unwilling to provide protection because they support the actions of the private persons concerned, they tolerate them or they have other priorities.
- Serious harm has been committed by others and the authorities are unable to provide protection.

1.4.3 Grounds for persecution

The Refugee Convention identifies five grounds for persecution. Each one of them can be interpreted from a gender perspective. The following is based on the Canadian Immigration and Refugee Board Guidelines:

Race: *There may be cases in which a woman claims a fear of persecution because of her race and her gender. For example, a woman from a minority race in her country may be persecuted not only for her race, but also for her gender.*

Religion: *A woman who, in a theocracy for example, chooses not to subscribe to or follow the precepts of a state religion may be at risk of persecution for reasons of religion.*

88 James Hathaway, *The law of refugee status*, Butterworth, 1991.

In the context of the Convention refugee definition, the notion of religion may encompass, among other freedoms, the freedom to hold a belief system of one's choice or not to hold a particular belief system and the freedom to practice a religion of one's choice or not to practice a prescribed religion. In certain states, the religion assigns certain roles to women; if a woman does not fulfill her assigned role and is punished for that, she may have a well-founded fear of persecution for reasons of religion. A woman may also be perceived as expressing a political view (and have a political opinion attributed to her) because of her attitude and/or behaviour towards religion.

Nationality: *A gender-related claim of fear of persecution may be linked to reasons of nationality in situations where a national law causes a woman to lose her nationality (i.e. citizenship) because of marriage to a foreign national. What would constitute good grounds for fearing persecution is not the fact of losing her nationality as such (notwithstanding that such laws are discriminatory in that they do not apply to men married to foreign nationals), but the consequences she may suffer as a result.*

Political opinion: *A woman who opposes institutionalized discrimination on the basis of gender, or expresses independent views that run counter to male social/cultural dominance in her society, may fear persecution by reason of her actual political opinion or a political opinion attributed to her (i.e. she is perceived by the agent of persecution to be expressing politically antagonistic views).*

Social group: *Women who fear persecution as the consequence of failing to conform to, or for transgressing, certain gender-discriminating religious or customary laws and practices in their country of origin. Such laws and*

practices, by singling out women and placing them in a more vulnerable position than men, may create conditions for the existence of a gender-defined social group. The religious precepts, social traditions or cultural norms that women may be accused of violating may range from choosing their own spouses instead of accepting an arranged marriage, to such matters as wearing make-up, the visibility or length of hair, or the type of clothing they choose to wear.

1.5. Guiding principles on internal displacement

An estimated 25 to 30 million people have been uprooted from their homes and forced to flee in fear of their lives, but remain within the borders of their country of origin. As a result, they are deemed to be “internally displaced people,” rather than refugees, by the international community. IDPs, by virtue of remaining within their country of origin are covered by all international human rights standards ratified by their governments, as well as by IHL.

In 1991, the UN Commission on Human Rights adopted the first of several resolutions concerning the internally displaced. This led in 1992 to the appointment by the UN Secretary General of a Representative for Internally Displaced Persons, who studied relevant legal issues and held discussions with governments about how to improve the conditions of internally displaced people. In 1998, the Special Representative submitted the *Guiding Principles on Internal Displacement*.⁸⁹

The purpose of the *Guiding Principles* is to address the specific needs of IDPs worldwide by identifying rights and guarantees relevant to their protection. The principles reflect and

⁸⁹ E/CN.4/1998/53/Add.2: Guiding Principles on Internal Displacement, February 11, 1998.

are consistent with international human rights law and IHL. They apply to the various phases of displacement, providing protection against arbitrary displacement, access to protection and assistance during displacement and guarantees during return or alternative settlement and reintegration.

Although all principles must be applied without discrimination of any kind, including discrimination based on gender, the guiding principles have also sought to address the specific protection needs of IDP women. This gender-specific approach characterizes protection of women from sexual violence and other forms of harm, participation of women in the planning and distribution of assistance, access to assistance and education, etc. (see Appendix One).

1.6 Accountability

As human rights activists documenting abuses in the context of mass influx of populations, you will face a situation with a large number of actors, some of which may not be necessarily or directly bound by international human rights instruments, such as non-governmental organizations, or donor countries.

This section provides some possible directions in terms of the instruments and other documents to refer to and the identity of the actors to be held accountable whenever situations of abuses have been documented.

1.6.1 Treatment of refugees by the authorities of the receiving state

The treatment of refugees by the authorities of the receiving state is bound by the Refugee Convention, domestic law, all international standards ratified by the governments or considered customary, primarily the UDHR, ICCPR, CAT and others, and IHL in situations of armed conflicts (this also

applies to armed groups that may be active around the camps).

1.6.2 Treatment of refugees by the authorities of the state of origin

Authorities of the country of origin may target individual refugees (i.e. through abduction or killing) or refugee populations in camps (i.e. through attacks on camps). They may also pressure the authorities of countries of asylum to turn down applications for asylum. Such actions contravene the international obligations of the countries. Their treatment of the population or individuals who have sought refuge outside their countries of origin is bound by their international obligations, as defined by human rights and humanitarian instruments, for instance.

1.6.3 Treatment of IDPs by national authorities

If the situation amounts to an armed conflict, authorities' treatment of their internally displaced population is bound by IHL, along with domestic law and human rights standards which are non-derogable. Although the *Guiding Principles on Displacement* is not a legally binding instrument, you should attempt to increase its relevance and legitimacy by calling on national authorities (and other actors included in the Principles) to respect it.

1.6.4 Treatment of refugees or IDPs by armed groups

According to IHL, armed groups should never target civilian populations (See previous sections).

1.6.5 Treatment of refugees or IDPs by the UNHCR

The UNHCR is responsible for the protection of refugees, by virtue of its statute. In addition, it may also be requested to provide protection to IDPs and to coordinate the delivery

of assistance. The extent and nature of the UNHCR's responsibilities are determined by the following instruments and documents:

- The 1951 Convention;
- The UNHCR statute (adopted by the UN General Assembly);
- The Executive Committee of the UNHCR's (ExCom) decisions or recommendations;
- The specific agreement signed between the UNHCR, and all or several of the following actors: the receiving state, the government of the state of origin, non-governmental organizations;
- Various internal guidelines, primarily the UNHCR *Guidelines on the Protection of Refugee Women* (1991) and *Sexual Violence against Refugees: Guidelines on Prevention and Response: Guidelines on the Protection of Refugee Women* (1995).

1.6.6 Protection of refugees and IDPs by non-governmental organizations

The nature and extent of the responsibilities of NGOs have been the subject of some debate and action within the international humanitarian community. Many NGOs have developed codes of conduct that identify the governing principles and criteria of their interventions, such as the Sphere standards or the ICRC *Code of Conduct* (see Appendix Three). They also enter into special agreements with the UN, the national authorities of the country within which they are operating, local authorities and possibly the national authorities of the country of asylum (especially when repatriation is being considered). Finally, they are also likely to have contractual relationships with the donor countries or agencies funding their programmes. These vari-

ous agreements set the framework and objectives of NGO operations, along with their legal status. Taken together, the codes of conduct or internal guidelines and the bilateral or multilateral agreements provide activists with a framework to assess the nature and extent of the responsibilities of these crucial actors and how they are put into practice.

You may also wish to argue that these national and international organizations are somehow bound by international human rights instruments. Claims of this sort have been made regarding the responsibilities of multinational corporations and other economic actors, with respect to the protection of human rights. Such legal arguments are complex and beyond the scope of this manual. However, the UDHR could guide your work and help your argument. It is designed to include actors other than states with respect to the protection and promotion of human rights. This is clearly the intention of the preamble, which “proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.”

1.6.7 Protection of refugees and IDPs by the international community

The scope of all international programmes of assistance, protection, repatriation, and others is largely determined by the commitment of and resources from donor countries. Whether by providing political clout, security arrangements, so-called humanitarian interventions or financial

resources, the international community is obliged to play a determining role in situations of mass influx. Major arenas for debates and decision-making include the UN Security Council, the UN General Assembly, the capitals of Western countries, UN agencies, etc. These arenas should be a major focus of your lobbying actions and provide an opportunity to remind these countries of their responsibilities.

The principle of *burden-sharing* should guide the actions of these countries, and in particular their financial assistance. The burden of providing asylum can be very great and many less-developed countries need help to sustain the immediate additional costs of caring for refugees. Moreover, as stricter controls are imposed by the developed countries on the admission of asylum-seekers, there is a risk that an even greater share of the burden of caring for refugees may be shifted to the countries immediately adjacent to the refugees’ countries of origin. As a result, the fabric of international protection may be weakened by an apparent decrease in international solidarity.

International burden-sharing of the kind that UNHCR, through its assistance programmes, seeks to provide with the support of donor countries and the cooperation of non-governmental organizations and other international agencies can be extremely important to the international protection of refugees by helping to relieve a part of the material, political and social costs of providing asylum. However, the costs of receiving refugees in most cases go well beyond those covered by UNHCR assistance programmes. It is important to acknowledge both the enormous contribution made, without recompense, by host countries and their need for additional development and rehabilitation assistance to compensate for costs, such as to their infrastructure and environment.

As an activist, you should attempt to pressure donor countries to ensure that they fund programmes and policies meant to address the protection needs and rights of populations fleeing armed conflict areas, both inside or outside their country.

2. Abuses Committed Against Displaced Women

The UNHCR *Guidelines on the Protection of Refugee Women* (1991) and *Sexual Violence against Refugees: Guidelines on Prevention and Response: Guidelines on the Protection of Refugee Women* (1995) identify the various forms of abuse suffered by refugee women during their flight and in refugee camps (such as sexual violence and discrimination), the causes for these abuses and possible remedies. Internally displaced women may suffer similar types of abuses. The following overview is based on these guidelines and conclusions from independent research.

2.1 Attacks and sexual violence during flight

Women are vulnerable to attacks during their flight to safer areas, both by road or over water. These attacks may be committed by the national armed forces or armed groups. Women may be the victims of sexual violence. Those who escape in boats are frequently attacked by pirates. Others who travel by road are assaulted and sexually abused by bandits, security forces, border guards, smugglers and other refugees. Refugees are often forced to turn to smugglers as the only way to cross the border and escape. Women in this situation are frequently abused by smugglers or border guards who offer to 'help' them in exchange for sex.

Attacks and acts of sexual violence against displaced women violate human rights standards, the Refugee Convention,

and the Geneva Convention (please see previous chapters). These attacks are also prohibited by the *Guiding Principles*.

2.2 Forced return or refoulement

Displaced women, along with men, are vulnerable to the risks of forced return, or refoulement, in the case of refugees. They may also be turned back at the border by border guards or made to wait for days without any assistance. Both refoulement and prohibitions from seeking asylum contravene the Refugee Convention.

Refoulement violates refugee law, the Geneva Convention and international human rights treaties, such as the CAT and ICCPR, both of which proscribe the return of a person to a place where they may be at risk of torture or CID treatment or punishment. Forced return is also prohibited by the *Guiding Principles*.

2.3 Attacks on refugee camps

The risk of attacks on refugee camps is especially heightened when they are located near the borders or areas of conflict. The danger faced by refugees was recognized by the ExCom of the UNHCR in 1987, which recommended that whenever possible, refugee camps should be located "at a reasonable distance from the frontier of the country of origin."⁹⁰ Attacks on refugee camps clearly contravene IHL and human rights law and cannot be justified even if members of armed groups or armed forces are located within the camps.

2.4 Sexual violence in the refugee camps

Violence against women is likely to continue once they have reached 'safe' areas within or outside their country.

⁹⁰ ExCom Conclusion no. 48 1987 - Military or armed attacks on refugee camps and settlements, para. 4, c).

Perpetrators of such violence include soldiers from the country of asylum, members of armed groups and fellow refugees. The abuse may be as flagrant as rape and abduction, or as subtle as an offer of protection in exchange for sexual favours.⁹¹ All studies, including the UNHCR guidelines, point to the prevalence of prostitution and sexual favours in all camp situations. They also indicate that these develop as a result of the shortcomings and inadequacies of relief programmes, including the lack of physical protection provided to women. Existing evidence also tends to reveal an increase in domestic violence in camps, along with depression and alcoholism.

Any acts of violence against displaced women violate human rights standards, the Refugee Convention, and the Geneva Convention. They are also prohibited by the *Guiding Principles*.

2.5 Discrimination and gender-bias

Studies have indicated that relief projects and structures for refugee representation tend to exacerbate existing gender inequality within the affected communities. The structures for representation tend to be clearly male-dominated and generally insensitive to representing the needs of women, including being unsympathetic with regard to the resolution of domestic disputes. Sexual discrimination in the delivery of goods and services has been frequently documented. The UNHCR (1991) itself has acknowledged the shortcomings of its programmes and the lack of gender-awareness of its staff.

Discrimination on the basis of gender is prohibited under international human rights law, as is discrimination of any

other kind, including race, colour, language, religion or belief, political or other opinion, national, ethnic or social origin, legal or social status, age, disability, property, birth, or by any other similar criteria. Discrimination against displaced and refugee women also violates CEDAW, which obliges states parties to condemn discrimination against women in all its forms, to adopt appropriate legislative and other measures, and to establish legal protection for the rights of women.

The principle of non-discrimination is applicable as well to emergency and camp situations, in the case of both refugees and IDPs. As stated previously, displacement does not strip individuals of their human rights, including the right not to be discriminated against, one of the cornerstones of international human rights standards.

For instance, women and men have equal rights in receiving assistance programmes and basic supplies, such as food, and to obtain all documents necessary for the enjoyment and exercise of their legal rights, such as passports, personal identification documents, birth certificates and marriage certificates.

According to the *Guiding Principles*, internally displaced persons, such as children (especially unaccompanied minors), expectant mothers, mothers with young children, female heads of households, persons with disabilities and elderly persons, are entitled to protection and assistance required by their condition and to treatment that takes their special needs into account.

According to the UNHCR *Guidelines*, and the *Guiding Principles*, special efforts should be made to ensure the full participation of women in the planning and distribution of basic supplies. For instance, special efforts should be made

91 United Nations High Commissioner for Refugees, *Guidelines on the Protection of Refugee Women*, Geneva, July 1991, p.18.

to ensure the full and equal participation of women and girls in educational programmes.

Signatories to the ICRC *Code of Conduct* recognize the crucial role played by women in disaster-prone communities and endeavour to ensure that this role is supported, not diminished, by aid programmes. They also endeavour to find ways to involve programme beneficiaries in the management of relief aid: “Disaster response assistance should never be imposed upon the beneficiaries. Effective relief and lasting rehabilitation can best be achieved where the intended beneficiaries are involved in the design, management and implementation of the assistance programme. We will strive to achieve full community participation in our relief and rehabilitation programmes.”

3. Factors Contributing to the Prevalence of Abuse

Several factors contribute to increasing women’s vulnerability to abuse within refugee or internally displaced camps. Many are not only contributing factors, they are also abuses of women’s rights.

3.1 Overcrowded camps

In many camps the physical conditions increase the likelihood of violence against women. Camps are often overcrowded, with strangers having to share communal living spaces.

3.2 Poor design of refugee camps

Poor design can have major repercussions on those living in camps. It can render women vulnerable to attack from outside the camp. An example is when women are forced to

walk long distances along dark or isolated paths to collect food, water and fuel. The lack of adequate lighting at night and lockable sleeping and washing areas are factors that erode the security of women. Design of communal latrines and washing facilities and the distance they are from living quarters are also important.

3.3 Absence of adequate facilities

Facilities at camps are sometimes provided without thought to women’s special needs. The absence of what may seem to men as trivialities, such as supplying sanitary napkins, can immobilize women and young girls. They may end up staying inside their shelters while they are menstruating for one week in four. Inappropriate or inadequate health services, such as the absence of female doctors or experts in sexual violence, further increase women’s vulnerability.

3.4 Discrimination against women

Structures of representation and camp management are almost invariably dominated by men who may not be sensitive to women’s concerns, thus increasing their dependence or vulnerability. Discrimination in the distribution of goods and services may result in the sexual and physical abuse of refugee women. According to the UNHCR, “refugee women who are unable to feed, clothe and shelter themselves and their children will be more vulnerable to physical and sexual abuse in order to obtain such necessities [...] Refugee women who must bribe guards in order to obtain firewood, water or other essential goods will be more susceptible to sexual harassment.”⁹²

One of the reasons some refugee women are forced into prostitution is that they have been deprived of the ap-

⁹² Ibid, p.3.

propriate documents, including ration cards and documents showing they are legally in the country, both of which are often distributed to the male heads of the households.

The marginalization of women within the formal political and economic structures of the camp (as well as within the household) contributes to subjecting refugee women to gender-specific abuses that, are, often enough, interrelated, as the following quotation reveals. “Victims of repeated sexual assault, and responsible for the survival of their children, many of the most destitute women refugees decide to make a profit out of their situation and [...] resort to prostitution as a living.” (Nyakabwa and Lavoie, 1995, p.28).

3.5 Absence of protection

The police are often unable or unwilling to protect refugees, especially refugee women. In many circumstances, police officials themselves may be among the perpetrators. Refugee women may be unwilling to report any abuses because they are afraid that their complaint may result in a worsening of the situation. More often than not, there is no mechanism in place that allows refugee women to report abuses and seek redress. In addition, existing evidence tends to demonstrate that single women are particularly vulnerable to abuse, including sexual violence and discrimination with respect to access to resources.

3.6 Trauma and inadequate counselling

Many women have been the victims of abuse, and/or witnessed abuse committed against family members, neighbours, friends or fellow displaced. They may have lost members of their families — husbands who have died in fighting or have joined military forces, or children or older relatives who have died of hunger or disease on the way to refuge.

Many die in epidemics that sweep through crowded encampments in the first weeks of a refugee crisis. Families are separated during flight, sometimes never to be reunited.

POWER STRUCTURES WITHIN THE CAMP

The formal and informal power structures within a camp may be particularly insensitive to women. They may be at the root of institutional discriminatory practices against women. Representatives of these structures may collude in abusing women, condone abuse or fail to take necessary measures to protect women against abuse.

You should seek to identify both formal and informal power structures and understand their workings. There is not a single model for such structures, but an exhaustive list of the actors, decision-makers, and division of labour in the camp may be a starting point. Actors and decision-makers include, at a minimum, camp managers (usually national civil servants), UNHCR field staff, other UN agencies, international and national non-governmental organizations and refugees’ representatives’.

It is fairly common practice that the formal power structures within the camp include refugees’ representatives. You should seek to identify how these representatives have been selected or elected, and the nature and extent of their role. Any reference to ‘traditional’ chiefs should be made very cautiously given the circumstances (i.e. war, sudden flight, deaths, family and community disintegration, etc.).

A common thread that runs throughout the literature on refugee experiences is the profound loss of individuality, self-esteem, and independence endured by refugees. Refugee camps have been also compared to a “controlling institution,” a “nightmare in totally controlled living,” and a “generalized technology of power” with the refugees subjected to techniques of control, investigation or intervention.

4. Investigation in a Camp for Displaced Persons: General Advice

Investigation in a camp for displaced persons may have two major purposes. The first purpose is to find the reasons behind the mass movement and the abuses that have taken place prior to the arrival in the camp, including during the flight itself. The second purpose is to learn about the living conditions and possible human rights abuses within the camp. This second subject of inquiry includes a focus on the treatment of displaced persons by the national and camp authorities, i.e. whether the rights of refugees or displaced persons are being respected, and/or whether the assistance programme for displaced persons meet the standards that humanitarian actors have set for themselves.

This section focuses on the second objective. The first has been dealt with in the previous chapters of this manual.

4.1 Preparing for investigation in a camp

All field visits require preparation, and field work in a refugee or IDP camp is no different. You should never arrive at the gate (visible or invisible) of a camp without first having received the proper authorization and coordinated your visit with some of the international and national agencies working on the site. In addition to the fact that you may not be authorized to enter, you are also likely to face many difficulties in the pursuit of your inquiries and by your actions you may make it more difficult for other investigators to follow suit.

Before visiting a camp, it is therefore imperative that you follow the steps laid out in this section.

4.1.1 Approach the UNHCR headquarters

This step may be especially useful if you are not already located in the country or region where the camp is located. The UNHCR should be made aware of your plan and the relevant staff at the UNHCR headquarters may grant you assistance in getting access to a camp, in addition to vital information about its history and the international programme of assistance.

4.1.2 Seek proper authorization

More than one authorization is usually required. You may need official authorization from the national Ministry responsible for the running of the camp, from the local authorities and from the UNHCR or other agencies with overall responsibilities for the camp. You will be asked to explain the purpose of your visits. If any of the above refuse to grant you authorization, you may need to ask others to intercede on your behalf, such as the headquarters of the UNHCR, other UN agencies, local or international NGOs or individuals with influence.

4.1.3 Coordinate your visit with the local UNHCR office and/or other agencies and organizations

You should announce your visit in advance, pay a visit to the UNHCR regional or local office and meet the representative and field officers. The same approach applies to other agencies or NGOs. These may simply be courtesy visits. More likely, however, they will also be research visits, as you will need to get information about the security situation in the camp, possibly a map of the camp, and general information about the work and division of labour among the various actors.

4.1.4 Consider security risks

Investigation in a refugee camp may present many risks for your delegation and the people you are seeking to speak with. Security problems may result from the proximity of the camps to border areas and/or areas of conflict, presence of armed groups nearby, armed intrusion or attacks on the camps. Individuals or groups within the camp may also contribute to an atmosphere of violence and fear or actively participate in, or condone acts of violence. There may be criminal activities linked to the assistance programme and the resources and revenues it is creating. Relations with the local populations may be tense: instances of attacks on displaced persons, including rape of women, by members of the local populations are often reported. Finally, humanitarian actors may be the target of acts of violence or hostility either by the displaced populations themselves or by outsiders.

You should get detailed and accurate information on the security incidents within the camps you are proposing to visit, including dates, alleged motives or factors, identity of the victims, alleged identity of the perpetrators, etc. Security officials within the UNHCR may be a good source of information and advice. You should list all possible security concerns (i.e. your own physical security and the security of your contacts) and develop contingency plans to deal with each one of them (i.e. how evacuation would be carried out).

4.2 Gathering background information on the camp(s)

Background information is also important for your mission. This section lays out the type of information you should seek.

4.2.1 The history of the camp

Camps for displaced persons differ greatly from one to the next, for instance, in terms of size. Some are huge cities, others are small villages. They also differ with respect to how close or how far they are from border areas, how long they have been in existence, whether they are opened or closed, etc.

You should seek to develop an overview of the camp with information such as the following:

- Date of and reasons for its opening;
- National and local circumstances;
- Population size and evolution;
- Ethnic composition of the displaced populations;
- Religion;
- Relations with the local population;
- Major events (i.e. outbreak of a communicable disease such as cholera, attacks by armed groups, instances of violence against displaced or humanitarian actors, etc.);
- Demographic data (i.e. mortality, morbidity, number of children in intensive feeding centres and evolution, etc.).

4.2.2 Division of labour and responsibilities among UN agencies, national authorities, international and national NGOs, and displaced persons, and the nature of the assistance programme

You will need to identify the different types of responsibility-sharing and division of labour among actors, including the UNHCR (or another UN agency), the government of the country of asylum and the NGOs. Factors to be noted include the following:

- Existence of a tripartite agreement among the aforementioned actors (as is usually the norm for refugee movement) or another form of agreement;
- Whether the UNHCR (or another UN agency) has been involved from the beginning in setting up the camp (or whether its involvement was preceded by a national initiative);
- Nature of the assistance programme at the time of the investigation (i.e. emergency phase, or care and maintenance program, or consolidation and integration phase);
- Review of the coordination mechanisms among all partner agencies and of the (usual) problems associated with them;
- Status under domestic law of the international and national agencies operating in the camp.

The main sources of this information include yearly reports from UN agencies or NGO web sites, situational reports (sitrep) from various UN agencies and NGOs, government reports, statistics, and interviews with key contacts (such as government officials and country representatives of the UNHCR and NGOs, field officers of the UNHCR and NGOs and camp managers).

Note that in the course of monitoring, the abovementioned contacts will most likely be met with several times.

4.3 Selecting and interviewing displaced or refugee women

You should refer to the step-by-step approach laid out in *Methodology for Gender-Sensitive Research and Documenting Human Rights Violations by State Agents: Sexual Violence*.

It is highly unlikely that a single unaccompanied visit to the camp will allow you to investigate cases of sexual

violence. If at all possible, you should therefore plan several visits. Within the camp itself, some individuals may be better positioned than others in terms of access to possible victims. They include nurses, health workers, teachers, NGO workers (both national and international) and possibly refugee women leaders. Anyone who is in daily contact with refugee women may be able to give you some information on victims of violence or discrimination.

Always be aware that the refugee leaders may be among the perpetrators or may be condoning the abuse. While meeting with these representatives is necessary, sole reliance on them to identify refugees is questionable and potentially biased. 'Representatives' have their own agendas, political or otherwise, and they may select refugees on this basis.

Other methods of selecting refugees must be identified. They may include the following:

- Random sample survey of refugee households: select a couple of sections (or neighbourhoods) within the camp and interview each 10th or 20th (or any other number) household;
- Representative sample survey of selected neighbourhoods or households within the camp (selected on the basis of the religion of the refugees, ethnic group, date of arrival, etc.);
- Random interviews at water points;
- Random interviews at the marketplace in the camp;
- Random interviews at the camp clinic and the intensive feeding centre (for access to the most vulnerable households);
- Interviews at the registration point (where newly arrived refugees are supposed to be registered);

- Interviews with key informants (i.e. elected representatives, school teachers, nurses, market traders, refugees working for NGOs, refugees responsible for food distribution, etc.);
- Interviews during food distribution.

4.4 Adopt a gender-sensitive research method

At all stages, you should adopt a gender-specific approach to the investigation.

Besides documenting one or several cases of abuse within a camp, your main contribution to the well-being of the refugee women resides in being able to identify policy and structural factors or conditions that allow these abuses to take place and continue and possibly in proposing remedies.

Applying a gender-sensitive research methodology to investigating abuses against women in a camp consists of highlighting and analyzing the significance of gender on the circumstances of the abuses, the nature of the harm, the causes, the consequences and women's access to remedies.

5. Investigating Living Conditions in a Camp: Instances or Patterns of Gender Discrimination

Many humanitarian agencies have now agreed to codes of conduct that identify professional standards for the delivery and implementation of assistance programmes. Your first line of inquiry should consist of determining whether the agencies operating in the camp have done so. If they have not, you should recommend that they do as a way of ensuring accountability and efficiency.

One of the most common types of gender-specific abuse of displaced women is in discrimination in the delivery of services and in the structures of representation within the camp. In addition, women may face abuses which are not, *a priori*, gender-specific, such as insufficient or inadequate food rations, inadequate sanitation facilities, unsafe water, etc. However, whenever investigating such problems, you should bear in mind that they may present gender-specific elements (see previous section).

5.1 Relief items and methods

The following list identifies some of the issues you may wish to investigate.⁹³ Many may require a certain level of expertise and knowledge and it is therefore highly recommended that experts such as nutritionists, planners, medical doctors, etc., accompany you in the research.

- **Stock levels of relief supplies:** a system should be in place to safeguard and prevent loss of supplies.
- **Stock distribution system:** food and other items should be distributed without discrimination and diversion. If both are taking place (all too often at the expense of women or children), you will need to determine whether the humanitarian actors and the camp authorities are seeking to address the problem and how.
- **Food rations:** does the food provided satisfy energy, protein, vitamin, and mineral requirements, as well as local dietary preferences?
- **Shelter:** you should seek to determine whether the camp provides adequate shelter for its occupants.

93 Extract from UNHCR Handbook for Emergencies (Part I: Field Operations) (1982).

- **Sanitation and health services:** this should be a primary focus of your inquiry, as correctly gathered health data may alert you to many problems or abuses in the camp. Health services should include primary health care, mother and child health care, child immunization, disease-control plan for the prevention, control, and treatment of communicable diseases.
- **Unaccompanied minors:** a programme should be in place to identify unaccompanied minors and reunite them with their families.
- **Special measures for women and girls:** you should determine whether there are any specific measures or assistance programmes targeting girls and women.
- **Education programmes:** are the educational needs of boys and girls in the camp being met?

Other issues to be considered may include **water supply, topography and drainage, accessibility to the camp, environmental conditions, vegetation and land rights.**

The methods of implementation of the assistance programme may also be a main focus of research. Most specifically, you need to discover the following:

- Whether displaced persons are being consulted with respect to the design and implementation of the program;
- Whether displaced persons are involved in the implementation of the program (i.e. use of paid staff, volunteers, etc.);
- If such consultation and involvement take place, whether it tends to favour some persons at the expense of others;
- Whether women are involved and consulted and how;

- Whether there are mechanisms in place that allow displaced persons to raise grievances and receive redress;
- Whether the social welfare service needs of the displaced or refugees are being met. As the trauma of becoming a refugee can create or exacerbate social and psychological problems, a social welfare service is necessary to identify and treat the problems. Any social welfare program should be culturally sensitive, and to the greatest extent possible, organized and administered by members of the community.

5.2 Investigating Food Distribution

The investigation of food distribution is difficult and potentially risky: situations of wide-spread food diversion, mismanagement, and unfair distribution, are fairly frequent. In many camps, these situations contribute to the power stratification within the camp, provide economic means to armed groups and sustain the armed conflicts, and/or involve high-ranking officials. Security concerns (for you and the displaced persons victimized by the diversion) should therefore be first in your mind. Some of the possible investigative approaches include the following:

- Interviewing displaced persons, the UN agencies, NGO field workers;
- Analyzing medical data to determine whether there is a discrepancy between the ration officially allocated and the rate of malnutrition or diet-related diseases;
- Surprise monitoring of food distribution (whereby rations of sampled refugees are weighed by the monitors after distribution);
- Interviewing workers responsible for food distribution;
- Interviewing representatives of the NGOs or UN agencies responsible for food distribution;

- Visiting clinics and intensive feeding centres and interviewing patients, etc.

5.3 Investigating attacks on camps or displaced individuals

Some key questions guiding the investigation include the following:

- Is the location of the camp potentially dangerous?
The camp should be as far removed from the border areas and/or potential military targets as possible. You should be aware that such a policy is often not very popular among the displaced populations themselves who may resent being moved further away from their area of origin. Armed groups who find refuge in the camps as well as access to food and economic power may actively and violently prevent the displacement of population away from the border areas. Displaced 'leaders' whose position and power may be linked to the proximity of the camp with border areas may also seek to prevent any attempt to displace the camps.
- Are members of armed groups or national armies known to have found refuge in the camp?
- Have there been instances of shooting or attacks?
- Are 'criminal' gangs known to be operating in the camp? (the distinction between criminal and political gangs may be very blurred.)
- Have there been instances of violent acts against displaced persons or humanitarian workers?
- Has the local population been known to target displaced persons (attacks, rape, killings, etc.)? Have any investigations been conducted and arrests made? More generally, does the local population resent the presence of the camp(s) and the reasons for this resentment.

- Is there a police or military station within the camp and/or a jail?

5.4 Investigating sexual abuse against displaced women

When investigating instances and patterns of sexual abuse against displaced women, you should especially keep in mind the following:

- The nature of the political and power structures within the camp and the possible function of their representatives in terms of perpetrating abuses, condoning them, or failing to protect women.
- Women's dependency on these structures in terms of access to food and services. They may be afraid to lose access to these services if they complain; they may be afraid for their lives and those of their children.
- Women's lack of protection. This is especially true for single women. Once you have left, women may be left alone to deal with the consequences of reporting their abuses.
- Absence of mechanisms within the camp for women to report the abuses. Few camps have established and recognized mechanisms that allow refugees or displaced persons to raise their concerns or receive redress. When they do exist, such mechanisms may not be particularly sensitive to women's concerns, fears or abuse.
- Vulnerability of refugees in general. If the abuses are perpetrated by the local police or local men, women may be afraid to be expelled or forcibly repatriated if they report them.
- Sexual abuse may take many forms within the context of a camp. In particular, sexual services in exchange for food, wood, other items, or for protection may be

common. As identified in Chapter Six, *Documenting Sexual Violence*, such acts constitute rape.

WOMEN IN POST-CONFLICT RECONSTRUCTION

Post-conflict reconstruction periods are times of tremendous change that lay the groundwork for the future of the state and society. Reconstruction occurs in three broad areas, political, economic, and social, all of which are intertwined. Women's previous positions and experiences prior to and during the conflict heavily influence their roles in and experiences of the post-conflict period.⁹⁴ It is a time in which new gains for women can be made (as in South Africa, Guatemala, the Philippines, and Rwanda) or where women's rights can be eroded (as in El Salvador, Serbia, Somalia, and Zimbabwe).

In pre- and post-conflict situations, international human rights law applies even in situations where tensions, disturbances, or disasters have contributed to an escalation of armed conflict that is not considered systematic and sustained.

However, as many of the issues women face in post-conflict situations result from their experiences during conflict, you should be able to draw upon international humanitarian law for prosecution in the post-conflict period for violations that occurred during armed conflict.

⁹⁴ Birgitte Sorensen, *Women and Post-Conflict Reconstruction: Issues and Sources, The War-Torn Societies Project*, Occasional paper no.3, Geneva: United Nations Research Institute for Social Development, 1998.

In all post-conflict situations, as a human rights activist you should be able to demand that representatives of the state adhere to international human rights laws. Additionally, each state will have laws regarding the political, economic, and social rights of women. It is crucial that you familiarize yourself with the relevant domestic legal standards (state, and where applicable, customary laws).

1. The Consequences of Rape and Sexual Violence

Example: Consequences of rape and sexual violence in post-conflict Rwanda⁹⁵

The silence surrounding rape affects women in a myriad of ways, but particularly with respect to their sexual and reproductive health. Many women who have been raped or mutilated continue to suffer health problems, but have not consulted a doctor because of the stigma attached and the cost and inaccessibility of health care. Dr. Rwamasirabo, the director of Kigali Central Hospital, noted that rape victims were reluctant to come forward to seek medical treatment because of the fear of being judged because 'society is looking at you' and because of the shame of being raped. Even women who have sought medical treatment often have not disclosed to their doctor the fact that they have been raped.

Dr. Etienne Mubarutso, a gynecologist at University Hospital in Butare, who has examined hundreds of rape victims since the genocide, described his experience with rape cases:

It has been two years since the war, but these patients are very difficult to cure. Initially, they come in with infections, vaginal

infections, urinary tract problems —problems that are sexually transmitted. You cure the direct illness, but psychologically, they are not healed. They continue to come back complaining of cramps or pain, but there is nothing physically wrong with them. The women are profoundly marked psychologically. Medically, they are healed, but they continue to be sick. And there are no services that specifically deal with the problems these women have. There are some groups for widows, and the like, but there are no groups to help women who have gone through this [rape].

Survivors of violations during armed conflicts must deal with a variety of physical, psychological, political, economic, social and cultural repercussions during the post-conflict period.

Physical ailments may include sexually transmitted diseases, such as HIV/AIDS, vesico-vaginal fistula, trauma, mutilation, complications from botched abortions, uterine problems, scarring of the vagina and problems having a normal sexual life or giving birth in the future. Survivors also suffer a wide array of psychological trauma.⁹⁶ As stated above, the physical and psychological consequences of rape and sexual violence continue long after the conflict has ended. Many women do not seek medical attention because of a fear of the stigma of sexual assault, their inability to afford medical care, and a general lack of health care facilities. Without treatment, many of the physical and psychological afflictions will worsen.

⁹⁵ Human Rights Watch/Women's Rights Project, *Shattered Lives: Sexual Violence during the Rwandan Genocide and its Aftermath*, New York, 1995, pp. 13-14.

⁹⁶ Human Rights Watch/Women's Rights Project, *Shattered Lives: Sexual Violence during the Rwandan Genocide and its Aftermath*, New York, 1995; Human Rights Watch/Women's Rights Project, *Kosovo: Rape as a Weapon of 'Ethnic Cleansing'*, Volume 12, No.3, New York, March 2000; Human Rights Watch/Women's Rights Project, *The Human Rights Watch Global Report on Women's Human Rights*, New York, 1995.

Survivors of abuse may face a number of threats, such as revenge attacks and/or death threats against them or their families. In addition, political or military leaders may use their experiences to justify or fuel future conflicts or politically motivated prosecutions. These threats are likely to increase and to be carried out whenever survivors agree to testify against those who committed abuses during the conflict.

Economic consequences can include loss of property, inheritance or land, inability to work or find work, increased poverty and economic marginalization resulting from the destruction of economic infrastructure. These consequences are especially acute in the case of widows, single women without family support and households headed by women.

Social and cultural repercussions may include rejection, or a profound fear of rejection, of the survivor by family members and community, and a variety of social stigmas, including the inability to marry.

In all cases, as a human rights activist, you should adhere to the principles of protecting and promoting the well-being of the survivor while working toward justice.

It is imperative that women's rights in domestic and international human rights standards be promoted and enforced in the post-conflict area. In particular, these include the right of women to non-discriminatory treatment in political, social, economic, and cultural spheres, but most importantly here, rights to health care, including reproductive health, and the right to adequate health care facilities as enshrined in Articles 2, 3, 4, 12 and 14 in CEDAW.

Depending on the form of discrimination women are facing, you should be able to draw upon domestic and international standards, especially CEDAW.

2. Protection of Witnesses

In the post-conflict period, survivors of violations of international humanitarian and international human rights standards may choose to testify. Issues surrounding witness protection and support are central for women willing to speak out and testify against the perpetrators of sexual violence, many of whom may still be at large or operating in their former positions with impunity.

Example: Kosovo⁹⁷

Testimony provided to Human Rights Watch also suggested that women held in prisons were raped and sexually assaulted [...] A man, M.J., described being taken with others by truck to the prison in Lipljan (Lipjan), which also had a women's facility. When the detainees arrived at the prison, they were tortured and interrogated, he told Human Rights Watch. M.J. spent forty-two days in the prison. He told a Human Rights Watch investigator that women also were detained and raped in the prison. The women, held in a cell near the men, could be heard screaming. According to the prisoner, "I heard the police tell the women to take off their clothes. I will never forget their screams. The police would walk by our room and say to each other, 'Tonight we will be with the girls[...]'"

Many women who survived [such] attacks do not want to report for a variety of reasons. Some women victims of rape expressed fear that they would never be able to marry. Others felt terrified that they would be shunned by society. But other

⁹⁷ Human Rights Watch interview, M.J., Dobrotnin, July 13, 1999, as quoted in Human Rights Watch/Women's Rights Project, *Kosovo: Rape as a Weapon of 'Ethnic Cleansing'*, Volume 12, No.3, New York, March 2000, p. 23. See also, James Hider, "Post-war women must work to overcome conflict trauma," Agence France Presse, November 27, 1999, as presented in Human Rights Watch/Women's Rights Project, *Kosovo: Rape as a Weapon of 'Ethnic Cleansing'*, Volume 12, No.3, New York, March 2000, p. 24.

women have expressed anger at their attackers and willingness to testify at the ICTY [International Criminal Tribunal for the Former Yugoslavia]. That willingness to testify is tempered, however, by the fear that their attackers may still be at large in Kosovo, or that they may return.

The attacks against these women and men are in clear violation of the standards of IHL and international human rights laws, most notably those regarding torture and the detainment and treatment of prisoners.

Witnesses who are willing to testify must receive proper treatment and protection both during and after testifying.

Witnesses should not be pressured to give testimony under circumstances that may heighten their feelings of fear or shame. “It has been reported, in fact, that a number of victims of rape or other sexual torture became severely depressed and committed suicide after interviews.”⁹⁸

Witnesses should receive moral support and there should be strong consideration given to preserving confidentiality or anonymity when the victim fears repercussions.

Judges and legal personnel should receive training to raise their awareness of issues ranging from discriminatory treatment by the courts of survivors of sexual violence to sexual violence during armed conflict to ensure interviews, investigations, and court proceedings are carried out in the most just manner.

98 Ariane Brunet and Stephanie Rousseau, “Acknowledging Violations, Struggling against Impunity,” Indai Lourdes Sajor editor, *Common Grounds: Violence against Women in War and Armed Conflict Situations*, Quezon City, Philippines: Asian Center for Women’s Human Rights, 1998, p. 50.

Finally, victims and advocates could draw from the experience of American, European, Asian, and African lawyers who have, on behalf of survivor’s groups, brought class action suits against perpetrators in several countries. The benefit of such suits is that if successful they allow victims to sue perpetrators and can compel the state to provide compensation to the survivor. They are also useful in that they can be pursued outside of the jurisdiction of the territory where the alleged perpetrator(s) reside. However, not all legal systems provide for such actions and it is therefore crucial for you to be familiar with the options available under domestic laws.⁹⁹

3. Discriminatory Treatment Under the Law

Example: Property and Inheritance Rights in Post-Conflict Rwanda¹⁰⁰

In Rwanda, under customary law, women do not inherit (and, in fact, may form part of the husbands’ ‘belongings’ subject to inheritance). Upon the death of the husband, the eldest son becomes the head of the family or the husband’s family claims the inheritance. According to Rwandan women survivors of the genocide:

It is a big problem for women in the rural areas. When a married woman tries to get her parents’ property, she is told that she has a husband and that she should go to his home. Sometimes the woman herself thinks like that and does not even pursue the property to which she is entitled. Then the surviving male relatives take it. Orphaned children are also having problems

99 Ibid., pp. 33-60.

100 Human Rights Watch/Women’s Rights Project, *Shattered Lives: Sexual Violence during the Rwandan Genocide and its Aftermath*, New York, 1995.

getting their parents' land. The property is rightfully theirs, but sometimes conflicts within the family make it difficult. The orphans are usually absorbed by the mother's side of the family. Yet, it is the father's side that wants to take the property (and not always the children)[...]Women lost their families, their houses, their property—everything[...]They are often chased away from the family property[...]

Another genocide survivor stressed that in many cases, women are just trying to get access to what they are entitled to, stating, "The new government is not doing enough for women. We need a policy for widows and their children. Many women can't get their money or their property back. We're not begging. We just want our rights recognized."

Article 1 of CEDAW defines "discrimination against women" as "any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field."

As mandated in Article 2 of the CEDAW, state parties are obliged "to pursue by all appropriate means and without delay a policy of eliminating discrimination against women." This obligation includes the following:

- Adoption of legislation and other measures, including sanctions where appropriate, prohibiting all discrimination against women.
- Establishment of legal protection of the rights of women.

- Ensuring through competent national tribunals and other public institutions the effective protection of women against any act of discrimination.
- Refraining from engaging in any act or practice of discrimination against women and ensuring that public authorities and institutions act in conformity with this obligation.
- Taking all appropriate measures to eliminate discrimination against women by any person, organization or enterprise.
- Taking all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women; and
- Repealing all national penal provisions that constitute discrimination against women.

In the example above, Rwanda, which has ratified CEDAW, should be held to its obligations. In 1995, the government began revising the discriminatory laws affecting women and children, but by 2000 the reforms were still proceeding slowly with little or no interim protection for the women implemented.

4. Women's Political Participation

Example: A Hostile Reception in Northern Ireland¹⁰¹

When the Northern Ireland Women's Coalition won seats in the election and gained access to the Forum, an arena where the political parties aired their views, they encountered a heavy mix of sexism and sectarianism. Men labeled them the 'ladies coalition' and addressed them with a mixture of ridicule and hostility. "Whingeing, whining, silly, feckless women," says [representative] Monica McWilliam, were just some of the insults thrown at her and her colleagues in the Forum. "Calls of 'sit down you silly woman,' and being told that it was the duty of the good loyal Ulster woman to 'stand by her man' did not make for a good working environment."

The ICCPR, the Convention on the Political Rights of Women, and CEDAW enshrine women's equal ability with men to participate in public and civil life. Articles 3, 7, and 8 of CEDAW prohibit discrimination against women in political and public life and in particular, ensures for women, on equal terms with men, the right to vote, to stand for election for all public bodies, to participate in the formulation of government policy, to hold public office at all levels of government, including international levels, and to participate in non-governmental organizations and civil associations.

It is essential that women play an active role in the reconstruction of the political sphere. Attempts to deny women's political and civil participation should be identified for what they are, violations of women's domestic and international human rights.

Importantly, while at the local level women's grassroots organizations are active during and after the conflict, they are often marginalized during national peace negotiations.

Their participation in national peace accords most often occurs via two routes: i) Women mobilize politically and demand inclusion and a voice in the process, as seen in Guatemala, Northern Ireland, Palestine, South African, and the Sudan or ii) UN, governmental, or NGO-facilitated peace conferences include women, as witnessed recently in Somalia and the Sudan.

¹⁰¹ Sanam Naraghi Anderlini, *Women at the Peace Table: Making a Difference*, New York: UNIFEM, 2000.

Extract from Guiding Principles on Internal Displacement

A publication of the United Nations Office for the
Coordination of Humanitarian Affairs (OCHA)

Section I GENERAL PRINCIPLES

Principle 1

1. Internally displaced persons shall enjoy, in full equality, the same rights and freedoms under international and domestic law as do other persons in their country. They shall not be discriminated against in the enjoyment of any rights and freedoms on the ground that they are internally displaced.
2. These Principles are without prejudice to individual criminal responsibility under international law, in particular relating to genocide, crimes against humanity and war crimes.

Principle 2

1. These Principles shall be observed by all authorities, groups and persons irrespective of their legal status and applied without any adverse distinction. The observance of these Principles shall not affect the legal status of any authorities, groups or persons involved.
2. These Principles shall not be interpreted as restricting, modifying or impairing the provisions of any international human rights or international humanitarian law instrument or rights granted to persons under domestic law. In particular, these Principles are without prejudice to the right to seek and enjoy asylum in other countries.

Principle 3

1. National authorities have the primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction.
2. Internally displaced persons have the right to request and to receive protection and humanitarian assistance from these authorities. They shall not be persecuted or punished for making such a request.

Principle 4

1. These Principles shall be applied without discrimination of any kind, such as race, colour, sex, language, religion or belief, political or other opinion, national, ethnic or social origin, legal or social status, age, disability, property, birth, or on any other similar criteria.
2. Certain internally displaced persons, such as children, especially unaccompanied minors, expectant mothers, mothers with young children, female heads of household, persons with disabilities and elderly persons, shall be entitled to protection and assistance required by their condition and to treatment which takes into account their special needs.

Section II PRINCIPLES RELATING TO PROTECTION FROM DISPLACEMENT

Principle 5

All authorities and international actors shall respect and ensure respect for their obligations under international law, including human rights and humanitarian law, in all circumstances, so as to prevent and avoid conditions that might lead to displacement of persons.

Principle 6

1. Every human being shall have the right to be protected against being arbitrarily displaced from his or her home or place of habitual residence.
2. The prohibition of arbitrary displacement includes displacement:
 - (a) When it is based on policies of apartheid, “ethnic cleansing” or similar practices aimed at/or resulting in altering the ethnic, religious or racial composition of the affected population;
 - (b) In situations of armed conflict, unless the security of the civilians involved or imperative military reasons so demand;
 - (c) In cases of large-scale development projects, which are not justified by compelling and overriding public interests;
 - (d) In cases of disasters, unless the safety and health of those affected requires their evacuation; and
 - (e) When it is used as a collective punishment.
3. Displacement shall last no longer than required by the circumstances.

Principle 7

1. Prior to any decision requiring the displacement of persons, the authorities concerned shall ensure that all feasible alternatives are explored in order to avoid displacement altogether. Where no alternatives exist, all measures shall be taken to minimize displacement and its adverse effects.
2. The authorities undertaking such displacement shall ensure, to the greatest practicable extent, that proper accommodation is provided to the displaced persons, that such displacements are effected in satisfactory conditions of safety,

nutrition, health and hygiene, and that members of the same family are not separated.

3. If displacement occurs in situations other than during the emergency stages of armed conflicts and disasters, the following guarantees shall be complied with:
 - (a) A specific decision shall be taken by a State authority empowered by law to order such measures;
 - (b) Adequate measures shall be taken to guarantee to those to be displaced full information on the reasons and procedures for their displacement and, where applicable, on compensation and relocation;
 - (c) The free and informed consent of those to be displaced shall be sought;
 - (d) The authorities concerned shall endeavour to involve those affected, particularly women, in the planning and management of their relocation;
 - (e) Law enforcement measures, where required, shall be carried out by competent legal authorities; and
 - (f) The right to an effective remedy, including the review of such decisions by appropriate judicial authorities, shall be respected.

Principle 8

Displacement shall not be carried out in a manner that violates the rights to life, dignity, liberty and security of those affected.

Principle 9

States are under a particular obligation to protect against the displacement of indigenous peoples, minorities, peasants, pastoralists and other groups with a special dependency on and attachment to their lands.

Section III

PRINCIPLES RELATING TO PROTECTION DURING DISPLACEMENT

Principle 10

1. Every human being has the inherent right to life which shall be protected by law. No one shall be arbitrarily deprived of his or her life. Internally displaced persons shall be protected in particular against:

- (a) Genocide;
- (b) Murder;
- (c) Summary or arbitrary executions; and
- (d) Enforced disappearances, including abduction or unacknowledged detention, threatening or resulting in death.

Threats and incitement to commit any of the foregoing acts shall be prohibited.

2. Attacks or other acts of violence against internally displaced persons who do not or no longer participate in hostilities are prohibited in all circumstances. Internally displaced persons shall be protected, in particular, against:

- (a) Direct or indiscriminate attacks or other acts of violence, including the creation of areas wherein attacks on civilians are permitted;
- (b) Starvation as a method of combat;
- (c) Their use to shield military objectives from attack or to shield, favour or impede military operations;
- (d) Attacks against their camps or settlements; and
- (e) The use of anti-personnel landmines.

Principle 11

1. Every human being has the right to dignity and physical, mental and moral integrity.
2. Internally displaced persons, whether or not their liberty has been restricted, shall be protected in particular against:
 - (a) Rape, mutilation, torture, cruel, inhuman or degrading treatment or punishment, and other outrages upon personal dignity, such as acts of gender-specific violence, forced prostitution and any form of indecent assault;
 - (b) Slavery or any contemporary form of slavery, such as sale into marriage, sexual exploitation, or forced labour of children; and
 - (c) Acts of violence intended to spread terror among internally displaced persons.

Threats and incitement to commit any of the foregoing acts shall be prohibited.

Principle 12

1. Every human being has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention.
2. To give effect to this right for internally displaced persons, they shall not be interned in or confined to a camp. If in exceptional circumstances such internment or confinement is absolutely necessary, it shall not last longer than required by the circumstances.
3. Internally displaced persons shall be protected from discriminatory arrest and detention as a result of their displacement.
4. In no case shall internally displaced persons be taken hostage.

Principle 13

1. In no circumstances shall displaced children be recruited nor be required or permitted to take part in hostilities.
2. Internally displaced persons shall be protected against discriminatory practices of recruitment into any armed forces or groups as a result of their displacement. In particular any cruel, inhuman or degrading practices that compel compliance or punish non-compliance with recruitment are prohibited in all circumstances.

Principle 14

1. Every internally displaced person has the right to liberty of movement and freedom to choose his or her residence.
2. In particular, internally displaced persons have the right to move freely in and out of camps or other settlements.

Principle 15

Internally displaced persons have:

- (a) The right to seek safety in another part of the country;
- (b) The right to leave their country;
- (c) The right to seek asylum in another country; and
- (d) The right to be protected against forcible return to or resettlement in any place where their life, safety, liberty and/or health would be at risk.

Principle 16

1. All internally displaced persons have the right to know the fate and whereabouts of missing relatives.
2. The authorities concerned shall endeavour to establish the fate and whereabouts of internally displaced persons reported missing, and cooperate with relevant international

organizations engaged in this task. They shall inform the next of kin on the progress of the investigation and notify them of any result.

3. The authorities concerned shall endeavour to collect and identify the mortal remains of those deceased, prevent their despoliation or mutilation, and facilitate the return of those remains to the next of kin or dispose of them respectfully.
4. Grave sites of internally displaced persons should be protected and respected in all circumstances. Internally displaced persons should have the right of access to the grave sites of their deceased relatives.

Principle 17

1. Every human being has the right to respect of his or her family life.
2. To give effect to this right for internally displaced persons, family members who wish to remain together shall be allowed to do so.
3. Families which are separated by displacement should be reunited as quickly as possible. All appropriate steps shall be taken to expedite the reunion of such families, particularly when children are involved. The responsible authorities shall facilitate inquiries made by family members and encourage and cooperate with the work of humanitarian organizations engaged in the task of family reunification.
4. Members of internally displaced families whose personal liberty has been restricted by internment or confinement in camps shall have the right to remain together.

Principle 18

1. All internally displaced persons have the right to an adequate standard of living.

2. At the minimum, regardless of the circumstances, and without discrimination, competent authorities shall provide internally displaced persons with and ensure safe access to:
 - (a) Essential food and potable water;
 - (b) Basic shelter and housing;
 - (c) Appropriate clothing; and
 - (d) Essential medical services and sanitation.
3. Special efforts should be made to ensure the full participation of women in the planning and distribution of these basic supplies.

Principle 19

1. All wounded and sick internally displaced persons as well as those with disabilities shall receive to the fullest extent practicable and with the least possible delay, the medical care and attention they require, without distinction on any grounds other than medical ones. When necessary, internally displaced persons shall have access to psychological and social services.
2. Special attention should be paid to the health needs of women, including access to female health care providers and services, such as reproductive health care, as well as appropriate counselling for victims of sexual and other abuses.
3. Special attention should also be given to the prevention of contagious and infectious diseases, including AIDS, among internally displaced persons.

Principle 20

1. Every human being has the right to recognition everywhere as a person before the law.
2. To give effect to this right for internally displaced persons,

the authorities concerned shall issue to them all documents necessary for the enjoyment and exercise of their legal rights, such as passports, personal identification documents, birth certificates and marriage certificates. In particular, the authorities shall facilitate the issuance of new documents or the replacement of documents lost in the course of displacement, without imposing unreasonable conditions, such as requiring the return to one's area of habitual residence in order to obtain these or other required documents.

3. Women and men shall have equal rights to obtain such necessary documents and shall have the right to have such documentation issued in their own names.

Principle 21

1. No one shall be arbitrarily deprived of property and possessions.
2. The property and possessions of internally displaced persons shall in all circumstances be protected, in particular, against the following acts:
 - (a) Pillage;
 - (b) Direct or indiscriminate attacks or other acts of violence;
 - (c) Being used to shield military operations or objectives;
 - (d) Being made the object of reprisal; and
 - (e) Being destroyed or appropriated as a form of collective punishment.
3. Property and possessions left behind by internally displaced persons should be protected against destruction and arbitrary and illegal appropriation, occupation or use.

Principle 22

1. Internally displaced persons, whether or not they are living in camps, shall not be discriminated against as a result of their displacement in the enjoyment of the following rights:
 - (a) The rights to freedom of thought, conscience, religion or belief, opinion and expression;
 - (b) The right to seek freely opportunities for employment and to participate in economic activities;
 - (c) The right to associate freely and participate equally in community affairs;
 - (d) The right to vote and to participate in governmental and public affairs, including the right to have access to the means necessary to exercise this right; and
 - (e) The right to communicate in a language they understand.

Principle 23

1. Every human being has the right to education.
2. To give effect to this right for internally displaced persons, the authorities concerned shall ensure that such persons, in particular displaced children, receive education which shall be free and compulsory at the primary level. Education should respect their cultural identity, language and religion.
3. Special efforts should be made to ensure the full and equal participation of women and girls in educational programmes.
4. Education and training facilities shall be made available to internally displaced persons, in particular adolescents and women, whether or not living in camps, as soon as conditions permit.

Section IV

PRINCIPLES RELATING TO HUMANITARIAN ASSISTANCE

Principle 24

1. All humanitarian assistance shall be carried out in accordance with the principles of humanity and impartiality and without discrimination.
2. Humanitarian assistance to internally displaced persons shall not be diverted, in particular for political or military reasons.

Principle 25

1. The primary duty and responsibility for providing humanitarian assistance to internally displaced persons lies with national authorities.
2. International humanitarian organizations and other appropriate actors have the right to offer their services in support of the internally displaced. Such an offer shall not be regarded as an unfriendly act or an interference in a State's internal affairs and shall be considered in good faith. Consent thereto shall not be arbitrarily withheld, particularly when authorities concerned are unable or unwilling to provide the required humanitarian assistance.
3. All authorities concerned shall grant and facilitate the free passage of humanitarian assistance and grant persons engaged in the provision of such assistance rapid and unimpeded access to the internally displaced.

Principle 26

Persons engaged in humanitarian assistance, their transport and supplies shall be respected and protected. They shall not be the object of attack or other acts of violence.

Principle 27

1. International humanitarian organizations and other appropriate actors when providing assistance should give due regard to the protection needs and human rights of internally displaced persons and take appropriate measures in this regard. In so doing, these organizations and actors should respect relevant international standards and codes of conduct.
2. The preceding paragraph is without prejudice to the protection responsibilities of international organizations mandated for this purpose, whose services may be offered or requested by States.

Section V

PRINCIPLES RELATING TO RETURN, RESETTLEMENT AND REINTEGRATION

Principle 28

1. Competent authorities have the primary duty and responsibility to establish conditions, as well as provide the means, which allow internally displaced persons to return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country. Such authorities shall endeavour to facilitate the reintegration of returned or resettled internally displaced persons.
2. Special efforts should be made to ensure the full participation of internally displaced persons in the planning and management of their return or resettlement and reintegration.

Principle 29

1. Internally displaced persons who have returned to their homes or places of habitual residence or who have resettled in another part of the country shall not be discriminated

against as a result of their having been displaced. They shall have the right to participate fully and equally in public affairs at all levels and have equal access to public services.

2. Competent authorities have the duty and responsibility to assist returned and/or resettled internally displaced persons to recover, to the extent possible, their property and possessions which they left behind or were dispossessed of upon their displacement. When recovery of such property and possessions is not possible, competent authorities shall provide or assist these persons in obtaining appropriate compensation or another form of just reparation.

Principle 30

All authorities concerned shall grant and facilitate for international humanitarian organizations and other appropriate actors, in the exercise of their respective mandates, rapid and unimpeded access to internally displaced persons to assist in their return or resettlement and reintegration.

Extract from the Code of Conduct for the International Red Cross and Red Crescent Movement and NGOs in Disaster Relief

Prepared jointly by the International Federation of Red Cross and Red Crescent Societies and the ICRC¹⁰²

Purpose

This Code of Conduct seeks to guard our standards of behaviour. It is not about operational details, such as how one should calculate food rations or set up a refugee camp. Rather, it seeks to maintain the high standards of independence, effectiveness and impact to which disaster response NGOs and the International Red Cross and Red Crescent Movement aspires. It is a voluntary code, enforced by the will of the organization accepting it to maintain the standards laid down in the Code.

The Code of Conduct

Principles of Conduct for the International Red Cross and Red Crescent Movement and NGOs in Disaster Response Programmes

1. The humanitarian imperative comes first

The right to receive humanitarian assistance, and to offer it, is a fundamental humanitarian principle which should be enjoyed by all citizens of all countries. As members of the international

¹⁰² Sponsored by: Caritas Internationalis, Catholic Relief Services, The International Federation of Red Cross and Red Crescent Societies, International Save the Children Alliance, Lutheran World Federation, Oxfam, The World Council of Churches, The International Committee of the Red Cross (members of the Steering Committee for Humanitarian Response)

community, we recognize our obligation to provide humanitarian assistance wherever it is needed [...]

2. Aid is given regardless of the race, creed or nationality of the recipients and without adverse distinction of any kind. Aid priorities are calculated on the basis of need alone

Wherever possible, we will base the provision of relief aid upon a thorough assessment of the needs of the disaster victims and the local capacities already in place to meet those needs. Within the entirety of our programmes, we will reflect considerations of proportionality. Human suffering must be alleviated whenever it is found; life is as precious in one part of a country as another. Thus, our provision of aid will reflect the degree of suffering it seeks to alleviate. In implementing this approach, we recognize the crucial role played by women in disaster-prone communities and will ensure that this role is supported, not diminished, by our aid programmes. The implementation of such a universal, impartial and independent policy, can only be effective if we and our partners have access to the necessary resources to provide for such equitable relief, and have equal access to all disaster victims.

3. Aid will not be used to further a particular political or religious standpoint

Humanitarian aid will be given according to the need of individuals, families and communities. Notwithstanding the right of Non-Governmental Humanitarian Agencies (NGHAs) to espouse particular political or religious opinions, we affirm that assistance will not be dependent on the adherence of the recipients to those opinions [...]

4. We shall endeavour not to act as instruments of government foreign policy

NGHAs are agencies which act independently from governments. We therefore formulate our own policies and implementation strategies and do not seek to implement the policy of any government, except insofar as it coincides with our own independent policy [...]

5. We shall respect culture and custom

We will endeavour to respect the culture, structures and customs of the communities and countries we are working in.

6. We shall attempt to build disaster response on local capacities

All people and communities — even in disaster — possess capacities as well as vulnerabilities. Where possible, we will strengthen these capacities by employing local staff, purchasing local materials and trading with local companies. Where possible, we will work through local NGHAs as partners in planning and implementation, and co-operate with local government structures where appropriate. We will place a high priority on the proper co-ordination of our emergency responses. This is best done within the countries concerned by those most directly involved in the relief operations, and should include representatives of the relevant UN bodies.

7. Ways shall be found to involve programme beneficiaries in the management of relief aid

Disaster response assistance should never be imposed upon the beneficiaries. Effective relief and lasting rehabilitation can best be achieved where the intended beneficiaries are involved in the design, management and implementation of the assistance programme. We will strive to achieve full community participation in our relief and rehabilitation programmes.

8. Relief aid must strive to reduce future vulnerabilities to disaster as well as meeting basic needs

All relief actions affect the prospects for long-term development, either in a positive or a negative fashion. Recognizing this, we will strive to implement relief programmes which actively reduce the beneficiaries' vulnerability to future disasters and help create sustainable lifestyles. We will pay particular attention to environmental concerns in the design and management of relief programmes. We will also endeavour to minimize the negative impact of humanitarian assistance, seeking to avoid long-term beneficiary dependence upon external aid.

9. We hold ourselves accountable to both those we seek to assist and those from whom we accept resources

We often act as an institutional link in the partnership between those who wish to assist and those who need assistance during disasters. We therefore hold ourselves accountable to both constituencies. All our dealings with donors and beneficiaries shall reflect an attitude of openness and transparency [...]

10. In our information, publicity and advertising activities, we shall recognize disaster victims as dignified humans, not hopeless objects

Respect for the disaster victim as an equal partner in action should never be lost. In our public information we shall portray an objective image of the disaster situation where the capacities and aspirations of disaster victims are highlighted, and not just their vulnerabilities and fears [...]

Extract from the Sphere Project's Humanitarian Standards and Minimum Standards in Disaster Response

THE HUMANITARIAN CHARTER

Humanitarian agencies committed to this Charter and to the Minimum Standards will aim to achieve defined levels of service for people affected by calamity or armed conflict, and to promote the observance of fundamental humanitarian principles.

The Humanitarian Charter expresses agencies' commitment to these principles and to achieving the Minimum Standards. This commitment is based on agencies' appreciation of their own ethical obligations, and reflects the rights and duties enshrined in international law in respect of which states and other parties have established obligations.

The Charter is concerned with the most basic requirements for sustaining the lives and dignity of those affected by calamity or conflict. The Minimum Standards which follow aim to quantify these requirements with regard to people's need for water, sanitation, nutrition, food, shelter and health care. Taken together, the Humanitarian Charter and the Minimum Standards contribute to an operational framework for accountability in humanitarian assistance efforts.

1. PRINCIPLES

We reaffirm our belief in the humanitarian imperative and its primacy [...] We will act in accordance with the principles of humanity and impartiality, and with the other principles set out in the Code of Conduct for the International Red Cross and

Red Crescent Movement and Non-Governmental Organizations in Disaster Relief (1994).

The Humanitarian Charter affirms the fundamental importance of the following principles:

1.1 The right to life with dignity

This right is reflected in the legal measures concerning the right to life, to an adequate standard of living and to freedom from cruel, inhuman or degrading treatment or punishment [...]

1.2 The distinction between combatants and non-combatants

This is the distinction which underpins the 1949 Geneva Conventions and their Additional Protocols of 1977 [...] Non-combatants are protected under international humanitarian law and are entitled to immunity from attack.

1.3 The principle of non-refoulement

This is the principle that no refugee shall be sent (back) to a country in which his or her life or freedom would be threatened on account of race, religion, nationality, membership of a particular social group or political opinion; or where there are substantial grounds for believing that s/he would be in danger of being subjected to torture.

2. ROLES AND RESPONSIBILITIES

2.1 We recognize that it is firstly through their own efforts that the basic needs of people affected by calamity or armed conflict are met, and we acknowledge the primary role and responsibility of the state to provide assistance when people's capacity to cope has been exceeded.

2.2 International law recognizes that those affected are entitled to protection and assistance. It defines legal obligations on states or warring parties to provide such assistance or to

allow it to be provided, as well as to prevent and refrain from behaviour that violates fundamental human rights. These rights and obligations are contained in the body of international human rights law, international humanitarian law and refugee law.

- 2.3** As humanitarian agencies, we define our role in relation to these primary roles and responsibilities. Our role in providing humanitarian assistance reflects the reality that those with primary responsibility are not always able or willing to perform this role themselves. This is sometimes a matter of capacity. Sometimes it constitutes a wilful disregard of fundamental legal and ethical obligations, the result of which is much avoidable human suffering.
- 2.4** The frequent failure of warring parties to respect the humanitarian purpose of interventions has shown that the attempt to provide assistance in situations of conflict may potentially render civilians more vulnerable to attack, or may on occasion bring unintended advantage to one or more of the warring parties. We are committed to minimizing any such adverse effects of our interventions insofar as this is consistent with the obligations outlined above. It is the obligation of warring parties to respect the humanitarian nature of such interventions.
- 2.5** In relation to the principles set out above and more generally, we recognize and support the protection and assistance mandates of the International Committee of the Red Cross and of the United Nations High Commissioner for Refugees under international law.



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Rights & Democracy

International Centre for Human Rights
and Democratic Development

Rights & Democracy is a Canadian organization with an international mandate. It works with civil society and governments in Canada and abroad to promote human rights and democratic development through dialogue, advocacy, capacity building and public education. It focuses on four themes: democratic development, women's rights, globalization and human rights, and indigenous peoples' rights.