



International Institute of Humanitarian Law  
Institut International de Droit Humanitaire  
Istituto Internazionale di Diritto Umanitario

# Integrating Gender Perspectives into International Operations

**A Training Handbook with Commentaries**

INTERNATIONAL INSTITUTE OF HUMANITARIAN LAW

**INTEGRATING GENDER PERSPECTIVES  
INTO  
INTERNATIONAL OPERATIONS**

**A TRAINING HANDBOOK WITH COMMENTARIES**

Prepared by  
International Civil and Military Experts  
convened by the IIHL

*Editor*

Gabriella Venturini



International Institute of Humanitarian Law  
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## Foreword

The International Institute of Humanitarian Law (IIHL) based in Sanremo enjoys great reputation worldwide for the military manuals with commentaries it has produced and contributed to produce in the last twenty-five years, with a view to providing appropriate tools for training the military and public officials on international humanitarian law, as well as for disseminating its principles within non-state actors and the public at large. The first of these manuals, the *San Remo Manual on International Law Applicable to Armed Conflicts at Sea* (1994), remains the most consulted manual at naval military academies all over the world and an essential work of reference, and was followed by the *Manual on the Law of Non-International Armed Conflict* (2006), the *Sanremo Handbook on the Rules of Engagement (RoE)* (2009), and more recently by the *Military Manual on the Protection of Cultural Property* (2016), published by UNESCO and the IIHL, and already translated in several languages.

A quarter of a century after the publication of the first of the abovementioned manuals, it is now a special pleasure and a distinct honour for me to present to the public of interested persons a new manual, on *Integrating Gender Perspectives into International Operations. A Training Handbook with Commentaries*, which is the outcome of a Project on “Enhancing training on Women, Peace and Security (WPS)”, implemented within the framework of Italy’s Third Action Plan in accordance with UNSCR 1325 (2000), 2016-2019, funded by the Italian Ministry of Foreign Affairs and International Cooperation.

The idea of this *Training Handbook* arose in 2017 when elaborating the program of the traditional Round Table of the Institute on perspectives of IHL forty years after the Additional Protocols to the Geneva Conventions. With a view to identifying features implying the need for a progressive interpretation and implementation of the Protocols, that program singled out *inter alia* the questions of gender violence in armed conflicts and of the integration of a gender perspective into IHL. It was noticed on one hand that “gender violence, whilst still prevalent in many armed conflicts, does not appear to be widely addressed in traditional IHL training packages for the armed forces and there could, therefore, be a perception that the issue has not been absorbed as a mainstream IHL subject”, and, on the other hand, that “structural inequalities and gender stereotypes in society may entail the application of IHL rules in a way that is inherently discriminatory, and there may be a need to clarify or further develop the law to address these effects. Hence the problem of integrating a gender perspective into IHL, particularly at the level of its implementation, inevitably arose”.<sup>1</sup>

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<sup>1</sup> Fausto Pocar, *Opening Remarks*, in *The Additional Protocols 40 Years Later: New Conflicts, New Actors, New Perspectives*, 40<sup>th</sup> Round Table on Current Issues of IHL (F. Pocar and G.L. Beruto eds), p. 17 (2018).



These considerations and the discussion that followed at the Round Table<sup>2</sup> prompted the adoption of a Project envisaging the preparation of this *Training Handbook*, focused on dealing with the integration of a gender perspective into international operations, as a tool aiming at enhancing training in WPS-related issues and at providing support to the development of training modules on WPS, IHL and human rights, including codes of conduct and cultural awareness, through the organisation in Sanremo of three pilot workshops in 2018 and a meeting of experts in 2019. While the overall responsibility for the project was taken by myself as President of the IIHL, the task for its implementation as project manager was assumed by Professor Gabriella Venturini, emerita at the University of Milan, with the assistance of an Advisory Board composed of experts in this field and, at a later stage, of a Drafting Committee, which would draft the rules and the commentary under the supervision of the Advisory Board itself.

The three pilot workshops were held in 2018 from 12 to 16 March, from 23 to 25 May and from 8 to 12 October. According to the program developed by the Advisory Board, the workshops considered the fields where diversity and gender are relevant, enabling participants to conduct an appropriate gender analysis and addressing gender issues in the different stages of an international operation. They focused on defining the nature and the elements of sexual violence and on empowering participants to address situations of sexual exploitation and abuse in international operations, as well as on raising awareness about the legal consequences of sexual violence through a reference to selected cases of the *ad hoc* Criminal Tribunals and the ICC. The workshops further concentrated on understanding how gender and diversity impact on the condition of persons deprived of or restricted in their liberty, including in detention facilities, and raised awareness on vulnerability factors impacting on the protection of life and security of detained individuals. The role of gender in relation to acts of terror and human trafficking was also discussed, and highlighted the roles of women as victims, enablers, perpetrators, but also as agents in preventing and combatting violent extremism. The workshops were attended by about 70 participants (men and women, military, police and civilians) from European and African countries, with different background and rank. Discussions were guided by leading experts under Chatham house rule, and all sessions were complemented by case studies, interactive teaching and simulations based on specific examples. Participants were actively engaged and usefully contributed to the development of the Project.

Two issues required additional discussion: conflict-related sexual violence and sexual exploitation and abuse. They were discussed in an expert meeting from 20

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<sup>2</sup> See particularly the contributions of Sandesh Sivakumaran, Patricia Sellers Viseur, Nathalie Durhin, Cynthia Petrih, Gabriella Venturini, Giuseppe Morabito, and Lotta Ekvall, in *The Additional Protocols 40 Years Later*, *supra* fn 1, respectively at p. 109, 116, 137, 215, 227, 233.

to 22 May 2019, where challenges and achievements were further investigated by a selected group of 20 specialists.

The material and the experience gathered through these pilot workshops and the final meeting were further discussed by the Advisory Board which adopted appropriate directions for the drafting of the text of the rules to be recommended for an effective training suitable to integrate a gender perspective into international operations, and for the commentary thereon. The Drafting Team proceeded in its work in constant cooperation with the Advisory Board, and several joint meetings were held to discuss the progress in the preparation of the handbook, under the competent guidance of professor Venturini. A final meeting of the Advisory Board in July 2019 finalised the *Training Handbook*, which is now proposed by the IIHL to the attention of all those who are conducting or are involved in international operations, whether categorized as military, civil or police missions, with the hope that the training it recommends may contribute to solve issues that have so far arisen in the absence of a gender perspective in the planning and the implementation of those operations.

In concluding this foreword, I wish to express, on behalf of the Institute, my sincere thanks to all those who contributed, with different tasks and roles, to the realisation of this work, both as speakers, experts and participants in the workshops, and as members of the Advisory Board and the Drafting Committee. Their professional commitment, as well as the support of the institutions they represent, deserve our deep gratitude. A special thank goes to the General Direction of Political Affairs of the Italian Ministry of Foreign Affairs and International Cooperation, for its support in financing the project.

Sanremo, 5 August 2019.

Fausto Pocar  
*President of the International Institute of Humanitarian Law*



## TABLE OF CONTENTS

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<b>Foreword</b>	<b>v</b>
<b>Acronyms</b>	<b>xiii</b>
<b>Chapter 1 INTRODUCTION</b>	<b>1</b>
1.1 Purpose and scope of the Handbook	
1.2 Definitions	
1.3 Legal sources	
1.4 The role of commanders	
<b>Chapter 2 GENDER MAINSTREAMING</b>	<b>15</b>
2.1 Definitions	
2.1.1 Sex and gender	
2.1.2 Gender roles	
2.1.3 Gender mainstreaming	
2.1.4 Gender analysis	
2.1.5 Gender equality	
2.2 Guidelines	
2.2.1 Benefits of gender mainstreaming	
2.2.2 Training of trainers	
2.2.3 Responsibility for gender mainstreaming	
2.2.4 Role of Gender Advisers	
<b>Chapter 3 SEXUAL EXPLOITATION AND ABUSE</b>	<b>25</b>
3.1 Definitions	
3.1.1 Sexual exploitation	
3.1.2 Sexual abuse	
3.1.3 Sexual Exploitation and Abuse (SEA)	
3.1.4 Related concepts and terms	
3.2 Guidelines	
3.2.1 Gender analysis	
3.2.2 Gender factors contributing to the risk of SEA	
3.2.3 Prevention measures	
3.2.4 Reporting and investigating mechanisms	
3.2.5 Criminal responsibility for SEA	
3.2.6 Compensation for victims of SEA	
<b>Chapter 4 CONFLICT-RELATED SEXUAL VIOLENCE</b>	<b>45</b>
4.1 Definitions	
4.1.1 Sexual violence	

- 4.1.2 Gender-based violence
- 4.1.3 Conflict-related sexual violence
- 4.1.4 Applicable law
- 4.2 Guidelines
  - 4.2.1 Gender analysis
  - 4.2.2 Prevention of and response to CRSV
  - 4.2.3 Assistance and relief of victims
  - 4.2.4 Responsibility for sexual violence crimes
  - 4.2.5 Avenues for prosecution

## **Chapter 5 TRAFFICKING IN HUMAN BEINGS**

**63**

- 5.1 Definitions
  - 5.1.1 Trafficking in Human Beings
  - 5.1.2 UNTOC Convention and Palermo Protocol
  - 5.1.3 Constitutive elements of THB
  - 5.1.4 Smuggling of Migrants
- 5.2 Guidelines
  - 5.2.1 Gender analysis
  - 5.2.2 Acts, means and purpose
  - 5.2.3 THB and smuggling of migrants
  - 5.2.4 THB and terrorism
  - 5.2.5 THB and international operations
  - 5.2.6 International cooperation mechanisms

## **Chapter 6 TERRORISM**

**79**

- 6.1 Definitions
  - 6.1.1 International Conventions
  - 6.1.2 Common features of terrorist acts
  - 6.1.3 International Humanitarian Law
  - 6.1.4 International Criminal Law
- 6.2 Guidelines
  - 6.2.1 Gender analysis
  - 6.2.2 Propaganda and recruitment
  - 6.2.3 Women's armed fighting
  - 6.2.4 Prevention policies and strategies
  - 6.2.5 Women's agency

## **Chapter 7 DETENTION**

**89**

- 7.1 Definitions
  - 7.1.1 Detention
  - 7.1.2 International Human Rights Law
  - 7.1.3 International Armed Conflict

- 7.1.4 Non-international Armed Conflict
- 7.2 Guidelines
  - 7.2.1 Gender analysis
  - 7.2.2 Legal obligations and relevant standards
  - 7.2.3 Prevention and repression of gender-related acts of violence
  - 7.2.4 Release, repatriation, return and transfer of detainees
  - 7.2.5 Issues of responsibility

## **Chapter 8 WOMEN'S ENGAGEMENT IN PEACE PROCESSES 107**

- 8.1 Definitions
  - 8.1.1 Peace processes
  - 8.1.2 Conflict prevention
  - 8.1.3 Conflict resolution
  - 8.1.4 Peace building
  - 8.1.5 Post conflict reconstruction
- 8.2 Guidelines
  - 8.2.1 Gender analysis
  - 8.2.2 Women's participation in peace negotiations
  - 8.2.3 Women Mediators frameworks
  - 8.2.4 Normative frameworks and strategies



## ACRONYMS

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CRSV	Conflict-Related Sexual Violence
DPKO	Department of Peacekeeping Operations
EAPC	Euro-Atlantic Partnership Council
ECHR	European Convention on Human Rights
ECOWAS	Economic Community of West African States
EU	European Union
FARC	Revolutionary Armed Forces of Colombia
FAS	Femmes Africa Solidarité
FemWise	Network of African Women in Conflict Prevention and Mediation
FRAGO	Fragmentary Orders
GCS	Geneva Conventions of 12 August 1949
GENAD	Gender Adviser, or Advisor
GFP	Gender Focal Point
GNWP	Global Network of Women Peacebuilders
HRC	Human Rights Committee
IAC	International Armed Conflict
ICAT	Inter-Agency Coordination Group against Trafficking in Persons
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Court of Justice
ICRC	International Committee of the Red Cross
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
IDPs	Internally Displaced Persons
IHL	International Humanitarian Law
IHRL	International Human Rights Law
ILO	International Labour Organization
INTERPOL	International Criminal Police Organization
IOM	International Organization for Migration
LEGAD	Legal Adviser, or Advisor
LGBT	Lesbian, Gay, Bisexual and Transgender
MARA	Monitoring, Analysis and Reporting Arrangements
MWMN	Mediterranean Women Mediators Network
NATO	North Atlantic Treaty Organization
NGO	Non-Governmental Organisation
NIAC	Non-International Armed Conflict
NRMs	National Referral Mechanisms
NWM	Nordic Women Mediators



OSAGI	Office of the Special Adviser to the Secretary-General on Gender Issues and Advancement of Women
OPORD	Operations Order
OSCE	Organization for Security and Co-operation in Europe
PCC	Police Contributing Country
PMESII	Political, Military, Economic, Social, Information, Infrastructure
PoW	Prisoner(s) of War
ROE	Rules of Engagement
RPJ	Rules for the Protection of Juveniles Deprived of their Liberty
SEA	Sexual Exploitation and Abuse
SGBV	Sexual and Gender-Based Violence
SOFA	Status of Forces Agreement
SOPs	Standard Operating Procedures
TCC	Troops Contributing Country
THB	Trafficking in Human Beings
UN	United Nations
UNODC	United Nations Office on Drugs and Crime
UNSC	United Nations Security Council
UNSG	United Nations Secretary-General
UNSCR	United Nations Security Council Resolution
UNTOC	United Nations Convention against Transnational Organized Crime
UN Women	United Nations Entity for Gender Equality and the Empowerment of Women
WMC	Women Mediators across the Commonwealth
WPS	Women, Peace and Security





# CHAPTER 1

## INTRODUCTION

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### 1.1 Purpose and scope of the Handbook

This Handbook aims to provide a practical framework for mainstreaming gender in the training of military, police officers and civilians who are taking part in, or will prospectively be involved in international operations. This purpose stems from the conviction that gender is a lens through which the distinctive situation of persons in the theatre of a mission can be properly understood and better protected. Whoever bears in mind a gender perspective is aware that any action planned or undertaken has different impacts on men, women, boys and girls and will tailor his or her behaviour accordingly.

Against this background, the definitions and guidelines given in the Handbook do not originate from any specific national, regional or international context, or cultural and political environment, nor do they intend to reflect the policy of certain states or organisations. They have been developed in furtherance of human rights goals and in the interest of the human dignity of persons and they are meant to express universally shared values. Nevertheless, international regulations as well as domestic legislation are referred to as case studies and/or examples of good practices, when appropriate.

The topics included in the Handbook cover the most relevant **areas where gender affects international operations**. They have been subject to intensive teaching and learning in three pilot workshops held at the International Institute of Humanitarian Law in 2018, attended by officers of the Italian, European and African Armed Forces. Although, ideally, they should be considered as a whole, they may nevertheless be taken individually according to the type of operation, the area of deployment, the appreciation by trainers and the available training resources.

Besides explaining the purpose and scope of the Handbook, this **first Chapter** gives **basic definitions of terms** that are recurrently used throughout the Handbook such as international operations, mission personnel, sending state, host state and others (para. 2). The law applicable to international operations in the different situations they confront as well as the status of mission personnel are also briefly examined (para. 3). Finally, the role of military commanders and, more generally, of superiors in ensuring that their subordinates accept and implement gender perspectives is discussed (para. 4). Gender sensitive training should be

offered to all personnel involved in an international operation and those in a command or leading position have a special responsibility in prompting their subordinates to develop gender awareness and to act accordingly.

Chapters 2 to 8 have a consistent structure, each being divided into two sections. The first Section provides definitions related to the Chapter's subject matter and, where relevant, assessment of the applicable law or regulations. The second section sets forth guidelines addressed to trainers, each followed by one or more Commentaries. References and links to documents and literature (as provided in the boxes) are not aimed at suggesting an academic approach but are meant to help trainers develop case studies and practical exercises to complement any training.

The shared definitions and general guidelines on **gender mainstreaming** contained in the first Section of **Chapter 2** provide the starting point for gender-sensitive training. The underlying idea is to adopt a gender perspective at all stages of an international operation and by all actors involved – political, military, police and civilian. Definitions take into account those developed by the UN and the main regional systems such as the African Union (AU) the European Union (EU) and the North Atlantic Treaty Organization (NATO). Among these, gender analysis is of paramount importance insofar as it helps to assess the current state of the gender situation in the local population and to plan concrete actions to reach the objectives of the mission. A thorough gender analysis is a necessary pre-requisite for effective gender mainstreaming. It is for this reason that a Guideline on gender analysis appears in each Chapter with respect to its subject matter.

**Sexual exploitation and abuse (SEA)** and **conflict-related sexual violence (CRSV)** are presently the most visible challenges facing international operations. They are dealt with in **Chapters 3** and **4** of this Handbook. SEA perpetrated by mission personnel represents a very serious protection failure by the international community and it is a critical concern for the success of any mission. CRSV committed by all parties in the theatre of an international operation is widely documented and severely increases the pain and suffering of war victims. Both SEA and CRSV are gendered as they affect differently women, men, girls and boys. Definitions in Chapters 3 and 4 explain the nature of the acts concerned and why different wordings are often used to describe similar situations. The second Section in both Chapters provides gender training Guidelines and Commentaries on preventing and combatting SEA and CRSV including enforcement, individual responsibility and compensation for victims.

Today, **trafficking in human beings (THB)** occurs worldwide and particularly in armed conflict and post-conflict situations. Different types of trafficking should be appraised from a gender perspective covering the trade of persons for sexual exploitation, mainly affecting women and girls, or for the purpose of forced labour, especially involving men and boys, and many others. In **Chapter 5**, THB is defined in accordance with the Protocol to Prevent, Suppress and Punish

Trafficking in Persons, Especially Women and Children of 25 December 2003, supplementing the UN Convention against Transnational Organized Crime of 15 November 2000. It is, however, a complex and elusive phenomenon requiring special skills to be appropriately identified and suppressed. The second Section of the Chapter provides gender training Guidelines and Commentaries on how to prevent and oppose THB in the theatre of an international operation.

**Acts of terrorism** are a looming threat to international operations and they seriously hamper restoration of peace and security. Contemporary practice shows how social roles and cultural dynamics affect acts of terrorism, particularly with regard to the different roles of women as victims or recruiters, enablers and perpetrators. While the gender dimension is important for identifying risks and raising awareness of the terrorist threat, the role of women in combatting and preventing violent extremism is also very relevant. In the absence of a universally-shared definition, **Chapter 6** assesses the common features of the crimes of terrorism covered by existing treaties as well as the prohibition on acts or threats of violence aimed at terrorising the civilian population under IHL. The Guidelines focus on preventing and combatting terrorism in the theatre of an international operation, based on the gender dimension of related acts.

Situations of **detention** have been occurring more and more frequently in international operations. Gender impacts significantly on the condition of persons deprived of liberty or having their liberty restricted. Both men and women are subjected to gendered violations of rules and standards established by domestic and international law. **Chapter 7** aims to promote understanding of how gender affects conditions of detention and to raise awareness of risk due to societal and legislative contexts, time factors, policies and practices of international operations.

The purpose of today's international operations is not just to maintain or restore peace and security, but also to facilitate peace processes, to support the organisation of political elections and to promote human rights. Mainstreaming gender perspectives in international operations would not be effective without **enhancing the role of women** in conflict prevention, resolution and management and in post-conflict situations. Based on women's empowerment, **Chapter 8** provides the relevant training Guidelines and Commentaries, including inspiring case studies from different areas of the world.

## 1.2 Definitions

i. Generally speaking the notion of **international operation** refers to a set of activities – belonging to the field of public authority – performed abroad by one or more subjects of international law (usually by states, alone or in cooperation with, and/or under the aegis of, an international organisation). This notion is broad

enough to encompass number of operations that differ from each other both in terms of their nature and of the aim pursued.

International operations may be categorised as military, civil, or police missions.

- a. International operations are of a *military* nature when characterised by the deployment of military personnel and equipment. They may be differentiated according to the aim pursued, namely peacekeeping, peace building, peace-enforcement, coercive military operations (i.e. without the consent of the host state) and operations conducted upon the request of the state in which they take place. Over the last few years, military forces have also been sent abroad as part of international disaster relief operations.

Military operations may also be differentiated on the basis of the subjects involved. In some cases, a single state or a coalition of states acts *outside* the framework of an international organisation, as in the case of 'intervention by invitation' in a non-international armed conflict (see, for example, the French intervention in Mali, or the intervention led by Saudi Arabia in Yemen). On the other hand, military operations may involve international organisations. Within this framework, a military operation may be conducted by states or international and regional organisations (the African Union, NATO, the European Union, the Organization of American States, the Economic Community of Western African States, etc.), under the *authorisation* of the UN Security Council. In this case, the involvement of the UN is rather limited, since the operational command and control of the mission normally rests in the hands of the authorised states or regional organisation. However, in many other cases, which fall into the category of *International Crisis Response Operations*, the situation may be different: for instance, in the case of peace-keeping operations (namely consent-based missions aiming to maintain or preserve peace with no, or only minimal, use of force whether carried out by the UN or by an international regional organisation) the chain of command and control lies entirely within the organisation at issue.

- b. International operations of a *civil* nature are, in principle, those that do not employ military personnel. However, the main criterion for identifying such operations is the *aim* pursued by the operation in question: it may range from human capacity building to long term rule-of-law support, to humanitarian relief and institution building and technical assistance, etc. An instructive example of civil international operations is those entrusted with the administration of territories by the UN. In such cases, the international civilian presence, normally consisting of personnel from the organisation itself or volunteers, carries out a number of duties defined, sometimes in detail, in the act

establishing the operation. To cite an example, the UNMIK (*United Nations Mission in Kosovo*) established by the UNSCR 1244/1999, performs different tasks, such as support for strengthening rule of law institutions in Kosovo, or the monitoring and analysis of the political developments that could have an impact on stability in the region concerned. In the same vein, one might recall the EULEX Mission in Kosovo, carried out by the EU in accordance with the same normative framework (UNSCR 1244/1999): the overall mandate of this mission was to assist the authorities of the host state in establishing sustainable and independent rule of law institutions. It is worth noting that this operation carefully applies a gender perspective and gender mainstreaming standards to all its activities, both within the mission and while working with the host state institutions.

- c. In the framework of a peace-keeping operation it is quite common for the international organisation concerned to also deploy a *police* mission, which normally provides operational support to the host state's counterparts, such as the ordinary protection of civilians and the prevention of common offences. Over the last few years, operations of this kind have involved significant investigation into crimes relating to sexual and gender-based violence. Police operations also aim to assist host states with the reform and development of their own police services and other law-enforcement agencies.

Beyond cases of military coercive operations, it seems safe to conclude that international operations of a military, civil, or police nature are now mostly deployed on the basis of complex mandates, including protection of civilians, support to national authorities in rebuilding a nation after lengthy periods of conflict, providing security and public order among host populations, and support in the restoration of basic essential services and the rule of law. They are characterized by the presence of different actors as troop contributing countries (TCCs), host states, intergovernmental organisations, non-governmental organisations (NGOs) and others that need a strong coordination in their actions in order to make the best use of political, civilian and military instruments.

- ii. The personnel deployed in international operations vary depending on the kind of mission and mandate. In the case of a military operation led by a state or a coalition of states, whether authorised by the UN Security Council or not, the members of the mission act solely as organs of the state to which they belong.
  - a. For the military personnel of International Crisis Response Operations, the situation is slightly different: since international organisations do not have their own armies, the military components of these operations are national contingents, placed – through an ad hoc arrangement – at the



disposal of the international organisation involved by their respective state of origin. In peace operations set up by the UNSC, the management of the mission is handled by a special division of the UN Secretariat, i.e. the Department of Peacekeeping Operations (DPKO), headed by an Undersecretary-General. The chain of command of any specific operation, namely the Head of Mission/ the Special Representative of the Secretary-General, the Head of Military Component, and the entire staff, is part of the DPKO. In particular, the Head of Military Component has operational control over the Force and is responsible for the performance of all functions assigned to it by the UN, as well as for the deployment and assignment of troops placed at the disposal of the Force. The Force is considered a subsidiary organ of the organisation. However, below the level of operational command, the military components of a peace operation remain national contingents, namely military organs of their respective state of origin. This situation, described by some scholars as a 'double organic status', entails the need to partition responsibilities between the UN and a contingent's state of origin.

- b. In the context of an international operation, the civilian personnel may be quite heterogeneous. Depending on the situation, it is possible to differentiate civilians serving as international staff, namely as officials of the international organisation concerned, or as national staff from the host country, but also those acting as volunteers, consultants or contractors. In this regard, it is worth noting that with a view to achieving gender equality, international organisations are now attentive to the recruitment of female personnel. Within the UN, for instance, the main assumption is that increasing the number of women deployed in the framework of peace operations will encourage women from the host states to participate in public life and help dismantle stereotypes that impede women's ability to play a central role in it, including the peace-building processes. UNSCR 1325/2000 on Women, Peace and Security is to be read in this context. It addresses the disproportionate impact of armed conflict on women and recognises the under-valued contributions that female personnel make to conflict prevention, peacekeeping, conflict resolution, and peace building.

**iii.** The term **sending state** refers to the state of origin of the armed forces personnel deployed abroad in order to fulfil official duties. In some cases, the sending state may deploy civilian personnel in the role of experts, e.g., in the field of justice or economic development.

The term **host** refers to the state in whose territory international operations are deployed. Normally – apart from cases of peace enforcement and/or coercive measures – the consent of the host state is a pre-requisite for the deployment of the operation as a whole. In such cases the sending state is granted the right to exercise

*exclusive* criminal and disciplinary jurisdiction over its own personnel. For example, the 1990 UN Model SOFA established in paragraph 47 that the military members of a UN peace operation are subject to the exclusive jurisdiction of their respective contributing states with respect to any criminal offences that may have been committed by them in the host state.

In the last decade, many allegations of SEA (see Chapter 3 of this Handbook) by UN peacekeepers and non-UN forces – including military, civilian and police personnel – have been reported. Given this situation, the UNSC noted, in its resolution 2272/2016, the ‘primary responsibility of troop-contributing countries to investigate allegations of sexual exploitation and abuse by their personnel and of troop- and police-contributing countries to hold accountable, including through prosecution, where appropriate, their personnel for acts of sexual exploitation and abuse...’. However, the main problem with exclusive criminal jurisdiction is that members of national contingents are often not prosecuted for the crimes (allegedly) committed in the exercise of their functions in the host state. Moreover, not all sending states are able to exercise extraterritorial jurisdiction over acts committed by their soldiers abroad. It is worth noting that depriving the host state of criminal jurisdiction gives rise, as a direct consequence, to a lack of access to justice for victims and therefore to a system that leaves a number of human rights violations unaddressed.

Consequently, the concept of criminal responsibility may prove to be an empty tool. That is why, both in the legal scholarship and the practice of international operations, the notion of **accountability**, as opposed to **responsibility**, has been frequently invoked as a suitable instrument to deal with cases of abuses committed by members of international operations. Of course, accountability is a broad term and involves the assessment of an actor’s behaviour in relation to certain legal standards stemming from a variety of formal sources: responsibility, and *a fortiori* criminal responsibility, is just a special form of legal accountability. Against this background, it has been suggested that international organisations, in particular the UN, should create a system of ‘blacklisting’, whereby they clearly identify countries that consistently fail to prosecute their soldiers for alleged abuses. The application of mechanisms of accountability rather than responsibility may explain for instance the decision of the UNSG to repatriate a military unit or police unit of a contingent when there is credible evidence of sexual exploitation and abuse by that unit, before (and sometimes without) the institution of criminal proceedings.

See C. Ferstman, *International Organizations and the Fight for Accountability: the Remedies and Reparations Gap* (2017) p. 193 and K. Akonor, *UN Peacekeeping in Africa: A Critical Examination and Recommendations for Improvement* (2017) pp. 59-66. See also S. Sheeran, L. Zegveld, M. Zwanenburg, E. Wilmshurst, *Peacekeeping and Accountability*, Chatham House, The Royal Institute of International Affairs, International Law Programme Meeting Summary, 28 May 2014.

### 1.3 Legal sources

i. International Operations are governed by international law, although the domestic law of the host state and the sending state may be applicable. It must be emphasised that international operations carry out activities that, depending on the circumstances, are regulated by International Human Rights Law (IHRL) and/or International Humanitarian Law (IHL). IHRL encompasses all fundamental freedoms as well as all social, economic and cultural rights belonging to any individual regardless of nationality, sex, religion, etc. The source of these obligations is to be found in treaties and customary international law. IHL, on the other hand, refers to all the rules aiming to protect potential or actual victims of armed conflicts and the rules regulating the conduct of warfare. Today, therefore, IHL covers the so-called ‘Geneva Law’, namely the rules on the protection of victims of armed conflicts (the four Geneva Conventions of 1949 and related Protocols), and the so-called ‘Law of The Hague’, namely the regulations governing the means and methods of warfare.

- a. The relevance of IHRL in the context of international operations may be analysed from several points of view. Firstly, the human rights obligations of the subject under whose responsibility the operation is conducted are to be considered part of the applicable law. In fact, at least in principle, customary international human rights rules bind international organisations that lead – under their own command and control – an international operation. Secondly, the human rights obligations of the sending state apply extraterritorially to the acts committed within its jurisdiction. In other words, and depending on the terms of the human rights treaty in question, human rights obligations are binding on the state parties also when they perform official duties abroad: the decisive factor in such circumstances will be whether the individuals who allege they are victims of a human rights violation were under the jurisdiction (i.e., exposed to the exercise of public authority) of the sending state. If this is the case (and if the sending state is party to the relevant human rights treaties), the population of the host state may invoke the protection of treaties, such as, for instance, the two UN Covenants of 1966, the UN Convention against Torture of 1984, and treaties in force on a regional level, like the European Convention on Human Rights, the 1981 African Charter on Human and Peoples’ Rights, and so on.
- b. When military forces deployed in an international operation (whether formally established as a peacekeeping operation or enforcement action)

are party to an armed conflict, they are subject to IHL. In 1999, the UNSG issued a Bulletin on the ‘Observance by United Nations Forces of International Humanitarian Law’. This document requires UN forces ‘when in situations of armed conflict they are actively engaged therein as combatants, to the extent and for the duration of their engagement’ to respect the fundamental principles and rules of IHL. It is to be noted, in any case, that the application of these rules in the context of an international operation stems also from the obligation, set out in Art. 1 of the four Geneva Conventions of 1949, to ‘respect and to ensure respect’ for the Geneva Conventions in all circumstances. Rules of engagement (ROE) are of special importance in this regard; they are directives to operational commanders and define the parameters within which force may be used by international operations personnel. Very often, ROE refer to number of IHL provisions, such as those relating to the use of certain weapons and methods of combat or those intending to protect artistic works and archaeological sites.

- c. The application of IHL does not exclude the additional application of IHRL in a given situation. Generally speaking the relationship between these two branches of international law is characterised by mutual complementarity rather than as a relationship between *lex generalis* and *lex specialis*. The Inter-American Court of Human Rights, for instance, has repeatedly stated that human rights treaties are to be applied also in the context of armed conflict (see for example *Hermanas Serranos Cruz v. El Salvador*, 23 November 2004; *Masacre de Santo Domingo v. Colombia*, 30 November 2012). The International Court of Justice also held that the protection offered by human rights conventions does not cease in the event of armed conflict, save through the effect of provisions for derogation (see ICJ, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, ICJ Reports 2004, para 106). This circumstance is made clear in the text of human rights treaties, which normally contain an express provision allowing state parties to take measures derogating from their obligations to the extent required by the exigencies, inter alia, of a situation of armed conflict (see, for example, Art. 15 ECHR, Art. 4 of the ICCPR, etc.). These provisions prove that, *a contrario* and as a general rule, human rights obligations are to be complied with also in time of war. It is commonly contended that certain prohibitions established by IHL are strengthened by the contextual application of treaty rules on human rights (see, for example, ICTY, *Anto Furundzija*, IT-95-17/1-T, Trial Judgement, 10 December 1998, para 143). Moreover, in time of armed conflict, IHRL treaties may be interpreted in light of relevant IHL rules

(see ICJ, Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, ICJ Reports 1996, para 25).

- d. The domestic law of both the sending and the host state may continue to be relevant as described below.

- ii. The presence of an international operation in the territory of the host state may be analysed from two points of view. On one hand, the consent of the host state to the deployment of such operations is always required, except in cases of enforcement actions authorised by the UNSC (*ius ad praesentiam*). On the other hand, the legal status of the operation as well as of its personnel is regulated by a set of rules of international law that define the so-called *ius in praesentia*. These rules aim to establish the powers and jurisdiction of the sending and host states with regard to the operation and its personnel.

The legal relationship between the sending state and the host state is regulated in the Status of Forces Agreement (SOFA). Depending on the circumstances of the case and the degree of involvement of an international organisation (typically the UN), other treaties may be applicable, such as the Convention on the Privileges and Immunities of the United Nations, and the Convention on the Safety of United Nations and Associated Personnel.

As mentioned above, the function of a SOFA is to define the respective competencies of the sending states and the host state authorities over the International Operation's organisation and personnel. Beyond being applicable to the operation as such, a SOFA normally applies to three categories of personnel: members of a force, members of a civilian component, and dependents, namely the relatives of the members of the operation (see, for instance, Art. I of NATO SOFA). Locally recruited personnel enjoy only very limited privileges and immunities.

The purpose of the privileges and immunities set forth in SOFAs is to ensure proper and correct fulfilment of the personnel's tasks, even though it is generally agreed that these privileges are less far-reaching than diplomatic ones. In other words, the purpose of a SOFA is to establish rules that differ to some extent from those normally applicable within the host state. At the same time, however, SOFAs spell out that the categories of personnel referred to above have a general duty to 'respect' the law of the host state.

As for criminal jurisdiction, the sending state is usually granted the right to exercise its criminal and disciplinary jurisdiction over its own personnel within the host state (see above 1.2. ii. on criminal responsibility and accountability). Civil law issues are more complex and depend on individual SOFAs. In principle, the civil law of the host state applies to contractual obligations between any member of the operation and a third party.

Members making up the personnel are also granted immunity from both civil and administrative jurisdiction of the host state with respect to all acts performed in

the exercise of their official functions, including words, be they spoken or written (see, for example, UN Model SOFA para 46, or NATO SOFA, Art. VIII. 5 (g)).

Non-contractual claims by and against the personnel are likewise governed by the civil law of the host state. In certain circumstances, SOFAs provide special claims procedures, for example with respect to non-contractual claims which arise out of acts or omissions causing damage to third parties in the territory of the host state (see, for example, Art. VIII of NATO SOFA). It is important to highlight that claims for damage are regulated differently in peacetime and in wartime, with specific regard, for example, to certain categories of property used by the armed forces.

Foreign personnel normally enjoy inviolability of their facilities, archives, and documents as well as official correspondence (see, for example, UN Model SOFA, para. 16). The host state has an obligation to guarantee foreign personnel's adequate protection and security.

Among the privileges commonly addressed in SOFAs, exemptions from entry and departure regulations and rules must also be mentioned. Mission personnel are usually exempted from passport and visa regulations, as well as immigration inspections (see UN Model SOFA paras. 32-34). Freedom of movement is also guaranteed: members of the operation are permitted to drive vehicles, provided they have appropriate licences granted by their respective sending states. They may also install communications facilities and enjoy the right of unrestricted communications.

## 1.4 The role of commanders

i. The obligation to integrate gender perspectives into international operations lies with military and civilian commanders and superiors. Failure to integrate gender perspectives into international operations may increase gender disparities and lead to violations of the laws and ethics relating to their conduct. In practical terms, military and civilian commanders and superiors in an international operation are responsible for the discipline of their subordinates. This obligation is both legal and ethical. It is *legal* because the law requires a military commander or a civilian having a superior authority in an international operation to steward his or her subordinates in the direction predetermined by law. It is *ethical* because military and civilian commanders and superiors in an international operation ought to observe and maintain standards that define a moral and ethical course of action towards the discipline of the subordinates and draw a line between right and wrong. In order to ensure such standards, military and civilian commanders and superiors need to be *proactive* in preventing problems before they occur. They must ensure that their subordinates are trained and disciplined at all times, and fully aware of

the legal, moral and ethical standards set for them. Subordinates must be ready to comply with the set standards, lest commanders or superiors take a legal or disciplinary action against them. In terms of gender, and particularly regarding prevention of sexual abuse and exploitation during international operations, a commander or a civilian having a superior authority must instruct his or her subordinates on the 'dos' and 'don'ts' which are now clearly laid down in UNSCR 1325/2000.

ii. Failure to take into account gender factors may contribute to the risk of violations as in the examples given in the box below:

**Some Risk Factors Associated with Sexual Exploitation and Abuse in UN Peacekeeping Missions**

Acts of sexual exploitation and abuse involving uniformed peacekeepers continue to occur due, among other factors, to:

- Failure of commanders to be fully aware of the operational environment and factors that contribute to the risk of sexual exploitation and abuse;
- Insufficient pre-deployment and in-mission training on general awareness of sexual exploitation and abuse, including consequences of such acts;
- Inadequate compliance with the requirements of the UN zero tolerance policy;
- Lack of accountability for failures in command responsibilities;
- Non-adherence by commanders and contingent members to existing reporting procedures in UN peacekeeping missions;
- Lack of vigilance by commanders in monitoring the routine activities of their troops;
- Commanders tolerating conditions that could contribute to sexual exploitation and abuse (such as not taking appropriate measures against offenders);
- Failure to report acts of sexual exploitation and abuse or discouraging others from reporting; and
- Arranging, negotiating and encouraging informal settlements of sexual exploitation and abuse cases, including of a financial nature.

Source: *Military Aide Memoire: United Nations Measures against Sexual Exploitation and Abuse. Commanders' guide on measures to combat Sexual Exploitation and Abuse in United Nations military*, United Nations Peacekeeping, August 2017, pp. 9-10.

iii. Lastly, while bearing in mind the central role played by gender mainstreaming in international operations, military and civilian commanders and superiors must handle complaints about possible violations of the law in a professional manner and without delay. For example, while handling complaints of sexual exploitation and abuse during international operations, commanders should:

- React calmly and without prejudice.
- Avoid too many questions and do not attempt to become the investigator. Allow expert investigator(s) to perform the questioning/follow-up.

- Assure the complainant of your keen interest in the matter and readiness to assist.
- Ensure that complaint reporting mechanisms are effective and that complaints are promptly reported to the appropriate channel(s) listed above.
- Maintain confidentiality on all sexual exploitation and abuse reports.
- Consider the removal of alleged perpetrator(s) away from vicinity of complainants.
- Remember to treat any individual that approaches you with respect and dignity, regardless of your assessment of their credibility.
- Never tamper with evidence.

Source: *Military Aide Memoire: United Nations Measures against Sexual Exploitation and Abuse. Commanders' guide on measures to combat Sexual Exploitation and Abuse in United Nations military*, United Nations Peacekeeping, August 2017, p. 12.





## CHAPTER 2

### GENDER MAINSTREAMING

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#### 2.1 Definitions

**2.1.1 Sex** is the biological (e.g., chromosomes, anatomy and hormonal states) and physiological characteristics of a person, such as male or female. The sex of a person is biologically defined; determined by birth; and universal. **Gender** refers to the socially constructed roles, behaviours, activities, and attributes that a given society at a given time ascribes as appropriate for men and women. The gender of a person is socially constructed and, therefore, learned and can be unlearned and changed; it differs and varies within and across cultures and over time; it results in different roles, responsibilities, opportunities, needs and constraints for women, men, girls and boys.

**2.1.2 Gender roles** are the social roles ascribed to women and men in a given society. Gender roles result in women and men and girls and boys having different experiences during international operations. **Gender stereotyping** refers to the practice of ascribing to an individual woman or man specific attributes, characteristics, or roles by reason only of her or his membership in the social group of women or men. **Gender relations** refer to relations between men and women that are socially determined by culture, religion, or socially acceptable ways of thinking or being. These relationships between men and women, as they exist in most societies, are characterised by the marginalisation of women in decision-making and other forms of power sharing in the home and places of authority.

**2.1.3** For the purposes of this Handbook, **Gender mainstreaming** is the process of integrating a gender perspective into the preparation, design, implementation, monitoring and evaluation of policies, regulatory measures and spending programmes, governing international operations, with a view to promoting equality between women and men and combatting discrimination. It is a strategy for making women's as well as men's distinct concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and societal spheres so that women and men benefit equally, and inequality is not perpetuated. **Gender gaps** are the deficits in the numerical proportions of, and roles performed by women and men in any international operation. Historically, women, where they have been accepted in

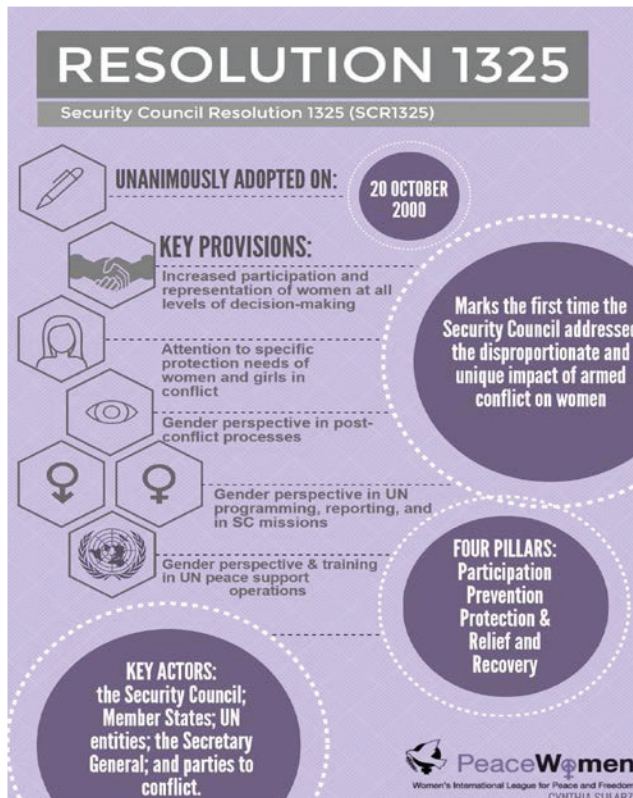
international operations, have been fewer in numbers than men, which lessens their ability to participate in decision-making processes concerning the operations. Gender gaps are maintained by gender-discriminatory infrastructures, policies and laws.

**2.1.4 Gender analysis** is a tool that brings to the surface gender disparities of a core problem. It reveals the connections between gender relations and the challenge to be solved; it indicates exactly what that impact is likely to be, and proposes alternative courses of action. It is a systematic analytical process based on sex-disaggregated and gender information used to identify, understand, and describe gender differences and the relevance of gender roles and power dynamics in a given context. It shows the linkages between inequalities at different societal levels. In principle, gender analysis is an intrinsic dimension of policy analysis; it identifies specifically how public policy affects women and men differently; it demonstrates that policy and implementation cannot be gender-neutral in gendered societies; and is supported by a specific analytic tool. **Gender budget analysis** looks at how financial resources are allocated with respect to different genders. **Gender perspective** is the understanding of the different implications for women and men of any planned action, including legislation, policies or programmes, in all areas and at all levels. It takes an inclusive approach that considers the needs of every individual, man and woman in military operations by focusing on how individual interventions relate to gender equality (such as the relational dimensions of members of the military, the preoccupation for gender equality in the here-and-now, emancipatory perspectives). **Gender awareness** is the ability to view society from the perspective of gender roles and understand how this affects women's needs in comparison to the needs of men.

**2.1.5 Gender equality** is achieved when women and men enjoy the same rights and opportunities across all sectors of society, including economic participation and decision-making, and when the different behaviours, aspirations and needs of women and men are equally valued and favoured. **Gender dimensions** are ways in which the situation and needs of, and challenges facing, women and men (and girls and boys) differ, with a view to eliminating inequalities and avoiding their perpetuation, as well as to promoting gender equality within policies, programmes or procedures. The ultimate goal is to achieve **gender equality** at all levels of international operations right from the planning phase through the designing, drafting the events of the exercise to the execution phase.

After the Brahimi Report in 2000, the UN have analysed the necessity of reshaping peacekeeping missions due to the changing nature of military conflicts around the world, leading to the concept of Multidimensional Peacekeeping Operations. It was found necessary to integrate gender perspectives into peacekeeping missions, and other

international operations, and this has since then predominantly been done through implementing UNSCR 1325/2000 on Women, Peace and Security, agreed in 2000. The resolution reaffirms the important role of women in the prevention and resolution of conflicts, peace negotiations, peace building, peacekeeping, humanitarian response and in post-conflict reconstruction, and stresses the importance of their equal participation and full involvement in all efforts for the maintenance and promotion of peace and security. UNSCR 1325/2000 urges all actors to increase the participation of women and incorporate gender perspectives in all UN peace and security efforts. It also calls on all parties to the conflict to take special measures to protect women and girls from gender-based violence, particularly rape and other forms of sexual abuse, in situations of armed conflict. The resolution provides for a number of important operational mandates, with implications for member states and all entities of the UN system. Key aspects of UNSCR 1325/2000 are highlighted in the image below.



Source: <https://www.peacewomen.org/SCR-1325>

## 2.2 Guidelines

### 2.2.1 *Enable trainees to understand the benefits of gender mainstreaming into international operations.*

#### Commentary

i. Training for international operations should enable trainees to appreciate the meaning and benefits of gender mainstreaming and empower them to ensure that it is done. Benefits of gender mainstreaming into international operations include *increasing operational efficiency* of women and men, *enhancing civil-military relations*, and *increasing interoperability* of actors in the operation, as highlighted in the image above. Moreover, incorporating a gender perspective in international operations helps to underscore the readiness of those who participate in international operations.

ii. The United Nations Secretary General (UNSG) has given guidance that a gender perspective should be mainstreamed in all international operations. His guidance was initially directed to UN peacekeeping operations, and not to individual member states. Increasingly, however, UN member states have been realising that the success of any international operation depends largely on how it incorporates a gender perspective into its plans right from the planning through to execution levels.

iii. Trainees must clearly understand why women are still disproportionately lower in numbers in international operations and why very few of them are involved at the highest levels of decision-making. Trainees need to know the historical biases such as gender stereotypes and discriminatory policies and laws which largely favour men and exclude women's contribution to international operations. Trainees therefore need to understand that awareness-raising, gender sensitivity and institutionalising gender perspectives and increased reporting mechanisms are key tools for any successful international operation.

iv. Trainees should also understand the key reasons why mainstreaming gender into international operations is not properly done. These include:

- a. insufficient gender training for mission personnel;
- b. lack of leadership commitment on the part of military and civilian commanders and superiors;
- c. under-reporting of gender issues at all levels of international operations which is worsened by gender biases.

v. The UNSG guidance on gender mainstreaming into international operations is indicated in the UNSG Report on WPS of 16 October 2002:

S/2002/1154 para 46:

Action 10

Incorporate gender perspectives explicitly into mandates of all peacekeeping missions, including provisions to systematically address this issue in all reports to the Security Council.

Action 11

Require that data collected in research, assessments and appraisals, monitoring and evaluation and reporting on peace operations is systematically disaggregated by sex and age and that specific data on the situation of women and girls and the impact of interventions on them is provided.

Action 12

Ensure necessary financial and human resources for gender mainstreaming, including the establishment of gender advisers/units in multidimensional peacekeeping operations and capacity-building activities, as well as targeted projects for women and girls as part of approved mission budgets.

In his further reports on WPS, the UNSG has recommended increasing women's participation in peacekeeping in terms of overall numbers, and in senior positions, as well as women's participation in consultations and community outreach. Women's participation and leadership in the context of peacekeeping has also been central to relevant language in Security Council resolutions on women, peace and security. Some examples below:

S/2004/814 para 98: 'I call on Member States, United Nations entities and civil society organisations to: (a) Further analyse the obstacles to increasing women's representation in peace operations and humanitarian response and develop and implement recruitment strategies aimed at increasing the number of women, particularly in decision-making positions, including in military and civilian police services; (b) Create a pool of pre-certified female candidates for senior level positions to ensure rapid deployment.'

S/2004/814 Para 118: 'An outstanding challenge is increasing the number of women in high-level decision-making positions in peacekeeping operations. In the areas of conflict prevention, peace negotiations and post-conflict reconstruction, women do not participate fully and more needs to be done to ensure that the promotion of gender equality is an explicit goal in the pursuit of sustainable peace.'

S/2005/636 para 19: 'Action plans on mainstreaming gender would be developed, *inter alia*, for the areas of peacekeeping and political affairs. Emphasis would be given to monitoring compliance with international humanitarian and human rights laws and preventing and reporting on violations of women's rights.'

vi. Training on gender mainstreaming in international operations, therefore, should emphasise the need to respect the views of women and men regarding

conduct of international operations if those operations are to meet the needs of the society where they are conducted, as well as the needs of women and men engaged in the operations.

### ***2.2.2 Conduct training with a view to establishing a cadre of trainers of trainers on gender mainstreaming in international operations.***

#### **Commentary**

i. By the end of the training sessions, trainees should have an enhanced understanding of the purpose of mainstreaming gender in international operations. The initial training on mainstreaming gender in international operations should ultimately create a cadre of trainers of trainers. Trained trainers should then consciously replicate and disseminate the knowledge acquired to their own forces. During the dissemination sessions, the purpose should be to ensure that the benefits of mainstreaming gender in international operations are emphasised. Key aspects that need to be emphasised include requiring trainees to:

- a. acknowledge the differences between and among women and men, based on the unequal distribution of resources, opportunities, constraints and power;
- b. ensure that the different needs of women and men are clearly identified and addressed at all stages of international operations;
- c. identify the obstacles preventing states from recruiting women in equal numbers to men for international operations;
- d. recognise that policies, programmes and the planning process can have different effects on women and men;
- e. seek to articulate the viewpoints of women and men and making their contribution a critical part of developing, designing, drafting and executing international operations;
- f. promote better informed gender-responsive and effective interventions during international operations,
- g. integrate the broad aims of gender mainstreaming perspective into international operations, namely that it is the responsibility of everyone in an international operation to monitor compliance, prevent and report violations of women or men stemming from gender biases.

### ***2.2.3 Identify who is responsible for gender mainstreaming in an international operation.***

#### **Commentary**

i. The responsibility to mainstream gender in international operations lies with the military and civilian commanders and superiors in an international operation. In any sending state, public institutions such as the head of the executive, the legislature and even the judiciary as well as private entities such as civil society organisations must play a critical role, as appropriate, in ensuring that a gender perspective is mainstreamed into a country's component that will eventually be deployed in an international operation. Trainees should, therefore, be made aware of the role of each of these players so that they are able to engage them on their obligations, whenever necessary. States that contribute personnel to international operations have an obligation to:

- a. reinforce the UN resolutions on WPS noting the critical role the inclusion of women plays in achieving enduring peace;
- b. include specific directions to consider the protection of women and children;
- c. relate the mandate to specific gender matters (e.g. that any disarmament, demobilisation and reintegration programmes include female combatants as well as male combatants, and should not only focus on people carrying weapons);
- d. include formal liaison with international and national bodies that represent women's groups within the country where the deployment will take place;
- e. capture gender-disaggregated data to understand the area of operations better and use these for future operational planning purposes;
- f. direct units to deploy Gender Advisers (GENAD) and Gender Focal Points (GFP) and budget for GENAD and GFP;
- g. make finances available for supporting the whole process of mainstreaming gender in international operations.

#### ***2.2.4 Focus on the role of the Gender Advisers in international operations.***

##### **Commentary**

i. The purpose of this training objective is to enable trainees to understand the key role played by a Gender Adviser in international operations. Although UNSCR 1325/2000 does not provide for the office of the Gender Adviser, UN entities have incorporated the office of the Gender Adviser in their systems with a view to including the needs and priorities of women and girls in all functions and components of peacekeeping and to ensure their protection from SGBV. In an international operation, the LEGAD should work in close cooperation with the GENAD both in the pre-deployment training and in the operational phases.



**ii.** In terms of planning and implementation of international operations, a GENAD helps to support the implementation of the UNSC resolutions on WPS, namely 1325/2000, 1820/2008, 1888/2009, 1889/2009, 1960/2010, 2106/2013, and 2122/2013 within the scope of mission mandates and in alignment with the Department of Peacekeeping Operations (DPKO) Policy on Gender Responsive United Nations Peacekeeping Operations (2018). Implementing gender perspectives and concepts in preparation and execution of international operations increases their effectiveness. Being aware of relevant gender information contributes to operational plans, operational assessment, collective training and exercises, mission execution and situational awareness. The Cultural Adviser (when present) should assist the GENAD and to connect with the host state's government and local institutions.

See [https://peacekeeping.un.org/sites/default/files/english\\_gender\\_responsive\\_united\\_nations\\_peacekeeping\\_operations\\_policy\\_1.pdf](https://peacekeeping.un.org/sites/default/files/english_gender_responsive_united_nations_peacekeeping_operations_policy_1.pdf)

**iii.** Within the UN framework, the Office of the Special Adviser to the Secretary-General on Gender Issues and Advancement of Women (OSAGI) was created in 1997 with the purpose to promote and strengthen the effective implementation of the Millennium Declaration, the Beijing Declaration and the Platform for Action and the Outcome Document of the special session of the General Assembly on Beijing+5. In 2010 OSAGI merged into the United Nations Entity for Gender Equality and the Empowerment of Women (UN Women). UN Women's objective is to further the elimination of all forms of discrimination against women and girls, the empowerment of women and the achievement of equality between women and men as partners and beneficiaries of development, human rights, humanitarian action and peace and security.

See <https://www.unwomen.org>.

Trainees can enhance their understanding of the role of the Gender Adviser in international operations by examining some examples given below.

**iv.** In a typical international operation such as the UN Mission in South Sudan (UNMISS), the Gender Section works with all parties within the mission from senior mission leadership, senior managers and workforce across the three mission components, namely Force, UN Police and Civilian Sections. In the external environment, the Gender Section is a member of established coordination mechanisms both within the UN system and beyond, namely Protection Cluster, GBV Sub-Cluster, Gender Technical Working Group, Monitoring Analysis Reporting Arrangements and Monitoring and Reporting Mechanism.

See <https://unmiss.unmissions.org/office-gender-adviser>

v. In the case of the North Atlantic Treaty Organization (NATO), which is basically a political and military alliance often deployed in international operations, once the UN Security Council passed UNSCR 1325/2000, member states began to take note of the issues the resolution raised, and developed plans to address those very same issues along national lines. The role of GENAD in NATO was established and clarified in the Bi-Strategic Command Directive 40-1 on *Integrating UNSCR 1325 and Gender Perspectives in the NATO Command Structures Including Measures for Protection During Armed Conflict*, which states that GENADs are responsible for providing an advice and operational support on the implementation of UNSCR 1325 to the Commander and NATO personnel. This Directive explains that GENADs are needed to ensure that gender is an integrated part of the planning of operations; how they can contribute to mission success, while emphasizing that the integration of gender perspective is cross cutting across all endeavours. NATO GENADs have been deployed to ISAF Mission and Resolute Support Mission since 2008, and to KFOR Mission since 2010. According to the 2017 Annual Report, NATO member nations had a total of 553 trained GENADs in 2016 while in 2017 the number reached 584; 35 GENADs were deployed in 2016 by NATO member nations while 21 gender advisors were deployed in 2017; so far 113 trained gender advisors were deployed.

See [https://www.nato.int/cps/en/natohq/news\\_149993.htm](https://www.nato.int/cps/en/natohq/news_149993.htm). See also K.H. Kennedy, *Gender advisors in NATO: Should the US Military follow suit?* *Military Law Review* 224(4) 2016, pp. 1052-1072. Available at: <https://heinonline.org/HOL/LandingPage?handle=hein.journals/milrv224&div=33&id=&page=&t=1560414634>.

vi. The African Union (AU), a continental bloc, does not have a Defence Pact like NATO, and hence does not have a military force of its own. It relies on Regional Economic Communities (RECs) and Regional Standby Forces, which include the military and civilian components, to execute its international operations. However, it has a Special Envoy of the Chairperson of the African Union Commission on WPS. The African Union Commission encourages member states of the Union to include gender experts in the planning and execution processes of their international operations. The African Union Commission and RECs are required to take steps to ensure that all their components include men and women as guided by UNSCR 1325/2000.

See <https://au.int/en/newsevents/20190211/africa-launches-result-framework-gauge-womens-role-peace-and-security>



## CHAPTER 3

### SEXUAL EXPLOITATION AND ABUSE

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#### 3.1 Definitions

**3.1.1 Sexual exploitation** includes any actual or attempted abuse of position of vulnerability, differential power or trust, for sexual ends, including, but not limited to, profiting monetarily, socially or politically from the sexual exploitation of another. Sexual exploitation includes acts such as transactional sex, solicitation of transactional sex, and exploitative relationships.

**3.1.2 Sexual abuse** includes any actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions. Examples of sexual abuse are rape, sexual assault, sexual activity with a minor, mutilation of sexual organs, forced abortions or forced stripping.

**3.1.3 Sexual Exploitation and Abuse (SEA)** is institutional terminology used to refer to offences as perpetrated by troops and other mission personnel of an international operation. SEA refers to misconduct committed for instance by deployed personnel and institutional staff/locally hired staff against the local population. Mission personnel, whether internationally deployed or locally hired staff, must be aware of the power relations between them and the local population and never abuse any power position they might have. Victims of SEA are often abused because of their vulnerable status as women, girls, boys, or even men.

Acts of SEA are a breach of the provisions of ST/SGB/2003/13 – <i>Special measures for protection from sexual exploitation and sexual abuse</i> , as adopted for military, police and other UN personnel. The UN has a zero-tolerance policy on SEA: see A/71/818 and A/818/Corr.1, <a href="https://oios.un.org/resources/2015/01/ST-SGB-2003-13.pdf">https://oios.un.org/resources/2015/01/ST-SGB-2003-13.pdf</a>
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With regards to SEA, the goals that an international operation should pursue are the prevention of SEA by mission personnel, the enforcement of the standards of conduct on SEA when it occurs (e.g. by investigating allegations of SEA) and the assistance to victims of SEA and children born as a result of SEA by mission personnel.

The report of the UNSG *Special measures for protection from SEA: a new approach* enumerates four pillars which the UN relies on in order to tackle SEA: putting victims first; ending impunity; engaging civil society and external partners; improving strategic communications for education and transparency. The same standards set for the UN and member states should be taken into account with regard to the conduct of non-UN international forces authorised under Security Council mandates. See [https://peacekeeping.un.org/sites/default/files/sg\\_report\\_a\\_71\\_818\\_special\\_measures\\_f\\_or\\_protection\\_from\\_sexual\\_exploitation\\_and\\_abuse.pdf](https://peacekeeping.un.org/sites/default/files/sg_report_a_71_818_special_measures_f_or_protection_from_sexual_exploitation_and_abuse.pdf)

**3.1.4** For further clarity, it is important to outline the differences between SEA, sexual harassment/assault, sexual violence, conflict-related sexual and gender-based violence (CRSGBV).

- a. Sexual harassment/assault is a work-related offence, involving staff or related personnel and not members of the general public; it may happen for instance between soldiers/institutional staff.
- b. Sexual violence as a general crime refers to an act of sexual nature committed against someone through coercion or without consent, or an effort to force a person to commit such an act against another; this might include acts such as rape, sexual torture or forms of domestic violence. Sexual violence will be extensively defined in Chapter 4.1.1. of this Handbook.
- c. Gender-based violence is regarded to be any harmful act directed against individuals or groups of individuals on the ground of their gender. Sexual and gender-based violence is commonly defined under the SGBV acronym.
- d. Conflict-Related Sexual Violence (CRSV) sometimes also called Conflict-Related Sexual and Gender-based Violence (CRSGBV), consists of incidents or patterns of sexual violence, including rape, sexual slavery, forced prostitution, forced pregnancy, forced abortion, enforced sterilisation, forced marriage and any other form of sexual violence of comparable gravity, perpetrated against women, men, girls or boys that are directly or indirectly linked (temporally, geographically or causally) to a conflict. The link with conflict may be evident in the profile and motivations of the perpetrator(s), the profile of the victim(s), the climate of impunity/weakened state capacity, cross-border dimensions and/or the fact that it violates the terms of a ceasefire agreement. CRSV will be covered in Chapter 4.

*Sexual and Gender-Based Violence (SGBV) Summary Chart*

	Sexual misconduct perpetrated by the personnel deployed in an international operation		Other forms of SGBV of concern	
	SEA	Sexual Harassment	Sexual Violence against deployed personnel	Other SGBV, CRSGBV
Perpetrator	Deployed personnel/ Locally hired staff	Deployed personnel/ Locally hired staff	External person/ Deployed personnel/ Locally hired staff	External person/ Deployed personnel/ Locally hired staff
Victim	External person	Deployed personnel/ Locally hired staff	Deployed personnel/ Locally hired staff	External person

## 3.2 Guidelines

### *3.2.1 Enable trainees to conduct a gender analysis aimed at identifying risks and actual occurrence of SEA perpetrated against women, men, girls and boys.*

#### Commentary

i. SEA affects differently women, men, girls and boys in the theatre of an international operation. Gender analysis should gather and examine the widest possible information about the situation of individuals and groups in the host state, their roles and constraints they face relative to each other and their exposure and gender-related vulnerability to unfair and harmful treatment.

ii. Among the important points to be considered when analysing the external context of an international operation with a gender lens are:

- a. Opportunities offered by the context in the host state for the mission personnel to commit SEA. Such a permissive context could be facilitated by a legal commercial sex industry when prostitution is not a criminal offence in the host state, by economic hardship, meaning poverty, a high

unemployment rate and potential severe food shortages, also by a cultural tolerance of exchange of money or gifts for sex between consenting adults, a cultural practice of early child marriage or a weak rule of law system that is unlikely to be able to hold mission personnel to account for criminal acts.

- b. Greater vulnerabilities to SEA by mission personnel among some categories of the local population. Such categories may be Internally Displaced Persons (IDPs) living in camps protected by peacekeepers, people displaced by conflict who settle around military camps looking for protection, domestic workers, teenage schoolgirls, street children, migrant workers in bars and restaurants. In that respect, scrutinising previous available data on victims of SEA helps in understanding which are the most vulnerable categories. Potential differences between headquarters and remote locations or regional differences should be looked at as well.
- c. Potential easy approachability of mission personnel by the local population. Such proximity would allow the deployed personnel to be solicited by commercial sex workers in hotel bars or clubs.
- d. Local societal/cultural features that may discourage or inhibit the reporting of SEA. The likelihood of reporting SEA in the host state is to be examined. Reporting is less likely in societies where there is a cultural tolerance of exchange of sex for money or gift between consenting adults, socially conservative attitudes about extra-marital sex, or where homosexuality is illegal. Consideration should also be given to who they report to and where they can report to.
- e. The likely consequences for children born as a result of SEA. Depending on the local context, these children may face social stigma and difficulties to obtain a birth certificate when paternity is unknown, and also suffer from a poor access to education, food and health services.

### ***3.2.2 Prepare trainees to assess gender factors that contribute to the risk of SEA.***

#### **Commentary**

i. Risk factors include (a) insufficient gender training, (b) lack of leadership commitment, (c) lack of reporting and of accountability, (d) easy access to the local population and (e) inadequate living and deployment conditions. This non-exhaustive list of key risk factors for SEA to be taken into account is further explained below:

- a. Lack of knowledge due to missing, insufficient or inadequate gender training before deployment and on arrival in theatre. Also, the behaviour of mission personnel must be taken into consideration. They must not only be aware of but also accept and comply with the set standards of conduct on

SEA. Practically, this means that they should not perceive these standards as an objectionable intrusion into their private lives or show by their actions a certain tolerance to some forms of SEA such as commercial sex work or early child marriage.

- b. Weak command and control over mission personnel and a leadership not committed to addressing SEA. When senior leadership, whether military commanders or civilian managers, does not lead by way of example, does not adopt a gender perspective in monitoring the routine activities of their troops, does not take appropriate measures against offenders or does not dedicate resources to investigate allegations of SEA, there is another crucial risk factor for SEA. Also, a lack of accountability for failures in command responsibilities is deleterious.
- c. Non-adherence by commanders and mission personnel to reporting procedures and subsequent failure to report acts of SEA or discouraging others from reporting are harmful practices. Also problematic are informal settlements of SEA cases being encouraged, negotiated and arranged.
- d. Easy access to the local population creates opportunities for mission personnel to commit SEA. Depending on the location of camps and the living arrangements, SEA may become much more practicable. It is for instance the case when the contingent camps are located close to residential areas or when the operation authorises overnight guests in hotels in its internal policies. Furthermore, this easy access may be also facilitated by insufficient or inadequate security arrangements, for example if the deployed personnel are able to leave the camp without being controlled or if the local population is similarly able to enter the camp without being checked. Whenever movements of the deployed personnel are not restricted and off-duty contact with the population is not prohibited, SEA becomes easier.
- e. Inadequate living and deployment conditions must not be underestimated as risk factors for SEA. This is particularly the case for long deployments (some national contingents are deployed for more than 12 months in UN missions without taking rest and recuperation breaks), especially when the tempo of operations is high, and where there are inadequate living conditions for civilian, military and police personnel and deficient welfare provisions.

On 1<sup>st</sup> October 2003 the UNSG, for the purpose of preventing and addressing cases of SEA, promulgated the *Secretary-General's Bulletin: Special Measures for Protection from Sexual Exploitation and Sexual Abuse*, ST/SGB/2003/13. On 28 February 2017, the UNSG Report named *Special measures for protection from SEA: a new approach*<sup>7</sup> posed the problem of the continuation of SEA and pinpointed miscellaneous factors listed hereafter. The UN often operates in circumstances of heightened risk for SEA, where local public



safety and legal systems are either ineffective or absent and involving a strong engagement with vulnerable local populations, especially during humanitarian assistance missions. Other issues identified are weakly enforced standards with respect to civilian hiring; little to no system-wide screening of candidates for prior history of related misconduct; ignorance of the values and rules of the UN; a lack of uniform and systematic training across all categories of personnel; weak civilian or uniformed leadership that fails to reinforce conduct and discipline; a sense of impunity among those who perpetrate these acts; insufficient attention and a lack of sustained efforts on the part of the senior UN leadership and member states.

See [https://peacekeeping.un.org/sites/default/files/sg\\_report\\_a\\_71\\_818\\_special\\_measures\\_for\\_protection\\_from\\_sexual\\_exploitation\\_and\\_abuse.pdf](https://peacekeeping.un.org/sites/default/files/sg_report_a_71_818_special_measures_for_protection_from_sexual_exploitation_and_abuse.pdf)

### ***3.2.3 Address measures that are appropriate for preventing SEA.***

#### **Commentary**

Prevention of SEA should involve various tools and good practices, to include: i. training; ii. vetting and screening mechanisms; iii. public information and outreach to local communities; iv. risk management; v. welfare and recreation.

#### **i. Training**

- a. Pre-deployment training as well as direct induction and refresher training after arrival in theatre should be mandatory. Training should also be complemented by SEA awareness-raising exercises supported by a wide range of training materials including specific tools for all levels and online programmes.
  - Various tools may be called upon in order to get the best pre-deployment training: employing a train-the-trainers model on the core pre-deployment training material; making core training materials available; deploying mobile training teams to troop and police contributing countries whenever requested. Moreover, military contingent personnel, formed police units and other individually recruited uniformed personnel being deployed should get a certification that they have received pre-deployment training.
  - Among other points, training should explain why inappropriate off-duty contacts with the local population should be discouraged, minimised or avoided if necessary.
  - Direct induction and refresher training in theatre allow mission-specific training and can, in particular, specify how to report wrongdoing.
  - An online training programme on the prevention of SEA is a widely available tool and may be made mandatory for all uniformed and

civilian personnel who are part of an international operation. Specific modules may be place for managers and commanders. Such a tool can be translated into the various languages of the sending states.

In the UN system, pre-deployment training is mandatory and conducted by the DPKO for UN international civilian staff whilst it is provided by Troop- and Police-Contributing Countries (TCCs, PCCs) for military and police personnel. For TCCs, pre-deployment training must meet the standards set by the UN and address UN standards of conduct and the prohibition of sexual exploitation and abuse. Induction training on site is then performed by Conduct and Discipline Teams.

The *NATO/EAPC Women, Peace and Security third Policy and Action Plan* endorsed at the Brussels Summit in 2018 aims to translate the global WPS commitments into a NATO context and builds on a framework of three 'I's': Integration; Inclusiveness; Integrity. Pursuant to the guiding principle of Integrity, all troops in NATO-led operations and missions must live up to the highest standard of professionalism and recognise that NATO should develop specific mechanisms to prevent and respond to SEA as it causes disproportionate harm to women and girls and undermines NATO's credibility and operational effectiveness. The follow-on Action Plan envisages enforcing specific measures to prevent SEA in NATO-led operations and missions. Specifically, NATO is developing a NATO policy on combatting SEA that will be followed by a handbook, and by developing training on identifying, preventing and responding to SEA in NATO-led operations and missions.

See [https://www.nato.int/nato\\_static\\_fl2014/assets/pdf/pdf\\_2018\\_09/20180920\\_180920-WPS-Action-Plan-2018.pdf](https://www.nato.int/nato_static_fl2014/assets/pdf/pdf_2018_09/20180920_180920-WPS-Action-Plan-2018.pdf)

- b. The best approach is tailored training. Firstly, generic mandatory (core) training would help all personnel understand SEA and its implications, rather than more specific training sessions. Secondly, there would be specialised training. There could be tailored training sessions for trainers, considering the large numbers of personnel who need to be trained; for local government counterparts, informing them of what is in existence with regards to addressing SEA; for beneficiaries of assistance, that would include community outreach programmes; for specific functions, like public information; and for managers/commanders, addressing the key responsibilities of management. Furthermore, commanders/managers/ mission leadership could be given a letter of engagement on an annual or regular basis. Indeed, senior managers in the field play a crucial role in prevention of SEA by implementing organisational policies to prevent abuse. They need to be fully informed of their organisation's stance on protection from SEA, and on their obligation to integrate protection from SEA into programme design and evaluations.

*Example of a checklist for training related to protection from SEA*

<b>TARGET GROUP</b>	<b>TRAINING OBJECTIVE &amp; STRATEGY</b>
All Staff	All personnel deployed on mission receive basic orientation on the zero-tolerance policy and to their responsibilities with regard to SEA.
Senior Management	Senior Management assume their key responsibility with regard to respect and implementation of the terms of the SGB, demonstrate active support for the training and energetically exercise their role in protection and victim assistance.
SEA Focal Points	Ensure SEA focal points are fully attuned to their responsibilities and functions, and have the practical skills and tools necessary to secure support and resources as well as the credibility required to fulfil their role.
Senior Military Personnel/ Contingent Commander	Ensure their awareness of all aspects of the 2003 UNSG Bulletin on SEA as well as their related responsibilities for the conduct and well-being of their personnel; secure their active support for staff welfare and recreation activities related to stress reduction and good health.
NGO Counterparts	Ensure awareness of and active support for on-going SEA prevention measures, victim assistance and protection activities thereby securing partnerships.
Local Media	Consolidate outreach to local media to inform them of training and awareness raising measures underway, the prevention, protection and assistance measures in place.
Local Government Counterparts. Beneficiaries, local host population, displaced persons.	Outreach to local community to ensure awareness of the provisions of the 2003 UNSG Bulletin on SEA, measures in place to prevent SEA and steps to be taken to report incidents. Solicit their support to spread this information within the community.
Groups in situations which may render them particularly vulnerable.	Ensure groups identified as being in such situations are fully aware of the provisions of the SGB, measures in place to prevent SEA and steps to be taken to report incidents. Solicit their support to spread this information among their peers.

Source: Extract from *Checklist: Preventing Sexual Exploitation and Abuse in the Kenya Refugee Program (Draft) Kenya Refugee Program Prevention of Sexual Exploitation and Abuse Committee*. See <http://www.pseataaskforce.org/en/tools>

- c. In the context of international operations where the possibility of misconduct being committed is higher, it should be made clear to all mission personnel that all sexual activity with a child under 18 years of age, regardless of the age of majority or consent locally should be prohibited and considered as sexual abuse. Mistaken belief in the age of the child is not a defence.

An entire section of the Code of Conduct for employees of the ICRC is specifically devoted to harassment, abuse of power and exploitation. For the ICRC, ‘entering into a sexual relationship with a child (a girl or boy under 18 years of age) or inciting or forcing a child to take part in activities of a sexual nature, whether or not he or she is aware of the act committed and irrespective of consent is prohibited. This prohibition also covers pornographic activities (photos, videos, games, etc.) that do not involve sexual contact with the child, as well as acquiring, storing or circulating documents of a paedophiliac nature, irrespective of the medium used.’

See [https://www.icrc.org/sites/default/files/wysiwyg/code\\_of\\_conduct\\_may\\_2018.pdf](https://www.icrc.org/sites/default/files/wysiwyg/code_of_conduct_may_2018.pdf)

This age of 18 comes from Art. 1 of the UN Convention on the Rights of the Child, of 20 November 1989, which defines a child as every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier. Art. 34 of the Convention requests the states parties to undertake to protect the child from all forms of sexual exploitation and sexual abuse and to this end, to take all appropriate national, bilateral and multilateral measures to prevent the inducement or coercion of a child to engage in any unlawful sexual activity and the exploitative use of children in prostitution or other unlawful sexual practices and the exploitative use of children in pornographic performances and materials.

See <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

- d. Prostitution might be legal and culturally accepted both in the sending state and in the host state and training should therefore specifically address that question. Where it is legal, it might nevertheless be prohibited by the applicable Code of Conduct of the sending state or of the relevant international organisation. In this respect, it should be at least recommended not to solicit nor engage in prostitution, or even to uphold rules prohibiting buying sex from prostitutes.

In the UN approach, UN personnel must abide by the UN Standard of Conduct, irrespective of local laws. The solicitation of a prostitute is also a violation of the 2003 UNSG Bulletin on SEA since the definition of sexual exploitation refers to actual or attempted abuse and thus includes solicitation. The UN considers that prostitution in war-ravaged societies frequently involves extremely vulnerable women and children, including persons who have been trafficked for sexual exploitation, and emphasises that prostitution is inherently harmful and dehumanising.

ii. A robust vetting and screening policy

- a. Vetting and screening mechanisms are an efficient way to prevent SEA. Practically, enforcing such mechanisms means doing a thorough examination of individuals participating in international operations, including background checks. Screening is usually a coarse filter; hence, a ‘screening’ mechanism is more often mentioned when it comes to troops, whilst a ‘vetting’ mechanism being a finer filter will be more associated with commanders. Vetting and screening mechanisms should include sending states’ commitments regarding personnel’s criminal records.

A vetting and screening policy was recommended for the first time in the UN Report of the UNSG A/70/729 dated 16 February 2016. Currently in the UN system, processes for vetting have been gradually expanded since 2016 to cover more categories of personnel. All international and national civilian personnel, UN Volunteers, individual contractors and consultants, members of formed police units, individual military and police officers and other government-provided personnel, such as justice and corrections officers, are vetted *before* they are hired and/or deployed. Vetting personnel for prior misconduct is aimed at avoiding engaging or re-engaging them. As for military and police contingent members, they are vetted *as soon as they arrive* in the mission area, at which time a final list of names is available. All records are kept in a confidential Misconduct Tracking System. See [https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/a\\_70\\_729.pdf](https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/a_70_729.pdf)

- b. Awareness should also be ensured for those recruited through recruitment databases, and external partners like contractors. Contracts with external service providers (e.g. transporters, guards) can easily incorporate the core principles of the mission Code of Conduct as part of the contract and specify that any violation of the Code of Conduct by the external provider may result in contract termination. Also, contractors may be asked to attend SEA training organised by the mission.

All UN staff job openings, Letters of Offer (LOO) and Letters of Appointment (LOA) now have a special notice for detailing the values and standards of conduct required of members and the consequences of failing to achieve these standards. All UN contracts for contractors (consultants, day workers, individual contractors) contain general conditions that the contractor shall comply with the standards of conduct set forth in the 2003 UNSG Bulletin on SEA.

- c. In addition, a certification of pre-deployment training for every individual has become a precondition of deployment of national contingents. TCCs and PCCs are required to certify that the personnel they deploy or rotate have not committed, nor are alleged to have committed, violations of

international human rights law and international humanitarian law. If incorrect, the individual will be repatriated at the member state's expense and barred from participation in future UN operations. Member states take on greater accountability by ensuring that they provide personnel consistent with agreed standards.

**iii. Public information and outreach to local communities**

- a. Effective awareness-raising among the host population of what is acceptable behaviour by mission personnel and how to report wrongdoing is a key strategy to reduce the risk of SEA and to minimise the harmful effects when SEA does occur. Communication should reach out to local government officials, civil society organisations, community groups, international organisations, non-governmental organisations, schools and religious communities. Developing an awareness-raising campaign in multilingual or predominantly illiterate settings can be difficult, because messaging may not be understood by all community members. Awareness-raising measures for local communities should therefore be diversified to maximise their accessibility (e.g. print media, poster campaigns, intra-net web sites, newsletters, radio broadcasts, briefings during town hall meetings/community talks and mission-specific Codes of Conduct). Translated copies of the Code of Conduct can be disseminated amongst the communities and made freely available to beneficiaries.
- b. As a minimum, the local population should be aware of the broadly accepted definition of SEA; the standards of conduct for mission personnel; that they have a right to humanitarian assistance without being subjected to SEA; where to report SEA incidents; what services are available, and how to access them; what to expect after making a complaint, including potential referrals, timeframes, and the responsibilities of actors involved.

The UN has issued a Public Information Standard Operating Procedure on SEA (SOP/3000/2006/ dated 03 April 2006) that demands a pro-active approach to the release of information on SEA allegations, investigations and follow-up action. A civil society advisory board has been established, comprising leading civil society figures and experts, to provide the UNSG with advice on measures to strengthen prevention of and response to sexual exploitation and abuse. Also, formal and informal meetings regularly take place with civil society actors.

See [https://www.aaptc.asia/images/resourcess/16\\_GENDER\\_AND\\_WOMEN/SOP\\_Public\\_Information\\_on\\_SEA.pdf](https://www.aaptc.asia/images/resourcess/16_GENDER_AND_WOMEN/SOP_Public_Information_on_SEA.pdf)

Awareness-raising success story: music to transfer key messages: in the IASC's Pilot Community-Based Complaint Mechanism in the Democratic Republic of the Congo, radio and music have been very successful means to transfer messages using local radio stations that are popular in IDP camps, making messages accessible for the population. The messages are also frequently repeated, which increases impact. See *Best Practice Guide Inter-Agency Community-Based Complaint Mechanisms Protection against Sexual Exploitation and Abuse*.

[https://interagencystandingcommittee.org/system/files/best\\_practice\\_guide\\_-\\_with\\_inside\\_cover\\_online.pdf](https://interagencystandingcommittee.org/system/files/best_practice_guide_-_with_inside_cover_online.pdf)

#### iv. Risk management and good practice as part of a prevention strategy

- a. An important way of preventing misconduct is identifying risks before misconduct occurs. Missions are therefore expected to develop mission-specific risk management plans, based on the realities on the ground in each mission, which should look at the level of risk, and specific risk factors, linked to possible misconduct by their personnel, with special emphasis on SEA. As part of related risk management activities, missions may conduct risk assessment visits and patrols, identify and assess risks and their sources, undertake mitigating actions and conduct follow-up visits to ensure that identified risks are adequately addressed and mitigated.

To support missions in identifying risks and mitigating measures, the UN published a *SEA risk management toolkit* in 2018; it has been developed by the Conduct and Discipline Unit of the Department of Field Support (DFS). The toolkit is designed to be adaptable to the specific prevailing conditions in different types of peace operations. The Toolkit contains guidance on how to identify, assess, treat and monitor risks relating to SEA by UN personnel as well as a series of practical tools containing formats and examples, and can be usefully used as a reference guide by all personnel with roles and responsibilities on managing risks relating to SEA. Specifically, it contains a valuable list of key questions to guide situation analysis and identify SEA-related risks and risk factors.

See [https://conduct.unmissions.org/sites/default/files/dpko-dfs\\_sea\\_risk\\_toolkit\\_28\\_june\\_2018\\_modified.pdf](https://conduct.unmissions.org/sites/default/files/dpko-dfs_sea_risk_toolkit_28_june_2018_modified.pdf)

- b. Amongst good practices is designing contingent camps to minimise off-duty contact with the population (e.g. by including space to play outdoor games/sports inside the camp/premises; by locating contingent camps away from existing residential areas and markets). Maintenance of discipline is part of the commander's responsibility. A non-fraternisation policy can also be considered as a radical measure.

The *Six Core Principles Relating to SEA* adopted by the 2003 UNSG Bulletin on SEA and the Statement of Commitment (2006) incorporated into organisations' Codes of Conduct,

require all humanitarian agencies to create and maintain an environment that prevents SEA and to promote the implementation of their respective institutional Codes. Managers at all levels have a special responsibility to support and develop structures that maintain an environment free of SEA.

v. Welfare and recreation

The overall goal is to assist in alleviating living and working conditions that may contribute to unacceptable behaviour such as SEA, by providing adequate welfare facilities (e.g. internet, phone/skype, gym, outdoor sports, indoor games, supervised outings, welfare flights, inter-contingent sporting competitions, provision of PX facilities, food deliveries to remote locations) and adequate living conditions for civilian, military and police personnel. In addition, counselling services for civilian, military and police personnel could be provided.

UN missions have been requested to improve welfare and recreation facilities within existing resources and member states urged to fully utilise welfare payments provided by the UN for their soldiers. See the Report of the UNSG *Comprehensive review of the welfare and recreation needs of all categories of peacekeeping personnel (A/62/663)*: <http://undocs.org/en/A/62/663>.

***3.2.4 Focus on reporting and investigating mechanisms aimed at enforcing the prohibition of SEA that should be established throughout the chain of command for the benefit of victims.***

**Commentary**

i. Multiple reporting channels should be made available to the host population to provide them with a wide range of options to submit complaints, to include anonymous complaints, either verbally or in writing (e.g. locked drop-boxes, private meeting rooms to allow reporting in a confidential setting, telephone hotlines, secure e-mail addresses, appointment of regional focal points, key community leaders trained on SEA; staff employed in a Gender-Based Violence/Women's Centre or medical facility, local UN-NGO network of focal points on SEA, agencies, etc.). Mission personnel should receive information about how to report misconduct during their training; the information should also be made available on missions' intranet sites and disseminated through poster campaigns and/or broadcast messages. In case of a suspected incident of SEA, reporting should be mandatory. Commanders are to ensure that all personnel under their command are familiar with the SEA reporting channels.

The 2003 UNSG Bulletin on SEA and many agency policies make reporting concerns or suspicions of SEA via 'established reporting mechanisms' a mandatory requirement of



staff. It is the duty of all UN personnel, whether they are civilian, military and police, to report misconduct to the officials whose responsibility it is to take appropriate action. Any UN personnel who fail to comply with this obligation may be considered as having engaged in misconduct themselves. These policies frequently prohibit staff from disclosing any case information to other individuals or entities, and stipulate that breaches of this policy may result in disciplinary measures taken against the reporting staff member.

**ii.** When a report is received concerning possible misconduct, the information received should be reviewed and assessed to determine whether the alleged acts, if true, would amount to a breach of the relevant Code of Conduct. If there is sufficient information available to make this determination and the alleged acts would constitute misconduct, the matter must be referred for investigation.

The UN has standardised its reporting mechanisms. The Conduct and Discipline Teams record misconduct complaints and associated allegations in the Misconduct Tracking System, which is a strictly confidential, restricted-access database.

**iii.** Independent, impartial, thorough and prompt investigations should be initiated and undertaken by the national investigation officers of concerned contingent(s) upon instructions from their government, in coordination with the internal oversight bodies. Investigations should be respectful of the extremely sensitive nature of the allegation, as well as the age and gender-related vulnerability of the victim(s). Commanders should fully cooperate in investigations.

- a. If an allegation of a serious misconduct is substantiated, the individual(s) should be repatriated by the sending state without delay. Disciplinary sanctions should be taken and other judicial actions, which may include criminal or civil accountability, should be taken by the sending state, which usually exercises its jurisdiction over its forces and civilian component (depending on the SOFA). More broadly, units or even entire national contingents should be repatriated when there is credible evidence of widespread or systemic SEA by a given military unit or formed police unit of a contingent.
- b. In the case of UN missions, the UN relies on TCCs to take disciplinary and/or criminal action against their military and police personnel and TCCs are required to inform the UN of the actions taken. When allegations of serious misconduct against uniformed personnel are substantiated or when a TCC does not take appropriate measures to investigate the allegation or does not hold the perpetrator(s) accountable, the UN may repatriate the individuals concerned on disciplinary grounds and ban them from future participation in UN operations. Concerning its civilian personnel, the UN may take disciplinary action against them which may range from a reprimand to dismissal depending on the nature

of the misconduct, and may include a fine or other type of financial accountability.

The UN issued a Policy on Accountability for Conduct and Discipline in field missions in August 2015, which details the roles and responsibilities in field missions and at headquarters for addressing misconduct, and explains how accountability is to be achieved when personnel fail to observe the UN standards of conduct. The Policy also highlights the responsibilities of Heads of Mission and senior managers and commanders in this regard. <https://conduct.unmissions.org/documents-standards>

- c. Member states have an important role to play to facilitate investigations and strengthen accountability. One possibility is to establish on-site court martial proceedings for allegations which amount to sex crimes under national legislation in the case of military contingents. Another is to obtain DNA samples of members of uniformed personnel who are alleged to have committed SEA. The mission itself must be able to investigate SEA allegations as soon as they are made to properly preserve evidence, even before investigators arrive from the sending state. Finally, the host state can enhance its basic capacity to carry out investigations via Quick Impact Projects, even when the legal system is weak, and capacity-building projects may also be undertaken in the long term.

### ***3.2.5 Highlight the paramount importance of repression of SEA in international operations by addressing issues of criminal responsibility.***

#### **Commentary**

i. The repression of SEA that constitutes crimes under applicable law (e.g., rape or sexual relations with children) in international operations should be given paramount importance with the aim of overcoming the legal and political obstacles to accountability. Several mechanisms could be put in place or reinforced in order to practically enable the criminal prosecution of those who have committed SEA, and to address the current lack of accountability and dearth of prosecutions of mission personnel. This is all the more important given that crimes involving SEA committed in international operations breach the relationship of trust between mission personnel and the members of the local population they are sent to protect and assist.

ii. Offences that members of an international operation commit will not be war crimes if not committed in the context of and associated with an armed conflict; but they are likely to be contrary to the law of the host state in which the mission personnel is operating and to the law of their own nationality.

iii. In the context of UN operations, UN officials and national contingents must be looked at separately. UN staff and experts are protected by the Convention of Privileges and Immunities of the United Nations (13 Feb. 1946) and enjoy jurisdictional immunity in the host state when they are exercising their functions. Since immunities are normally conferred for acts undertaken in official capacities only, therefore should not affect the prosecution of acts of SEA, however immunity waivers are rarely granted whether by the UN or by the state of nationality of the official concerned. Hence, UN personnel remain under the jurisdiction of the state of which they are nationals.

iv. Military and civilian police who form the national contingents engaged in a UN mission follow different rules. The UN has no command over military contingents and can therefore not enforce accountability. Plus, a TCC retains exclusive jurisdiction over offences committed by their peacekeepers in the host state; the latter cannot prosecute offences itself. In practice however, the state of nationality of the individual concerned rarely brings a prosecution. Various factors explain that (e.g. difficulties in securing evidence; lack of national legislation or weakness in the legal system; lack of political will).

See the *UN Model Status of Forces Agreement (SOFA)* dated 09 October 1990 and the *Memorandum of Understanding signed between the UN and Troop and Police Contributing Countries*, <http://undocs.org/A/45/594>

In the UN system, the so-called *Zeid report* has proposed several amendments aimed at remedying the shortcomings of the UN model SOFA, with regards to better enforced accountability. It states that there should be a better implementation mechanism set out under the SOFA by which TCCs are requested to provide assurances to the UN that their contingent members will exercise jurisdiction with respect to crimes that might be committed by their forces in the mission, when allegations made against a military member of its contingent are well founded. Also, the report advises that the UN model SOFA shall:

- mention that national authorities will take their decision in the same manner as they would for an offence of a similar grave nature falling under the laws of that country;
- mention that if national authorities conclude that prosecution is not appropriate, the TCC shall submit a report to the UNSG explaining why prosecution was not appropriate;
- require the TCC to agree to inform the UNSG within 120 days after a case has been referred to it of measures it has taken under its national law and to inform him/her of progress achieved every 120 days thereafter until the case is finalised. See *A Comprehensive Strategy to Eliminate Future Sexual Exploitation and Abuse in United Nations Peacekeeping Operations*, Letter dated 24 March 2005 from the Secretary-General to the President of the General Assembly, UN Doc. A/59/710, <http://undocs.org/A/59/710>.

In 2006, an *ad hoc* UN Committee was created to specifically tackle the problem of criminal accountability of UN personnel and experts on mission. The Group of Experts'

Report made several proposals. Member states have been invited to agree upon an international convention under which states would agree to investigate, prosecute or extradite alleged offenders. This convention is however unlikely to be signed. The other measures proposed were an increased judicial assistance and cooperation between states and with the UN by sharing information and evidence and to prosecute those responsible, a shared exercise of jurisdiction between the host state and other states, the establishment of hybrid courts or of an international tribunal having jurisdiction over all categories of peacekeepers. See the *Report of the Group of Legal Experts on ensuring the accountability of United Nations staff and experts on mission with respect to criminal acts committed in peacekeeping operations*, in *Ensuring the accountability of United Nations staff and experts on mission with respect to criminal acts committed in peacekeeping operations*, 16 August 2006, UN Doc. A/60/980, <http://undocs.org/A/60/980>.

v. There have been multiple initiatives over the years, especially undertaken by the UN to improve the accountability deficit for all categories of peacekeeping personnel. Criminal responsibility could be improved by implementing the measures are detailed below.

- a. A universal jurisdiction convention (or an ‘extradite or prosecute’ convention) modelled on the draft convention on SEA by UN peacekeeping personnel written by the Group of Legal Experts would require states parties to the convention to prosecute a suspect found in their territory if they did not extradite the suspect to another State. In practice, there would be several limitations: since universal jurisdiction is usually only asserted in relation to the most severe crimes; some forms of SEA are not caught by the higher threshold offences set out in the draft convention; the recommendation for the convention which is being debated in the General Assembly concerns only the UN personnel component of a peacekeeping mission.
- b. Establishing an international tribunal with jurisdiction to try all the categories of members of an international operation would provide a permanent means of bringing to justice persons who at present are not being prosecuted. This would however require significant financial and human resources and it would be difficult to secure evidence and suspects. If the tribunal is established by a treaty, the risk is that not all states would participate in it, which would limit its effectiveness. To avoid some of the costs of a permanent tribunal, a ‘light’ international tribunal can be envisaged instead, with a standing roster of judges and administrative personnel that would act on request. This ‘lighter’ version has been suggested by the UK House of Lords Select Committee on Sexual Violence in Conflict in its report.

*Report of the Sexual Violence in Conflict Committee, 12 April 2016, HL Paper 123, Sexual Violence in Conflict: A War Crime.*

See <https://publications.parliament.uk/pa/ld201516/ldselect/ldsvc/123/12302.htm>.

- c. The best way of ensuring more responsibility for the members of an international operation is to increase prosecution by the TCCs/PCCs for the military and police components; by the state of nationality for the UN personnel; or by the host state having a properly operating legal system.
- d. To promote criminal responsibility, states must be encouraged to cooperate and amend their national legislation to permit nationality-based extraterritorial jurisdiction when necessary. TCCs could also hold on-site courts martial, which would facilitate access to witnesses and evidence in the mission's area. That would require national legislations regarding on-site courts martial and fair trial guarantees. In the same perspective, national investigation officers within contingents should be made mandatory in the revised model of the MoU between the UN and TCCs.

Best practices of member states on prevention of and response to SEA are contained in the Annex II to the report of the UNSG '*Special measures for protection from SEA: a new approach*' dated 28 Feb. 2017. The conduct of on-site court martial proceedings is mentioned among the actions taken in connection with specific allegations of SEA (e.g. by South Africa in DRC); this allows a judicial process close to the location of victims. Actions taken to strengthen the investigations include the quick appointment of a national investigations officer to investigate allegations in SEA (e.g. Democratic Republic of the Congo, Egypt, Morocco, Togo, Uruguay, etc.).

See [https://peacekeeping.un.org/sites/default/files/sg\\_report\\_a\\_71\\_818\\_special\\_measures\\_f\\_or\\_protection\\_from\\_sexual\\_exploitation\\_and\\_abuse.pdf](https://peacekeeping.un.org/sites/default/files/sg_report_a_71_818_special_measures_f_or_protection_from_sexual_exploitation_and_abuse.pdf)

See G. Nesi, *The repression of the crimes of sexual exploitation and abuse committed by peacekeepers: recent developments*, in *La Comunità Internazionale* no. 3/2017, pp. 327-342.

[https://www.academia.edu/36002824/THE\\_REPRESSION\\_OF\\_THE\\_CRIMES\\_OF\\_SEXUAL\\_EXPLOITATION\\_AND\\_ABUSE\\_COMMITTED\\_BY\\_PEAKEEKEEPERS\\_RECENT\\_DEVELOPMENTS](https://www.academia.edu/36002824/THE_REPRESSION_OF_THE_CRIMES_OF_SEXUAL_EXPLOITATION_AND_ABUSE_COMMITTED_BY_PEAKEEKEEPERS_RECENT_DEVELOPMENTS)

### **3.2.6 Describe compensation mechanisms for victims including trust funds or facilitating paternity claims.**

#### **Commentary**

i. Assistance and support to complainants, victims and children allegedly born as a result of SEA must be provided, even before an investigation into the allegations has been completed. This support can be delivered through identified existing local services, programmes, networks or community mechanisms that are appropriate to the given context and in a manner that does not isolate or stigmatise

the complainants. It may include medical assistance, help to access psychological counselling or to find shelter, clothing, food or protection, if their security is at risk, and also assistance to understand how the complaint will be handled.

- a. In order to ensure the protection of victims, complainants, witnesses or representatives, confidentiality must always be maintained and any unauthorised disclosure of confidential information should result in disciplinary measures.
- b. More specifically, the health/medical response must include the examination and treatment of injuries, prevention of disease and/or unwanted pregnancy, collection of minimum forensic evidence, medical documentation, and follow-up care. The psychosocial services can help the victim to heal from trauma, including feelings of blame, guilt, shame or fear that are among the effects of sexual abuse, and can support social re-integration. A complainant should not need to identify the perpetrator or prove that they were sexually exploited or abused by a mission staff member in order to receive basic assistance. If a victim requests legal counsel, justice actors will inform the victim of all legal options, procedures and timelines, security measures that can prevent further harm by the alleged perpetrator, and any inadequacies or problems in national or traditional justice solutions (i.e., justice mechanisms that do not meet international legal standards)

**ii.** Trust Funds may be established to provide resources to support victim assistance services and projects.

The UN established a *Trust Fund in Support of Victims of Sexual Exploitation and Abuse* in March 2016 to provide greater support to victims of SEA by UN and related personnel. The Fund supports projects providing specialised services for victims, engages in community outreach and addresses service gaps in the provision of support for complainants, victims and children born as a result of SEA. It is however not used to provide compensation to complainants or victims of SEA. Funds originate from voluntary payments made by member states and also from payments withheld from UN personnel in cases where SEA allegations have been substantiated.

**iii.** Where a child has been born as a result of SEA by a member of an international operation the pursuit of claims of paternity and child support should be facilitated.

- a. In that regard, DNA samples may be critical to ensuring effective investigations and often constitute compelling evidence for national criminal judicial processes. States should be encouraged to use DNA samples for testing for paternity and to appoint a national paternity focal point. If a paternity is confirmed, the sending state and the host state

should work closely together on the exchange of legal documents to ensure that paternity is legally recognised by courts in the countries of both the mother and father and ensure that arrangements are made for payment of child support.

- b. Within the framework of the UN, a DNA sample collection protocol has been developed and UN missions have been provided with DNA paternity collection kits and guidance for their use. The protocol is applied on a voluntary basis in connection with paternity claims. The UN has also requested member states to obtain DNA samples of members of military contingents and formed police units who are alleged to have committed SEA, where the national legislation of a member state permits the use of DNA samples for testing for paternity. In addition, member states are requested to provide the contact information of an appropriate focal point within their national legal system to receive and advise on paternity and child support claims from nationals of countries in which their citizen served with the UN. If needed, the UN can also facilitate the arrangements related to the recognition of paternity and child support.

## CHAPTER 4

### CONFLICT-RELATED SEXUAL VIOLENCE

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#### 4.1 Definitions

**4.1.1 Sexual violence** is regarded as any act of a sexual nature against one or more persons or that cause such person or persons to engage in an act 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, or by taking advantage of a coercive environment or such person's or persons' incapacity to give genuine consent. It includes rape, sexual slavery, forced prostitution, forced pregnancy, forced abortion, enforced sterilisation, forced marriage and any other form of sexual violence of comparable gravity, perpetrated against women, men, girls or boys. Acts of sexual violence are motivated by desire to assert power and dominance, inflict suffering, abuse of authority, and may include crimes of opportunity, tactics of war or accepted practices. Sexual violence entails grave physical, psychological, social and economic consequences for victims / survivors, families and communities. The terms 'victim' and 'survivor' can both be used but their associated narrative is different; for the present Handbook, the term victim will be used to include secondary victims, that is, those persons who are injured as a direct result of witnessing an act of sexual violence or of subsequently becoming aware of that act. Sexual violence is a worldwide phenomenon, very often widespread, not committed in isolation but rather linked to other violations of human rights and IHL also occurring (e.g. killing, child recruitment, looting, etc.) and an invisible crime due to the feelings of guilt, shame, fear of retaliation or taboos that may prevent the victims from reporting it.

**4.1.2 Gender-based violence** is generally broader than sexual violence since it includes not only acts of sexual violence but also acts of a non-sexual nature such as certain forms of domestic violence (e.g. battery) or honour killings (e.g. dowry deaths). The violent act is committed because of the sex of the victim or it is based on socially ascribed gender roles. Examples of gender-based violence are domestic violence, rape, sexual exploitation/abuse, forced prostitution, trafficking, forced/early marriage, female genital mutilation, honour killings and compulsory sterilisation or abortion. With special regard to men and boys, the violations can also take many forms: oral and anal rape, gang rape, rape with objects (such as sticks, bottles, hoses, drills and metals skewers), sexual slavery, enforced nudity,



being forced to perform sexual acts with others, to include family members, tying or beatings of the genitals, cigarette burns to the genitals and anus, injury to and mutilation of the penis and testes and castration (resulting in death). Gender-based violence is very commonly committed in situations of detention.

**4.1.3 Conflict-related sexual violence (CRSV)** is a term not used in IHL treaties, yet it is increasingly employed.

- CRSV consists in incidents or patterns of sexual violence that are directly or indirectly linked (temporally, geographically or causally) to a conflict. The link with conflict may be evident in the profile and motivations of the perpetrator(s), the profile of the victim(s), the climate of impunity/weakened state capacity, cross-border dimensions and/or the fact that it violates the terms of a ceasefire agreement.
- CRSV is often meant as sexual violence by armed actors, encompassing both state actors (military, police and paramilitary organisations under the direct command of other state actors) and non-state actors (rebels, militia organisations, organised criminal networks), but other perpetrators may be members of an international operation, members of private military and security companies or individuals (e.g. former combatants, young men brutalised by conflict). Victims are frequently actual or perceived members of a political, ethnic or religious minority group, or targeted on the ground of actual or perceived sexual orientation or gender identity; or belong to specific groups/categories (i.e. disabled, elderly, children, detained persons, IDPs, refugees, LGBT, etc.). The term CRSV also encompasses trafficking in persons when committed in situations of conflict for the purpose of sexual violence or exploitation.

**4.1.4 Rape and other forms of sexual violence** are absolutely prohibited under IHRL at all times and under IHL in both international and non-international armed conflicts.

- IHRL may complement IHL in times of armed conflict, especially for acts of sexual violence that have no nexus with the armed conflict, and may also provide guidance on the interpretation and application of IHL prohibitions against sexual violence. Although most human rights treaties, universal and regional, do not contain explicit or specific prohibitions of sexual violence, the non-derogable prohibition of torture or cruel, inhuman or degrading treatment or punishment contained in most general human rights treaties provides a strong basis to prohibit virtually all forms of sexual violence at all times. Plus, recent case law tends to consider sexual violence as an independent crime (see below Guideline 4.2.4.).

- IHL treaties prohibit acts of sexual violence in the Geneva Conventions and their Additional Protocols, and this prohibition is also part of customary IHL. The chart below captures the provisions where the prohibition can expressly or implicitly be found:

	IAC	NIAC
<b>Geneva Conventions (GC)</b>	Art. 14 GC III Art. 27 GC IV	Common Art. 3 to the GC
<b>Additional Protocols (AP) to the Geneva Conventions</b>	Art. 75.2.(b) AP I Art. 76.1 AP I Art. 77.1 AP I	Art. 4.2.(e) AP II
<b>Customary IHL</b>	Rules 93-94-134-156 of the ICRC Customary IHL Study <a href="https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul">https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul</a>	

## 4.2 Guidelines

### *4.2.1 Enable trainees to conduct a gender analysis aimed at identifying risks and actual occurrence of sexual violence perpetrated against women, men, girls and boys in the area of deployment.*

#### Commentary

i. Sexual violence is a gendered phenomenon. It affects differently women, men, girls and boys. It is linked to and arises from harmful social practices based on perceptions of gender and the power dynamics surrounding them. Gender analysis should gather and examine the widest possible information on the presence of women, men, children, and elderly people in the conflict zone, on their belonging to the civilian population or to armed forces or groups engaged in the conflict and on their affiliation to ethnic, religious or minority groups, for the purposes of identifying differential risks. Adopting a gender lens when approaching the issue of sexual violence allows identifying risk and potential vulnerability to its occurrence, understanding ways through which we can work towards its prevention, better understand how to increase the accessibility of care and tailor appropriate responses.

Sexual violence against boys and men in situations of armed conflict and displacement is a critical problem, yet underestimated. On that topic, see for example:

<https://childrenandarmedconflict.un.org/hidden-victims-sexual-violence-boys-men-conflict/>  
See also S. Sivakumaran, *Sexual Violence Against Men in Armed Conflict*, *The European Journal of International Law*, Vol. 18 No. 2, (2007) pp. 253-276, available at: <http://ejil.org/pdfs/18/2/224.pdf>

**ii.** Depending on the context of the conflict and what combatants are fighting over, there are different motivations and targets of violence. Focusing on rape four war-rape patterns can be identified:

- a. Field-centred/opportunistic rape: where strong rebel groups are fighting to gain control over valuable resources in a country, CRSV tends to be highly prevalent and perpetrated by both rebels and state agents in the field area where the fighting is occurring; rape may have a strong opportunistic component as well as a 'strategic' purpose (e.g. Liberia, Democratic Republic of the Congo);
- b. Field-centred/woman-targeted rape: where both state and rebel groups are perpetrators, women are more specifically targeted as a way of controlling their movement and autonomy, including their dress, appearance in public and political activism (e.g. Afghanistan, Iraq);
- c. State-led/ethnic-targeted rape: where a powerful, controlling state attempts to quash a smaller secessionist or minority-representing group, rape victims were often targeted on the basis of ethnicity (e.g. Chechnya, Myanmar);
- d. State-led/enemy-targeted rape: where state security forces tend to employ CRSV as a means of repression and target victims on the ground of ideological affiliations with rebel groups and activism critical of the State, whilst large and powerful rebel groups appear to have committed little CRSV (e.g. Colombia, Sri Lanka).

See K. Farr, *Extreme war rape in today's civil-war-torn states: A contextual and comparative analysis*, *Gender Issues*, vol. 26(1) (2009) pp. 1-41.

**iii.** CRSV may be a deliberate strategy of war, opportunity-driven, or a condoned/tolerated practice:

- a. Strategic sexual violence can take various forms: it can occur as sexual torture of detainees to obtain information; as institutionalised forms of compensation (wives in sexual slavery or forced marriage); as a form of terror or punishment, to control resources or territory or to 'cleanse' an area of a targeted population; or as a signal of the organisation's resolve. For instance, rape appears to have been a strategy in Bosnia, Guatemala, Rwanda, Uganda (by the Lord's Resistance Army) or for Daesh. If sexual violence occurs as a strategy, the policy should be directed at persuading or forcing organisation leaders to countermand the strategy.

- b. Opportunistic sexual violence, whether by family members or strangers, is carried out for private reasons, facilitated by the breakdown of the rule of law.
- c. Sexual violence as a practice is not ordered (even implicitly) or institutionalised but tolerated by commanders, sometimes as a form of compensation/reward to combatants. Here, sexual violence is facilitated by the lack of a hierarchical command structure and explicit norms against sexual violence within armed groups and it may be the product of social interactions and pressures (for example, the combatant's desire to conform to the behaviour of others in the unit). In such a case, the policy should be directed at persuading individual commanders to no longer tolerate practices that are already formally prohibited, and doing so without counterproductive consequences.

See E. J. Wood, *Conflict-related sexual violence and the policy implications of recent research*, International Review of the Red Cross, vol. 96 (894), 2014, pp., 457-478. Available at: <https://international-review.icrc.org/reviews/irrc-no-894-sexual-violence-armed-conflict>

**iv.** Some scholars argue that structural gender-based discrimination is a cause of SGBV (see Chapter 3.1.4.c. of this Handbook) and gender inequality can inform strategies of prevention in high-risk situations. Widespread and systematic SGBV is informed by discriminatory societal norms around gender, including discriminatory family codes that entrench men's domination over women and children; severe restrictions on women's civil liberties and access to resources and entitlements; institutionalised bias toward sons, boys and men; and normalised, everyday violations of women's physical and bodily integrity. Hence, the need to gender-disaggregate data on the conflict itself. Also, gendered structural conditions affect the incidence and the reporting of SGBV crimes. For instance, rape is so traumatic and under-reported for men and boys because it undermines their achievement of masculine agency and political identity, plus there may be a lack of male doctors trained to assess rapes committed against men. Access to healthcare for women may be more difficult in certain contexts (e.g. a woman who must be accompanied by a male relative to travel outside of the home; lack of female doctors to treat women). Policies should therefore not only try to prevent CRSV by focusing on the prosecution and socialisation of individual perpetrators and reforming justice systems to end impunity for SGBV crimes, but also address the significance of gendered inequalities and discriminatory practices in societies.

See S. E. Davies and J. True, *Reframing conflict-related sexual and gender-based violence: Bringing gender analysis back in*, Security Dialogue, 19 October 2015, available at:

#### **4.2.2 Provide adequate cognitive and intervention tools to prevent and respond to CRSV according to the mandate of the mission.**

##### **Commentary**

i. It is imperative that both armed forces and non-state armed groups prevent sexual violence. The prohibition of sexual violence should be integrated into all operational documentation, strategies and guidelines. Best practices and lessons learned on the prevention of CRSV should be shared with partners in coalitions and with UN members.

- a. The mandates, directives, orders and other guidance documents should explicitly state the requirements of addressing CRSV where applicable. The risk of occurrence of CRSV incidents should be taken into consideration throughout the planning process, with a focus on early-warning, and execution of operations. Human rights assessments on risks and threats, including on CRSV, should be reflected, *inter alia*, in the Concept of Operations (CONOPS), the Operations Order (OPORD), Fragmentary Orders (FRAGO), Standard Operating Procedures (SOPs) and Rules of Engagement (ROE). ROE should permit use of force up to and including deadly force for the protection of civilians under imminent threat of physical violence, which also covers all forms of SGBV. Also, ROE provide directions on detention, personnel and vehicle searches, cordon and search operations, and arms embargos which are undertaken as part of prevention and response to CRSV. Dedicated ROE on the prevention of and response to CRSV could be inserted in the ROE profile.

With regards to early-warning indicators on CRSV, they comprise disappearance, political rhetoric, fleeing/evacuating, house raids and searches, tell-tale marks of violation, silence or fearful disposition, detention at camps and check points, increased hospital reporting of rape, movement of troops after victory/defeat, proximity of armed groups to civilian centres, information from human and electronic sources, frequent forays to villages by individual/few soldiers, changed mobility patterns, particularly women and children, reporting of threats/incidents to the authorities or communities, ambushes, waylaying of women and girls during routine subsistence/economic activities (e.g. during farming, water/firewood collection, en route to market), isolated attacks, firewood/water rape and looting/ pillaging.

UN Women has listed gender-sensitive early-warning indicators that are structured around six pillars (military/security, social/humanitarian; political/legal, economic, media-related, health) and possible preventive/ responsive actions. The matrix is available at: [https://peacemaker.un.org/sites/peacemaker.un.org/files/MatrixEarlyWarningIndicatorsCSV\\_UNAction2011.pdf](https://peacemaker.un.org/sites/peacemaker.un.org/files/MatrixEarlyWarningIndicatorsCSV_UNAction2011.pdf)

- b. Force generation is another key aspect to take into consideration. In that sense, missions should have a fair representation of uniformed female personnel since they provide an effective interface with the women and girls of the local communities (including local female police personnel) and are able to establish two way communications, which is essential to understand protection concerns, vulnerabilities and threats and to design preventive measures. Indeed, women and children, and in certain circumstances men, affected by armed conflict may feel more secure working with and reporting abuse to uniformed female personnel. Also, uniformed women may encourage local women to participate in the national armed and security forces, thereby helping to build a security sector that is accessible and responsive to all, especially women. They should be part of frontline activities of the units in order to optimise their vital role in community engagement, particularly with local women and girls.

A second point is that military contingents should have trained female personnel (officers, rank-and-file, doctors and medics, interpreters and language assistants). Military commanders should be sensitised on relevance of effective response to CRSV. Training on CRSV in the pre-deployment phase should be mandatory for everyone. Eventually, trained CRSV focal points should be appointed in headquarters and contingents/units.

- ii.** Active advocacy with host state security forces and with armed groups should be part of the prevention policy against sexual violence.

- a. With regards to host state, advocacy should especially address the following: the role of national security forces in prevention of human rights violations and IHL violations, including CRSV; international standards for the protection of women and children's rights; the conduct and discipline of officers and soldiers (during on and off-duty periods) to restrain them from predatory practices leading to sexual violence and support the investigation and prosecution of perpetrators of CRSV under national laws; cantoning and confinement of soldiers and police personnel in camps and exercising controlled movement outside the camp in identifiable uniforms (to promote accountability and responsibility); timely payment of salaries, welfare and recreational facilities for the

troops to help prevent predatory practices; sensitising government security and law enforcement institutions on gender and human rights (including through training and education) to change gender discriminatory norms and practices, attitudes and promote respect for human rights; host security and law enforcement forces to also consult with the local women on their protection needs and to design protection measures as appropriate; security at border check points to prevent human trafficking for sexual slavery and forced prostitution.

- b. With regards to armed groups, advocacy should in particular address the following: ceasing all activities pertaining to CRSV and releasing hostages/sex slaves with immediate effect; conveying that all perpetrators will be held accountable for their human rights violations and IHL violations, including CRSV, and will be prosecuted as per national/international laws as applicable; informing that their activities are closely monitored, recorded and reported; removal/dismantling of unauthorised checkpoints and roadblocks to prevent harassment and extortion; declaring market areas to be ‘weapons-free zones’ to facilitate women’s safe economic activity; declaring refugees, IDP and DDR camps as ‘weapons-free zones’; and communicating that amnesty provisions will not be applicable to perpetrators of CRSV.

For further reference, see UN training on CRSV, Operational Module, available at: <http://dag.un.org/bitstream/handle/11176/400575/CRSV.Operational%20Module.pdf?sequence=2&isAllowed=y>

**iii.** Current policy responses for CRSV and SEA differ significantly. Policies fighting CRSV have underlined accountability and focus on promoting justice and restoring trust in rule of law institutions, which has led to huge investments to support capacity-building in domestic courts and tribunals in conflict settings, whilst initiatives to prevent CRSV from occurring (like better training and rigorous vetting) remain relatively rare. On the contrary, efforts to address SEA have emphasised prevention and stressed individual compliance through standards of conduct, recruitment, and training. However, prevention and accountability mechanisms should be employed to counter CRSV or SEA.

See A. Luedke, C. Lewis and M. Rodriguez, *Sexual Violence, Exploitation and Abuse, Improving Prevention Across Conflicts and Crises*, United States Institute of Peace Special Report 415, November 2017, available at: <https://www.usip.org/publications/2017/11/sexual-violence-exploitation-and-abuse>

A number of measures have been instituted by the UN at the strategic level to counter CRSV in conflict and post-conflict situations:

- Addressing CRSV concerns in peace process, mediation efforts, ceasefires and peace agreements;
  - Deploying Women’s Protection Advisers and Gender Advisers;
  - Advocating for prevention of CRSV and ending impunity with all parties to the conflict;
  - Establishing and implementing Monitoring, Analysis and Reporting Arrangements (MARA) on CRSV in armed conflict and post-conflict situations;
  - Listing parties and perpetrators credibly suspected of patterns of sexual violence in the annual report of the UNSG to the UNSC;
  - Imposing targeted and graduated state-specific sanctions against those who perpetrate and direct CRSV;
  - Promoting women’s political, social and economic empowerment and gender equality and women’s participation in peacebuilding;
  - Providing guidelines on CRSV in training packages for all peacekeeping and civilian personnel.
- UN specialised training materials on CRSV are available at: <http://dag.un.org/handle/11176/400575>

The Military Guidelines on the prevention of, and response to, CRSV (MCM-0009-2015) issued by NATO, stress the responsibility of the military commanders to act within their mandate in order to prevent and respond to CRSV. This involves numerous measures:

- Integrating CRSV into the operational planning documents, directives and doctrines, in all stages of the mission analysis, planning, education, training, conduct of exercises and evaluation of NATO-led operations and missions, and develop the analytical tools necessary to understand the level of risk of CRSV for information collection and reporting, including development of early warning indicators.
- Reporting on CRSV through the chain of command, sharing information collected with UN authorities and establishing protocols to secure information and data.
- Training Allies and Partner Nations’ Forces on the existing international and national frameworks and developing scenario-based and operationally focused pre-deployment training on CRSV, and raising the awareness of local security forces on all issues related to CRSV (e.g. by providing expertise or conducting respective trainings).
- Appointing GENAD and GFP to facilitate gender mainstreaming into the work, plans and activities of military leadership and personnel.
- Upholding the highest standards of personal and professional behaviour and establishing appropriate Codes of Conduct.
- Interacting with in-theatre actors to create an environment conducive to addressing CRSV.

Available at:  
[https://www.nato.int/issues/women\\_nato/2015/MCM-0009-2015\\_ENG\\_PDP.pdf](https://www.nato.int/issues/women_nato/2015/MCM-0009-2015_ENG_PDP.pdf)

In 2018, the Nobel Peace Prize was awarded to Denis Mukwege and Nadia Murad ‘for their efforts to end the use of sexual violence as a weapon of war and armed conflict’: see <https://www.nobelprize.org/prizes/peace/2018/summary/>.



### ***4.2.3 Identify the needs related to assistance and relief of victims of sexual violence.***

#### **Commentary**

i. Victims should always be guaranteed unimpeded access to timely and appropriate healthcare, including psychological support; shelter and economic support (e.g. food, water and clothing); security and safety from further violations or reprisals. Interpreters can play a crucial role in ensuring that access. The privacy, confidentiality and wishes of the victim should be respected. The host state has the primary responsibility for the provision of services to the victims of sexual violence, without prejudice of the responsibility of the sending state if the perpetrator is a member of its contingent. The UN and humanitarian organisations may provide support.

- a. The medical response to sexual violence should involve the following: address primary health concerns of the victim; obtain a complete medical and sexual violence history; perform sexual violence examination, document and treat injuries; perform STI/HIV/pregnancy testing; provide emergency contraception and post-exposure prophylaxis (PEP) for HIV; collect forensic evidence and maintain the chain of evidence; and document findings in a medical affidavit. The medical report is the most important, and often the only, form of evidence in CRSV cases, aside from the victim's testimony, but victims often arrive late at healthcare facilities due to reporting barriers, after injuries have healed and evidence has been lost. In all cases the consent of the victim is required.
- b. The psychological/mental health response to sexual violence should involve the following: provide the victim with individual counselling; discuss the pursuit of justice with him/her; provide group counselling; work with the victim to handle stigma and rejection; work with the victim and community to promote reintegration and social acceptance; promote income-generating activities for victims; and perform outreach to community members who are also affected.
- c. While victims need social/community-based support, the underlying cultural, social, and gender norms of a community often make it difficult for a victim to receive support or achieve redress. When reporting a sexual assault, victims of sexual violence may endanger their status, social capital, and economic viability. Indeed, they often face myriad obstacles, including re-victimisation, ostracism, discrimination and lack of livelihood. Sexually assaulted women especially, particularly young mothers, may be marginalised and stigmatised by their families and communities due to the dishonour associated with sexual violence, and often face economic hardships; this is particularly true in societies where

a woman's access to resources is based on her relationships with male family members. Hence, the need to assist communities in positively changing community norms, educating them in order to avoid stigma, and also helping the victims with economic support to help them to reintegrate.

See J. Freccero, L. Harris, M. Carnay and C. Taylor, *Responding to sexual violence: community approaches*, Human Rights Center, University of California Berkeley, available at: [https://www.law.berkeley.edu/wp-content/uploads/2015/04/Responding-to-Sexual-Violence\\_-Community-Approaches-SV-Working-Paper.pdf](https://www.law.berkeley.edu/wp-content/uploads/2015/04/Responding-to-Sexual-Violence_-Community-Approaches-SV-Working-Paper.pdf)

d. Victims may be assisted to access justice as appropriate. See below Guideline 4.2.5.

ii. Health providers should enjoy unimpeded movement and access to victims. The local health sector should be supported and engaged. Indeed, healthcare providers play a dual role in responding to CRSV, since they provide clinical care to victims but also support the justice process. Thereupon, healthcare providers should be trained to conduct a forensic examination, complete a relevant medical or police forms, collect, store and document evidence, and testify in court. Practical protocols for evidence collection in emergencies should be developed. More broadly, host states should allocate greater resources within health ministry budgets to address CRSV.

#### **4.2.4 Address issues of responsibility for sexual violence crimes.**

##### **Commentary**

i. Sexual violence can amount to a grave breach of IHL and a war crime. Rape and other forms of sexual violence have been explicitly recognised under international law as a stand-alone category of war crimes in both international and non-international armed conflicts. Sexual violence can also amount to a crime against humanity when committed as 'part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack' and/or an act of genocide, when committed with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such. CRSV is also a crime in most national legal systems.

See G. Gaggioli, *Sexual violence in armed conflicts: A violation of international humanitarian law and human rights law*, International Review of the Red Cross, vol. 96 (894), 2014, pp. 503-538.  
Available at: <https://www.icrc.org/en/international-review/sexual-violence-armed-conflict>

*Focus on sexual violence in international case law*

The two cases presented below are of particular interest:

ICTY, *Kunarac et al.*, IT-96-23-T & IT-96-23/1-T, Trial Judgement, 22 February 2001: this case relates to the systematic rape committed against Muslim women and girls mainly in private housing by members of the Bosnian Serb Army and of a Serb unit in the Foca area, which was being ethnically cleansed, in the context of the non-international armed conflict in Bosnia and Herzegovina in 1992-93. The ICTY considered rape and other forms of sexual violence as constituting war crimes. Moreover, this was the first case where individuals were prosecuted and convicted of rape as a constituent offence of crimes against humanity.

ICTR, *Akayesu*, ICTR-96-4-A, Appeal Judgement, 1 June 2001: this case related to Akayesu, who was a *bourgmestre* (the top-ranking public official in his commune) found to have known about, and been present at, several instances of sexual violence that occurred under his authority. Although he knew that members of the Interahamwe had systematically committed rapes and other forms of sexual violence against Tutsi women and girls, he took no measures to prevent or punish the perpetrators, and he ordered, instigated and aided and abetted sexual violence. He was charged with rape as a constituent act of crimes against humanity, sexual violence as a constituent act of genocide, and outrages upon personal dignity as a war crime. The ICTR considered that sexual violence could be done with the intent of killing members of a group, could constitute serious bodily or mental harm, could be comprised of measures intended to prevent births within the group, and could amount to forcibly transferring children of the group to another group.

UNSCR 1820/2008 recognises CRSV as a ‘tactic of war’ and a threat to ‘international peace and security’, prompts the creation of the Office for the UN Special Representative of the UNSG on Sexual Violence in Armed Conflict.

The UN efforts include legal reforms, legal assistance programmes, community security programmes, the development of specialised services for victims and witnesses, awareness-raising campaigns, rehabilitation programmes, support for country-level assistance on justice and the rule of law.

The Special Representative has articulated in 2017 a three-pillar priority strategy that aligns with that approach, namely: converting cultures of impunity into cultures of deterrence; addressing structural gender-based inequality as the root cause and invisible driver of sexual violence in times of war and peace; fostering national ownership and leadership for a sustainable, survivor-centred response that empowers civil society and women’s rights defenders.

**ii.** The Statute of the International Criminal Court (ICC) criminalises rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation or any other form of sexual violence of comparable gravity. Other concrete examples of sexual violence are trafficking for sexual exploitation, mutilation of sexual organs, sexual exploitation (such as obtaining sexual services in return for food or protection), forced abortions, enforced contraception, sexual assault, forced marriage, sexual harassment (such as forced stripping), forced inspections for virginity and forced public nudity.

Extracts from the Rome Statute of the ICC (17 July 1998):

Art. 7 - Crimes against humanity.

1. For the purpose of this Statute, 'crime against humanity' means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack (...)

(g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation, or any other form of sexual violence of comparable gravity.

Art. 8 - War crimes.

2. For the purpose of this Statute, 'war crimes' means: (...)

(b) Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts: (...)

(xxii) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced sterilisation, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions.

Available at: [http://legal.un.org/icc/statute/99\\_corr/cstatute.htm](http://legal.un.org/icc/statute/99_corr/cstatute.htm)

**iii.** Sexual violence that amounts to serious violations of IHL entails individual criminal responsibility. States have an obligation to criminalise, investigate and prosecute rape and other forms of sexual violence. Adequate disciplinary mechanisms should be ensured along the chain of command. Individual actors should be fully informed of existing domestic legislation and IHL.

**iv.** Criminal responsibility is challenged by many obstacles touched upon below:

- a. Victims' willingness and ability to report. Barriers to reporting CRSV are of both a social and structural nature. Most of the victims are traumatised, not emotionally or psychologically able to seek justice, and in need of psychosocial support. They may be inhibited by the stigma associated with CRSV, the fear of retaliation, community pressure to settle cases informally, limited awareness of legal rights and limited trust in the police, who can be perceived as ineffective, inefficient and corrupt. Also, the general insecurity and disruption of public transport during periods of active conflict often keeps victims in their homes and prevent them from seeking police or immediate medical care. Victims should not be required to report to the police before they are permitted access to care; likewise, a mandatory reporting from the hospital to the police will likely discourage reporting. Criminalisation of homosexuality is another obstacle to reporting.
- b. Limited resources, infrastructure and transportation. Long distances to police and health facilities and the cost of transportation are other obstacles. Often, basic infrastructure necessary to respond to sexual

violence does not exist or has been broken down in the conflict-affected areas, which means a lack of reliable access to electricity, transportation, medical equipment and public services, particularly in rural areas. Also, post-rape care is often difficult to secure since local clinics are often understaffed, overcrowded and under-stocked due to a high volume of injuries in the community.

- c. Evidence collection and prosecution, due to the general collapse of infrastructure and public services in conflict-affected areas. Also, health-care providers often do not have training in collection and management of forensic evidence; perpetrators may be difficult to identify; and the police may not have adequate competence to handle such cases.

See K. T. Seelinger, *Domestic accountability for sexual violence: The potential of specialized units in Kenya, Liberia, Sierra Leone and Uganda*, International Review of the Red Cross, vol. 96 (894), 2014, pp. 539–564.

Available at: <https://www.icrc.org/en/international-review/article/domestic-accountability-sexual-violence-potential-specialized-units>

The UK Foreign and Commonwealth Office has produced in collaboration with gender and sexual violence experts, an *International Protocol on the Documentation and Investigation of Sexual Violence in Conflict*, designed to help strengthen the evidence base for bringing perpetrators to justice.

Available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/598335/International\\_Protocol\\_2017\\_2nd\\_Edition.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/598335/International_Protocol_2017_2nd_Edition.pdf)

v. States are required to address violations of IHRL and IHL, to include sexual violence. Accountability measures should include the following:

- a. States must lead competent, timely, effective, independent, and impartial investigations on allegations of violations of IHRL and IHL, and prosecute the suspects by providing jurisdiction in their national legislation.
- b. In addition to prosecution, those found to have participated in serious violations of IHRL and IHL should be barred from entering security forces or removed from such forces.
- c. Reporting should be made easier for victims. It helps the victims to access essential medical care and psychosocial support. It can also contribute to the prosecution of CRSV, possibly as an international crime. To ease the reporting, billboards, community radio and theatre can be used. Moreover, long-term community mobilisation strategies to change underlying behavioural norms should be put into place. Access to reporting and support services should be facilitated, also during emergency periods (e.g. 24-hour hotlines, transportation to health

- facilities, teams of community-based first responders who can accompany survivors to services).
- d. Witness protection and support should be prioritised. Safe shelters, which promote the victim's sense of security, should be made available, as well as, in the courtroom, in camera testimony and screens to shield witnesses while they testify.
  - e. Reparations for victims of sexual violence, beyond monetary compensation and other forms of restoration (for instance return of property, restoration of liberty), can be provided through rehabilitation (provision of medical, psychological, social and legal services), satisfaction (like the cessation of violations, truth seeking, public apologies) or guarantees of non-repetition (which may include institutional reforms).

See K. Anyeko, K. T. Seelinger and J. Freccero, *Improving Accountability for Conflict-related Sexual Violence in Africa*, United States Institute of Peace, Peace Brief 206, June 2016.

Available at: <https://www.usip.org/publications/2016/06/improving-accountability-conflict-related-sexual-violence-africa>

- f. Amnesty should not be provided for war crimes. In both IACs and NIACs, it has been established under international law that states must investigate all war crimes allegedly committed by their nationals or armed forces, or on their territory, and, if appropriate, prosecute the suspects. They must also investigate other war crimes over which they have jurisdiction and, if appropriate, prosecute the suspects.

See also the ICRC Customary IHL Study, Rule 159: 'At the end of hostilities, the authorities in power must endeavour to grant the broadest possible amnesty to persons who have participated in a non-international armed conflict, or those deprived of their liberty for reasons related to the armed conflict, with the exception of persons suspected of, accused of or sentenced for war crimes'.

Available at: [https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule159](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule159)

#### **4.2.5 Explain what are the avenues for prosecution of sexual violence crimes.**

##### **Commentary**

i. The primary responsibility to prosecute crimes of sexual violence lies with domestic legal systems. All states must investigate sexual violence crimes allegedly committed by their nationals or in their territory (without prejudice to universal jurisdiction). States should include the full range of crimes provided for

in the Rome Statute in their national penal legislation. They have been encouraged to do so by the UNSC and they have been required to do so under IHL for war crimes. Also, military and police orders, doctrines and ROE should prohibit and criminalise sexual violence. In addition, domestic and international criminal laws concerning SGBV and CRSV should be harmonised, especially with regard to the definitions of offences (e.g. the Rome Statute definition of rape is gender-neutral, which is not always the case in local laws, which sometimes may only recognise women and girls as victims of rape).

**ii.** The host state criminal justice system has primary jurisdiction to prosecute perpetrators of CRSV; specialised chambers in national tribunals are especially a good avenue to prosecute crimes of sexual violence. Otherwise, the most serious crimes of international concern may be prosecuted before the ICC or *ad hoc* international mixed tribunals.

**iii.** Depending on the mandate, international operations may provide support to host states with developing or revising domestic legislation, including in criminal matters. Women's groups should be involved in strategies and action plans aimed at reinforcing the national frameworks for prosecuting those responsible of acts of sexual violence.

- a. An effective implementation of the laws criminalising sexual violence requires robust state institutions. National ownership should be strengthened, and national authorities should develop national frameworks and action plans to ensure a structured and institutionalised response to CRSV. The host state should be supported in the following key areas: building of a local and national response capacity; provision of remuneration and accommodation to soldiers; public information campaigns; border control and counter human trafficking operations; advocacy of protection, deterrence and accountability; adoption of strict Codes of Conduct by government forces and armed groups.
- b. The security sector (i.e. the police, the military and other security forces) should be staffed and trained to recognise sexual violence and to protect the population from such crimes by non-state actors. Appropriate procedures should be put in place to prevent and punish sexual violence by state officials with disciplinary and criminal sanctions. Support can be provided to the host state security forces as well, *inter alia* in the following activities: sharing information (including on threats and vulnerabilities to women); exchanging liaison officers and using direct hotline communication for early-warning and coordination; conducting joint planning, training, operations in the context of preventing or responding to CRSV; promoting responsible and accountable conduct/operations by security forces (i.e. advocacy to prevent human

rights violations, including CRSV, identifying offenders, screening of forces); providing support to monitor and/or implement the commitments made in addressing CRSV. Similarly, in the justice system personnel should be staffed and trained to investigate allegations of sexual violence and prosecute and sanction perpetrators.

iv. Women, women's organisations and other civil society organisations, formal/informal leaders at the national/provincial/local levels, including traditional and religious leaders and community networks should be involved for the various key roles they play: exerting influence over parties to armed conflict in addressing CRSV; sensitising communities on sexual violence to avoid marginalisation and stigmatisation of victims; supporting victims in accessing justice and reparations and combatting a culture of impunity for these crimes.

v. Armed groups and other actors involved/alleged/suspected of committing CRSV should be engaged. In that respect, the following actions can be carried out: engaging key leaders/ contact persons to enforce responsibility; advocating to influence their behaviour and actions, so that they cease all violations pertaining to CRSV and release hostages/sex slaves with immediate effect; making them know that their activities are being closely monitored and reported; sensitising that amnesty provisions will not be applicable to CRSV offenders; and supporting the host state in arresting, disarming and prosecuting CRSV offenders.

The UN Team of Experts on the Rule of Law and Sexual Violence in Conflict provides legal and judicial expertise on combatting CRSV upon invitation by governments, supports the investigation, prosecution of perpetrators and adjudication of crimes of sexual violence under civilian and military systems, legislative reform, the protection of victims and witnesses and reparative justice.

See <https://www.un.org/sexualviolenceinconflict/wp-content/uploads/reports/sg-reports/SG-REPORT-2017-CRSV-SPREAD.pdf>

Whilst perpetrators are often conceptualised as only armed actors, civilians may be the most common perpetrators of human rights abuses, including sexual violence, in peacetime and during armed conflict. The focus put on legal accountability and prosecution of sexual violence before international or national courts will not change the prevailing societal norms that contribute to making everyday citizens (and armed combatants) perpetrate SGBV. Hence, more stress should be put on prevention efforts emphasising gender-transformative programming. See A. H. Blair, N. Gerring and S. Karim, *Ending Sexual and Gender-Based Violence in War and Peace*, United States Institute of Peace, Brief 2015, September 2016.

Available at: <https://www.usip.org/publications/2016/09/ending-sexual-and-gender-based-violence-war-and-peace>





## CHAPTER 5

### TRAFFICKING IN HUMAN BEINGS

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#### 5.1 Definitions

**5.1.1 Trafficking in Human Beings (THB)** also referred to as **trafficking in persons**, involves the deprivation of liberty and the exploitation of people who are not able to exert their will or change their conditions because of threats, physical or emotional violence, coercion, abuse of power. Trafficking harms victims physically, psychologically and emotionally. Further traumas may be suffered because of stigmatisation by the family and the community of origin, with consequent deprivation of any type of personal assistance or economic support. Due to different cultures and social background, the perception of what is trafficking in human beings has been given different interpretations, but currently THB is regarded as a crime against the person and also a serious form of organised crime.

**5.1.2** With the adoption of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol, 25 December 2003) supplementary to the United Nations Convention against Transnational Organized Crime (UNTOC Convention, 15 November 2000) the international community has recognised THB (in its different forms) as a serious violation of human rights while giving a comprehensive definition (discussed below). The Palermo Protocol represents one of the main international tools to standardise law enforcement action in this field, also to prevent and combat trafficking of human beings, to assist victims – with special attention to women and children – and to promote cooperation worldwide.

Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=XVIII-12-a&chapter=18&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XVIII-12-a&chapter=18&lang=en)

**5.1.3** According to the Palermo Protocol, THB should possess specific constitutive elements in order to be acknowledged:

- a. an *act* (such as recruitment, transportation, transfer, harbouring or receipt of persons);

- b. a *means* by which that action is achieved (use of force or other forms of coercion, abduction, fraud, deception, abuse of power or of a position of vulnerability, giving or receiving payments or benefits to achieve consent);
- c. a *purpose* of exploitation of the victim (any exploitative purpose against children is sufficient *per se* to qualify as criminal activity).

Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Art. 3:

For the purposes of this Protocol:

(a) ‘Trafficking in persons’ shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;

(b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;

(c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered ‘trafficking in persons’ even if this does not involve any of the means set forth in subparagraph (a) of this article;

(d) ‘Child’ shall mean any person under eighteen years of age.

Trafficking for the purpose of sexual exploitation and forced labour are the most common ways, nevertheless exploitation can assume several other forms, such as organ removal, enslavement, servitude, forced marriages or situations where victims are forced to commit criminal activities on behalf of others (e.g. drug dealing). Trafficking requires exploitative purposes, but does not necessarily involve transportation across borders, it may then happen within the same country.

**5.1.4 The smuggling of migrants** involves the facilitation of a person’s illegal entry into a state.

The International Organization for Migration (IOM) defines a migrant as any person who is moving or has moved across an international border or within a state away from their habitual place of residence, regardless of (1) the person’s legal status; (2) whether the movement is voluntary or involuntary; (3) what the causes for the movement are; or (4) what the length of the stay is.

See <https://www.iom.int/who-is-a-migrant>

In practice, it may be difficult to distinguish between a situation of trafficking in human beings and a situation of migrants smuggling for many reasons: firstly, smuggled migrants may also become victims of trafficking; secondly, traffickers may also act as smugglers and use the same routes for both trafficking and smuggling; and last, but not least, conditions for smuggled persons may be so bad that it is difficult to believe they consented to it. However, there are key differences between THB and smuggling of migrants. These are clarified by the Protocol against the Smuggling of Migrants by Land, Sea and Air (28 January 2004) additional to the UNTOC Convention.

Protocol against the Smuggling of Migrants by Land, Sea and Air, Art. 3:

For the purposes of this Protocol:

(a) 'Smuggling of migrants' shall mean the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident;

(b) 'Illegal entry' shall mean crossing borders without complying with the necessary requirements for legal entry into the receiving State.

THB is a crime against the person involving the deprivation of freedom and any possibility of choice for the victim. It does not necessarily include a trans-border dimension since it can take place within a single country. When crossing a border, this may happen legally or with fake documents or identities. Migrant smuggling, instead, is a cross-border phenomenon entailing the irregular movement of people or the enablement of their irregular stay in a destination country. For those reasons, it represents a crime against the State. The victim agrees to be smuggled illegally and the criminal action is concluded at the time of the arrival at destination. In principle, unless further action is taken, it does not have any component of exploitation. Therefore, THB and migrants smuggling are two illegal activities that need to be addressed in different ways, according to different international legal provisions, although sometimes they may overlap. Further clarification is provided below at Guideline 5.2.3.

On the difference between trafficking and smuggling, see also:

<https://leidenlawblog.nl/articles/human-trafficking-and-human-smuggling.-whats-the-difference.>

## 5.2 Guidelines

**5.2.1 *Enable trainees to conduct a gender analysis with reference to each situation where there is any suspicion that trafficking in human beings is occurring, has occurred or will occur.***

## Commentary

i. THB is a worldwide phenomenon, victims are potentially trafficked despite their gender, origin, personal or social characteristics. Anyway, according to figures, victims who are statistically trafficked for the purpose of sexual, labour or other types of exploitation, are mainly women and children.

The International Labour Organization (ILO) estimates that there are 40.3 million victims of human trafficking globally. 81% of them are trapped in forced labour; 25% of them are children; 75% are women and girls.

See <http://www.ilo.org/global/topics/forced-labour/lang--en/index.htm>

In order to detect and combat the phenomenon of THB, a broad gender-sensitive analysis should be assessed. Gender analysis is aimed at identifying victims of THB taking into account gender specificity (e.g., women and girls trafficked for purposes of sexual exploitation may be hidden within mixed migration flows). Collecting disaggregated data on age, gender, ethnicity and other relevant characteristics can lead to a better understanding of risk factors. Moreover, in the framework of international cooperation among relevant organisations, it may be necessary to share information and data while taking advantage of existing mechanisms of analysis, including data on intersecting criminal activities connected to SEA and CRSV (see Chapters 3 and 4 of this Handbook) or using existing platforms aimed at identifying risk assessments and potential victims, especially in crisis areas (e.g. the IOM Displacement Tracking Matrix).

The Displacement Tracking Matrix (DTM) is a system to track and monitor displacement and population mobility. It is designed to regularly and systematically capture, process and disseminate information to provide a better understanding of the movements and evolving needs of displaced populations, whether on-site or en route.

See <https://www.globaldtm.info/>

ii. Trafficked men and women can share similar issues, such as appropriation of documents, detention, deportation, disorders, however gender stereotypes can make certain abuses peculiar to women and children. This may derive from gender inequalities, marginalisation, discrimination and violence in families and communities of origin. THB is then a gendered phenomenon and the consequences for its victims are gender specific. In the majority of cases THB victims are women and girls, especially trafficked for purposes of sexual exploitation, which results in gender-specific physical, gynaecological and mental health harms, with long term consequences. These are different from the consequences of being trafficked for purposes of labour and other forms of exploitation, which can be more specifically

related to men and boys.

See UN Commission on Human Rights, *Integration of the human rights of women and the gender perspective*. Report of the Special Rapporteur on trafficking in persons, especially women and children E/Cn.4/2005/71 (2004) <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G04/169/28/PDF/G0416928.pdf?OpenElement>.  
See also European Commission, 2016, *Study on the gender dimension of trafficking in human beings*, [https://ec.europa.eu/anti-trafficking/eu-policy/study-gender-dimension-trafficking-human-beings\\_en](https://ec.europa.eu/anti-trafficking/eu-policy/study-gender-dimension-trafficking-human-beings_en)

**iii.** Gender analysis is the prerequisite to provide gender-sensitive assistance to victims. It should take into account how different forms of disadvantage and vulnerability (such as age or disability) intersect with gender in order to envisage the implementation of specific interventions conceived to offer legal, psychological, educational and vocational support needed by beneficiaries to exit the trafficking circuits and enter in national protection programs including individualised pathways of social and economic reintegration.

**iv.** Sexual exploitation (see Chapter 3.1.1.) entails sex or sexual acts exchanged for money or other basic needs or benefits, such as food, protection or drugs. The majority of the victims are women, among which some categories can become more vulnerable to exploitation than others. Sexual slavery, forced or early marriage, forced prostitution and/or pregnancy are particular forms of exploitation occurring mainly in conflict or post-conflict areas. In those situations, the activity can take place secretly, however some armed groups tend to promote the slavery of women and children as part of fighters' recruiting policies and to control local populations, therefore it can be linked to conflict-related sexual violence.

See A. McAlpine, M. Hossain M. and C. Zimmerman, *Sex trafficking and sexual exploitation in settings affected by armed conflicts in Africa, Asia and the Middle East: systematic review*, in Bio Med Central, International Health & Human Rights, December 28, 2016, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5192570/>

**v.** Forced labour is another form of exploitation which takes advantage of the vulnerability of the victims and often under the menace of punishments/mistreatment. It may include any kind of work, whether a legal or an illegal activity, regardless of age, gender, or any other status. The recruitment is often done fraudulently and in some cases victims can be trafficked into conflict zones. Children are particularly vulnerable, especially in those areas where institutions and caregivers are absent, and the security system has collapsed. Unaccompanied minors become easy victims of traffickers and armed groups for child labour, sexual slavery or any other supportive roles (as cooks, porters or

messengers) or even in combat roles (e.g. suicide bombing, armed attacks, causing explosions).

### ***5.2.2 Prepare trainees to recognise acts, means and purpose as THB specific constitutive elements.***

#### **Commentary**

**i.** Numerous separate abuses are committed in the course of trafficking, which themselves can violate both national and international law (use of forged documents, facilitation of unlawful migration, begging, labour or sexual exploitation). It is the combination of these elements that allows THB to be considered as an overall crime distinct from each single violation. However, the composite nature of THB makes it very difficult to detect, as it can easily be confused or misperceived with some of its constitutive elements (border crossing, harbouring of irregular migrants, unregulated work, sexual abuse and violence, prostitution, begging). Conflicts can aggravate the weakness of local destabilised population and can amplify the potential of vulnerable groups to become victims of THB. Sexual abuse of women and girls and the use of children as soldiers are typical forms of exploitation, which happen predominantly in conflict or post-conflict environments. Armed groups may systematically use sexual violence as a tactic of war, targeting particular categories (e.g. gender, ethnicity, religion...) while financing their activities to support wider strategic and ideological goals.

**ii.** Children are commonly victims of sexual exploitation (predominantly girls, e.g. early and forced marriages) and labour exploitation, but they may be trafficked for other criminal activities such as illegal adoption, begging, organs removal. By definition, they are more vulnerable than any adult and become easily victims of criminal groups. To facilitate their transportation, they are often moved together with adults, especially with their relatives. Here a specific mention should be given to the UN Convention on the Rights of the Child which commits states parties to protect children from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual exploitation and abuse and trafficking.

United Nations Convention on the Rights of the Child of 20 November 1989, Art. 35: States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form. See <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

**iii.** When referring to children in conflict or post-conflict situations, UNSCR 1261/1999 has identified a specific set of crimes against children, described as the

Six grave violations against children (killing and maiming, recruitment, sexual violence, abduction, attacks against schools or hospitals, denial of humanitarian access.) Those are detected through a specific monitoring and reporting system and they data collected integrates the annual report of the UNSG on children and armed conflict. Trafficking is not included in the set, but there may be situations where one or more of the above mentioned categories overlap with a trafficking situations, for instance when THB happens for the purpose of sexual exploitation, slavery, child marriage or even to involve children in combative and supporting roles, in the context of armed groups and terrorist activities. Furthermore, UNSCR 2388/2017 seeks to further explore existing and potential links between trafficking in children during conflict and the six grave violations.

Vulnerabilities of children to sale, trafficking, and other forms of exploitation in situations of conflict and humanitarian crisis are outlined in the *Joint report* of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material and the Special Rapporteur on trafficking in persons, especially women and children, A/72/164 (2017). See <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N17/218/83/PDF/N1721883.pdf?OpenElement>, pp. 6-13.

### ***5.2.3 Enable trainees to distinguish between THB and the smuggling of migrants.***

#### **Commentary**

i. The key differences between THB and migrant smuggling must be clearly and widely explained in training. Firstly, smuggled migrants usually consent to being smuggled while trafficking victims have not consented or their consent is rendered meaningless by actions of the traffickers. Secondly, smuggling involves illegal border crossing and entry into another country while trafficking does not necessarily involve crossing a border, and where it does, the legality or illegality of the border crossing is irrelevant. Thirdly, the relationship between the smuggler and the migrant is a commercial transaction that usually ends after the border crossing, while the relationship between traffickers and their victims involves ongoing exploitation of the victims to generate profit for the traffickers. Another indicator is the source of the offender's profit: while smugglers generate profit from fees to move people, traffickers acquire additional profits through the exploitation of victims. Despite the important differences between the two categories of victims, trafficked people and smuggled migrants are similarly subject to serious human rights abuses and different forms of violence including abduction assault, sexual abuses. Risk factors are exacerbated by conflict and



destabilisation. In such areas, atrocities are also perpetrated, which has conveyed the attention of the most relevant international organisations.

Early identification, referral and protection of victims or potential victims of trafficking in persons in mixed migration movements are outlined in the Reports of the Special Rapporteur on trafficking in persons, especially women and children, especially A/HRC/38/45 (2018) and A/HRC/41/46 (2019).  
See <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/133/20/PDF/G1813320.pdf?OpenElement>; <https://reliefweb.int/sites/reliefweb.int/files/resources/G1911206.pdf>.

ii. There also exist overlaps between victims of THB, smuggled migrants and refugees. Victims of trafficking may be migrants who have been smuggled or refugees fleeing persecution or other dangers in their country being particularly vulnerable to traffickers. Similarly, migrants and refugees who have been smuggled are particularly vulnerable to being exploited because of the lack of opportunities in the destination country and the costs associated with smuggling. If other elements of trafficking are present, the exploitation may render them victims of trafficking. Refugee status or subsidiary protection may be granted to victims of trafficking who risk persecution in case of return to their home country, if the home country is unwilling or unable to protect them, depending on the individual circumstances.

The Convention Relating to the Status of Refugees of 28 July 1951 provides the universal definition of a refugee, which is extended by definitions contained in regional instruments and in national law, as applicable. Available at: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/StatusOfRefugees.aspx> and <https://emergency.unhcr.org/entry/250585/refugee-definition>  
The principle of non-refoulement guarantees that no one should be returned to a country where they would face torture, cruel, inhuman or degrading treatment or punishment and other irreparable harm. This principle applies to all migrants at all times, irrespective of migration status.  
See <https://www.ohchr.org/Documents/Issues/Migration/GlobalCompactMigration/ThePrincipleNon-RefoulementUnderInternationalHumanRightsLaw.pdf>

The Organization for Security and Co-operation in Europe (OSCE) has launched the project *Combating Human Trafficking along Migration Routes* aiming at enhancing the ability of interested participating states and partners to effectively investigate and prosecute human trafficking and to promptly identify victims of trafficking in human beings (THB) along migration routes by promoting a multi-agency and human rights-based approach. See <https://www.osce.org/projects/cthblix>.  
In Italy the Center of Excellence for Stability Police Units carries on International Live Exercises on Combating Trafficking along Migration Routes. During one week of training panellists explore the complex inter-connection between THB and migration, in order to identify the most pressing challenges and high-lighted good practices in combatting the

crime of human trafficking along migration routes. In particular, special attention is focused, on the one hand, on enhancing criminal justice responses to prosecute human traffickers operating along migration routes and, on the other hand, on better equipping the relevant authorities to identify victims of trafficking to ensure human rights and efficient referral mechanisms.

See <https://www.coespu.org/news/4th-osce-international-live-exercise-combating-human-trafficking-along-migration-routes>.

#### ***5.2.4 Make trainees aware of the connection between THB and terrorism, as indicated in the UNSCR 2331/2016.***

i. Internationally, terrorism has no comprehensive and exhaustive definition, although commonly it is envisioned as a series of activities perpetrated in order to intimidate a group or a state, through the use of violence, for ideological and political reasons (see Chapter 6.1 of this Handbook). Terrorism, as stated in international documents such as UNSCR 2331/2016, may have strong linkages with THB, mainly with mention to the profits obtained in the framework of criminal activities resulting from trafficking of human being aimed to exploitative roles (labour, sex, slavery...). Radicalisation of young people is one of the most common ground for the recruitment of members, with targeted propaganda in the family, through community links or social media. According to UNSCR 2331/2016 victims of trafficking committed by terrorist groups should be classified as victims of terrorism, therefore prevention, protection, investigations and prosecution activities should be done accordingly, supported by formal and informal cooperation linkages among state actors, non-governmental organisations, civil society.

UNSCR 2331/2016 para 10.

See [https://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s\\_res\\_2331.pdf](https://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_res_2331.pdf)

ii. Data collection in conflict zones and disaggregated analyses may result in an effective prevention tool. In this framework, it is crucial that risk warnings are made available among the most vulnerable communities, while engaging local leaders, religious entities – to defy extremist ideologies – and enhancing female participation. Moreover, short-, medium- and long-term measures must be implemented, according to specific vulnerabilities and followed by assistance, support and recovery measures. Trafficking is also connected to transnational organised crime, which challenges peace and stabilisation processes. The criminal activities perpetrated by traffickers usually generate high profits. Analysing financial flows associated with trafficking is crucial to detect the phenomenon and

it may result in diverting criminal activities perpetrated by terrorist groups as a source of financing.

iii. Financial and intelligence-led investigations may provide a diversity of evidence to detect the phenomenon, while identifying financial flows and markets where victims are exploited. An appropriate analysis to dismantle those criminal configurations can be enhanced by identifying the supporting financial structure behind THB organisations. Detecting and dismantling those activities requires understanding their *modus operandi*, which means discovering how, how often, from where and where to, the money is transferred. The so called *Hawala system*, allowing to move money from the country of origin to the destination, without leaving any trace, is a useful tool for organised crime, also used by terrorist groups.

*Hawala* is the name given to a system of transferring money without crossing borders through an underground network where a handler in one country accepts cash from a customer and then a handler in another country hands out the equivalent amount (minus commission) overseas. *Hawala* is illegal as transactions are made outside the conventional banking system and the related regulations. See <http://documents.worldbank.org/curated/en/410351468765856277/Informal-funds-transfer-systems-an-analysis-of-the-Hawala-System>

### ***5.2.5 Assess the risk of THB in theatres of international operations and enable trainees to act appropriately according to the mandate of the operation.***

#### **Commentary**

i. Countries where an international operation is deployed are usually characterised by instability, insufficient rule of law and lack of stable and efficient institutions representing fertile ground for the flourishing of the activity of criminal networks. These features prevail in armed conflict and in post-conflict situations, where operations are deployed to bring stability and peace. In these contexts, trafficking can significantly contribute to undermine the efforts to bring back stability and durable peace processes. Pre-existing vulnerabilities are exacerbated by other factors such as poverty, discrimination, inequality, violence and deprivation. Traffickers abuse vulnerable individuals to get profits while making victims dependent, through physical or psychological abuse, taking advantage of cultural background and traditional practices.

See the Human Trafficking Indicators as developed by the United Nations Office on Drugs and Crime (UNODC): [https://www.unodc.org/pdf/HT\\_indicators\\_E\\_LOWRES.pdf](https://www.unodc.org/pdf/HT_indicators_E_LOWRES.pdf)

**ii.** Family disintegration, lack of community or state support drives people to flee in search of physical or economic security. Due to gender discrimination, domestic violence experienced in families and marginalisation from local communities, women are made particularly vulnerable to trafficking. Costs are often covered by traffickers, generating a fear of reprisals and inability to repay. Debt bondage creates profound compliance to multiple forms of abuse. Moreover, the returnees experience further consequences and psychological trauma due to the stigmatisation from their families and lack of consistent reintegration policies. Risk of re-trafficking is then high.

**iii.** International operations can effectively contribute to fighting THB by establishing a system to monitor, prevent, minimise, investigate and punish involvement of mission personnel in activities that support human trafficking and other sexual exploitation and abuse; (where mandated) supporting national efforts to prevent and counter human trafficking in post-conflict environments, in particular through rule of law activities. Military, police and civilian components can develop synergies in providing safe and secure environment, training local institutions and providing assistance. A human rights-based approach is paramount in all actions by all stakeholders; multidisciplinary approaches and multiagency cooperation are essential elements in tackling THB and protecting trafficked and exploited persons' rights. In destabilised or post-conflict areas, it is also suitable to raise public awareness on the problem of THB, through consistent information campaigns using the media, advertising and public announcements, but also disseminating campaigns addressed to very specific targets, focusing on vulnerable categories, potential victims of recruitment for exploitation purposes.

- a. In order to create a reliable assistance mechanism for victims of trafficking, the most urgent and pertinent activity is their identification, possibly at an early stage. People trafficked do not always understand their status of victims of exploitation or may be reluctant to report. There are multiple factors preventing victims to reach out for help. In principle, this attitude originates from an extensive experience of abuse, violence and repeated traumas, producing devastating effects on self-confidence and willingness to participate in investigation processes. Victims do not see themselves as such and they often fear retaliation from exploiters.
- b. For the purpose of identifying THB victims, it may be appropriate to take advantage of existing tools and best practices shaped on experience. Standard indicators may be useful to highlight when there is a potential risk of trafficking, such as evident physical or psychological abuses, poor living conditions, restricted freedom of movement, unusual travel times. Additional generic signs could be connected with appearance and behaviour (injuries, appearance of fear, limited knowledge of the local language, no telephone, no cash, false documents or no travel documents,

- unhygienic living conditions, etc.) but there are also many specific indicators interrelated with peculiar form of exploitations such as labour exploitation (e.g. long working hours, absence of protecting measures, no insurance, poor salary, etc.) or sexual abuses (evidence of prostitution, no use of protections from sexually transmissible disease, etc.).
- c. When no visible sign is present, investigators and operators should adopt a different approach to obtain information from the victims and to build trust with them. Early referral and identification of victims is essential to establish effective protection measures. The approach should be integrated, holistic and human rights-based. A specific and often recommended technique is to make sure that victims of trafficking are first treated as rights holders and not as delinquents, although they might have taken part in criminal activities. This could help overcoming their reluctance to seek help. Secondly, medical treatment and psychological support should be prioritised. Presumed victims should be approached individually, taking account of their gender and age, for specific protection measures (e.g. if possible, it might be preferable that female operators should talk to women) and special treatment should be granted to vulnerable categories (e.g. pregnant women and victims with disabilities). Moreover, detailed legal provisions are required when dealing with children. The use of local assistants, such as interpreters should follow cautious procedures and their direct associations with victims should be restrained.
  - d. Scenes should be protected and evidence gathered in a way that will make it admissible in court and does not conflict with rules on evidence. Victims should be taken to a safe place. Support from social services, health authorities and, or non-governmental organisations should be used when available. Presumed victims must not be arrested absent compelling legal grounds; in any case they should not be detained together with prisoners.
  - e. Average protection measures require providing effective support and protection to victims, among which ensuring access to a safe accommodation, medical/psychological services, stress management, and – when applicable – material assistance, interpretation services, legal advice, training and employment opportunities, non-prosecution, financial support, safe return and reintegration and/or compliance with *non-refoulement*. Victims' needs and safety take priority and the policies applied case by case should be tailored according to survivors' needs. Such victim-centred approach aims at minimising re-traumatisation following the criminal justice process and related investigations. If possible, practical tools such as interview recording could be beneficial in

order to avoid that the victim must repeat accounts of abuses multiple times.

Under international human rights law, the principle of *non-refoulement* guarantees that no one should be returned to a country where they would face torture, cruel, inhuman or degrading treatment or punishment and other irreparable harm. This principle applies to all migrants at all times, irrespective of migration status.  
See <https://www.ohchr.org/Documents/Issues/Migration/GlobalCompactMigration/ThePrincipleNon-RefoulementUnderInternationalHumanRightsLaw.pdf>

### **5.2.6 Explain what are the international cooperation mechanisms for investigating and prosecuting THB.**

i. To take action to investigate and prosecute THB an inclusive cross-border cooperation is necessary, starting from the sharing and combining of information and best practices and the development of multi-level training activities, as well as a constant interchange among police, border-control authorities, judicial authorities, civilian experts, and financial investigators. Multi-disciplinary approaches would support prevention policies, facilitated by the inclusion of selected NGOs and civil society organisations, possibly working with victims and able to enrich prevention viewpoints and investigation perspectives during the process.

ii. The intention behind the UNTOC Convention and its Additional Protocols is to facilitate convergence in national approaches with regard to the establishment of domestic criminal offences and to support efficient international cooperation in investigating and prosecuting THB cases.

Palermo Protocol, Art. 5:

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct set forth in article 3 of this Protocol, when committed intentionally.
2. Each State Party shall also adopt such legislative and other measures as may be necessary to establish as criminal offences: (a) Subject to the basic concepts of its legal system, attempting to commit an offence established in accordance with paragraph 1 of this article; (b) Participating as an accomplice in an offence established in accordance with paragraph 1 of this article; and (c) Organizing or directing other persons to commit an offence established in accordance with paragraph 1 of this article.

iii. THB is increasingly becoming a transnational crime, therefore it should be tackled in cross-border investigations, through partnerships between public and private sector, prevented with awareness-raising campaigns and investigated accordingly. It requires transnational judicial and law enforcement cooperation,

establishment of communication channels at bilateral level and regional level (e.g. EUROPOL, EUROJUST, FRONTEX) or through international agencies such as INTERPOL, UNODC or IOM focusing on cooperation to break up criminal networks and to protect and assist vulnerable migrants trafficked, exploited or abused. Extensive international cooperation includes exchanging information, intelligence sharing and monitoring joint activities. Cooperation entails national and international law enforcement agencies as well as NGO services.

UNODC is the UN entity combatting human trafficking and the smuggling of migrants, based on prevention and prosecution activities and protection of victims, while encouraging cross-border cooperation and providing practical tools for the development of local capacity and expertise. A Model Law against Trafficking in Persons has been developed by the UNODC to assist states in implementing the provisions contained in UNTOC and the Palermo Protocol: see [https://www.unodc.org/documents/human-trafficking/UNODC\\_Model\\_Law\\_on\\_Trafficking\\_in\\_Persons.pdf](https://www.unodc.org/documents/human-trafficking/UNODC_Model_Law_on_Trafficking_in_Persons.pdf)

UNODC has developed a *Toolkit to Combat Trafficking in Persons* providing a comprehensive overview of THB phenomenon and specific guidance related to response mechanisms.

Available at: [https://www.unodc.org/documents/middleeastandnorthafrica/global\\_report\\_on\\_trafficking\\_in\\_persons/07-89375\\_Ebook5B15D.pdf](https://www.unodc.org/documents/middleeastandnorthafrica/global_report_on_trafficking_in_persons/07-89375_Ebook5B15D.pdf) An UNDOC *Thematic Paper on*

*Countering Trafficking in Persons in Conflict Situations* is also available at:

[https://www.unodc.org/documents/human-trafficking/2018/17-08776\\_ebook-Countering\\_Trafficking\\_in\\_Persons\\_in\\_Conflict\\_Situations.pdf](https://www.unodc.org/documents/human-trafficking/2018/17-08776_ebook-Countering_Trafficking_in_Persons_in_Conflict_Situations.pdf)

European initiatives include the EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016 ([https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/eu\\_strategy\\_towards\\_the\\_eradication\\_of\\_trafficking\\_in\\_human\\_beings\\_2012-2016\\_1.pdf](https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/eu_strategy_towards_the_eradication_of_trafficking_in_human_beings_2012-2016_1.pdf))

and the Council of Europe Convention on Action against Trafficking in Human Beings of 16 May 2005 (<https://rm.coe.int/168008371d>). The Convention is not restricted to CoE member states; non-member states and the EU have the possibility of becoming party thereto. The Group of Experts on Action Against Trafficking in Human Beings (GRETA) is responsible for monitoring the implementation of the Convention.

See <https://www.coe.int/en/web/anti-human-trafficking/greta>. On the EU approach specifically, see also: S.H. Krieg, 'Trafficking in Human Beings: The EU Approach between Border Control, Law Enforcement and Human Rights' (2009) 15, 6 *European Law Journal* 775.

iv. Many international organisations may not have a specific mandate to address THB. However, there are existing or potential linkages with other criminal activities and intersections which overlap with this phenomenon. Understanding the complex *modus operandi* of trafficking can support the integration of existing response instruments into combined actions. A specific mention should be given to mechanisms and platforms such as the UN Inter-Agency Coordination Group against Trafficking in Persons (ICAT), the UN Global Plan of Action to Combat Trafficking in Persons, and the Global Protection Cluster Anti-trafficking Task

Team.

The ICAT network is a policy forum mandated by the UN General Assembly to improve coordination among UN agencies and other relevant international organisations to facilitate a holistic and comprehensive approach to preventing and combatting trafficking in persons, including protection and support for victims of trafficking. See <http://icat.network/>. The United Nations Action for Cooperation Against Trafficking in Persons is a project ensuring a coordinated approach to combat trafficking in persons in the Greater Mekong Sub-region and beyond. See <http://un-act.org/>. The Global Protection Cluster Anti-Trafficking Task Team aims to develop guidance on anti-trafficking interventions in humanitarian responses. See <http://www.globalprotectioncluster.org/2018/09/04/new-report-anti-trafficking-in-humanitarian-responses/>.

v. It is almost impossible for a single organisation or institution to provide by itself the necessary provision to support victims of trafficking. It is therefore essential to adopt a broad partnership approach based on specialised networks to assist victims locally and on an international level. National Referral Mechanisms (NRMs) aim to identify, protect and assist THB victims through referral and involving relevant public authorities and civil society. Co-operation systems among governmental and non-governmental organisations, public authorities and civil society entail victim-centred approaches and prevention of re-trafficking.

See National Referral Mechanisms – Joining Efforts to Protect the Rights of Trafficked Persons: A Practical Handbook (2004) Published by the OSCE Office for Democratic Institutions and Human Rights (ODIHR) providing guidance on how to design and implement sustainable mechanisms and structures to combat human trafficking and support victims and on how to monitor and build the capacity of such mechanisms and structures. Available at: <https://www.osce.org/odihr/13967>. See also Liu, G. (2017) *National Referral Mechanisms for Victims of Human Trafficking: Deficiencies and Future Development*, in McAuliffe, M. and M. Klein Solomon (Conveners) (2017) *Ideas to Inform International Cooperation on Safe, Orderly and Regular Migration*, IOM: Geneva. Available at: [https://publications.iom.int/system/files/pdf/national\\_referral\\_mechanisms.pdf](https://publications.iom.int/system/files/pdf/national_referral_mechanisms.pdf)





## CHAPTER 6

### TERRORISM

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#### 6.1 Definitions

**6.1.1** Although no universally accepted definition of terrorism exists, since 1963, the international community has elaborated various **international legal instruments** to prevent and to prosecute terrorist acts. Those instruments were developed under the auspices of the UN and the International Atomic Energy Agency (IAEA), or by regional organisations such as the Council of Europe and they define **specific acts of terrorism**.

Nineteen Conventions presently in force dealing with unlawful acts committed against civil aviation, maritime navigation and platforms, protected persons, taking of hostages, protection of nuclear material, plastic explosives and terrorist bombings, suppression of financing and prevention of terrorism. A list and summaries are available at: <https://www.un.org/en/counterterrorism/legal-instruments.shtml>.

Since 2000, negotiations to conclude a comprehensive Convention on international terrorism have been pursued in the framework of the UN but they have not been successful so far.

**6.1.2 Common features of acts of terrorism** are the deliberate commission of crimes of violence, in peace or war, with the objective of inspiring fear and terror to intimidate or coerce a civilian population and / or to influence the policy of a government or of an international organisation by intimidation or coercion.

The Appeals Chamber of the Special Tribunal for Lebanon held that based on treaties, UN resolutions and the legislative and judicial practice of states a customary international law definition of terrorism in time of peace has emerged consisting of three key elements: (i) the perpetration or threatening of a criminal act (e.g. murder, kidnapping, hostage-taking, arson, etc.); (ii) the intent to spread fear among the population or directly or indirectly coerce a national or international authority to take some action, or to refrain from taking it; (iii) a transnational element. See Interlocutory Decision on the Applicable Law: Terrorism, Conspiracy, Homicide, Perpetration, Cumulative Charging, Case No. STL-11-01/I, 16.2. 2011, para 85).

Available at: <https://www.refworld.org/cases,STL,4d6280162.html>.

Acts of terrorism are penalised as criminal, in peace and in war, by both domestic and international law. For the purpose of this Handbook the term **terrorist groups** means groups which carry out acts of terrorism.

**6.1.3 The prohibition of acts or threats of violence aimed at terrorising the civilian population** is widely recognised as a norm of customary international law applicable in both international and non-international armed conflicts. Art. 33 GC IV, applicable to the territories of the parties to the conflict as well as to occupied territories in international armed conflicts, prohibits ‘all measures of intimidation or of terrorism.’ Articles 51.2 AP I and 13.2 AP II applicable in international armed conflicts and in non-international armed conflicts, respectively, provide that ‘Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited’ while Art. 4.2.(d) AP II further stipulates that ‘acts of terrorism’ ‘shall remain prohibited at any time and in any place whatsoever.’

The ICTY held that the prohibition of terror, as contained in the second sentences of both Art. 51.2. AP I and Art. 13.2. AP II, amounts to a specific prohibition within the customary prohibition of attack on civilians while the *mens rea* of the crime consists of the intent to make the civilian population or individual civilians not taking direct part in the hostilities the object of acts or threats of violence with the specific intent to spread terror among the civilian population. See *Stanislav Galić*, IT-98-29-T, Trial Judgement, 5 December 2003, para 98; *Dragomir Milošević*, IT-98-29/1-A, Appeal Judgement, 12 November 2009 para 37.

**6.1.4** Although the primary responsibility for prosecution of crimes of terrorism lies with domestic legal systems, international conventions to prevent and to prosecute terrorist acts (see above at 6.1.1.) provide for mutual legal assistance among states, information sharing, extradition and the transfer of terrorists to face trial or to secure evidence for a prosecution. Acts of terrorism committed in an armed conflict may also incur **individual criminal responsibility** under International Criminal Law and are specified as war crimes under the Statutes of the International Criminal Tribunal for Rwanda (Art. 4.d) and of the Special Court for Sierra Leone (Art. 3.d).

## 6.2. Guidelines

**6.2.1** *Enable trainees to conduct gender analysis with the aim of assessing how social roles and cultural dynamics affect acts of terrorism.*

### Commentary

**i.** Gender analysis shows how social roles and cultural dynamics affect acts of terrorism, particularly with regard to the different roles of women as victims, enablers, recruiters, perpetrators or actors playing important roles also in combatting and preventing terrorism. Assessing the gender dimension is crucial in order to identify risks and raise awareness, particularly through information sharing. Terrorism is not a gender-neutral phenomenon, and conducting an appropriate gender analysis containing such considerations may help to obtain a more inclusive prevention and protection policy (e.g. by using the PMESII model to outline the broader context where groups may have an influence). Integrating gender considerations in the analysis of the phenomenon would allow a more holistic understanding of the situation and better prevention.

PMESII is an acronym developed in the military of the United States. It is used to shape a structured approach for an action in an operational situation for the purpose of analysing the external environment. The acronym stands for Political, Military, Economic, Social, Information, Infrastructure. See [http://pmesii.dm2research.com/index.php/Main\\_Page](http://pmesii.dm2research.com/index.php/Main_Page)

**ii.** Where gender aspects are not taken into consideration, international operations may have a minor understanding of the operational environment, and situational awareness will inevitably decrease, generating security threats. Depending on the mandate of the operation, the broadest possible information on women and children (boys and girls) affiliated with terrorist groups in the deployment zone should be gathered and examined, followed by formal risk assessments. This approach would give international operators a clearer vision on how terrorist groups apply gendered strategies in recruitment practices and propaganda techniques.

**iii.** When performing a gender analysis – in order to identify risks of terrorist acts – it should be taken into account that women do not always have a public role. Their visibility depends on the local context and norms, on the ideology, culture and needs of the group to which they belong and their own willingness. Absence of the visible participation of women does not mean their inactivity.

- a.** In particular settings, sexual-related forms of exploitation have been used to generate direct profit or to attract and recruit fighters, with the promise of benefits, such as wives, slaves or similar kinds of ‘remuneration’. The practice of systematically providing, selling, sharing, exchanging sexual slaves has been quite consistent among certain terrorist groups, this creating favourable effects on the fighters’ personal motivation and enhancing their community cohesion. Sexual slavery has been encompassed in the supporting ideology and it has contributed to the functionality of those organisations.

- b. In other environments, terrorist groups have taken advantage of gender stereotypes and assumptions to take the opponents by surprise. They have used women initially as sexual slaves, but lately females have been used in hostilities, including as suicide bombers, presenting different characteristics compared to their male counterparts, such as the surprise effect (women are perceived to be mothers) when they attack civilian targets, although they may surrender and refuse to detonate.

See L. Dietrich and S.E. Carter, *Gender and Conflict Analysis in ISIS Affected Communities of Iraq*, May 2017.  
Available at: <https://reliefweb.int/sites/reliefweb.int/files/resources/rr-gender-conflict-isis-affected-iraq-300517-en.pdf>

### **6.2.2 Enable trainees to recognise the role of women in propaganda and recruitment for terrorist purposes.**

#### **Commentary**

i. Traditionally women have been entrusted ‘soft tasks’ like logistics and recruitment for terrorist purposes, but in reality, women play a variety of roles within terrorist groups, besides taking care of husbands and raising children. Both abroad and in theatre, women have been active in disseminating propaganda and fundraising, both individually and in small networks, as well as in recruiting other women and men.

See S.V. Raghavan and V. Balasubramanian, *Evolving Role of Women in Terror Groups: Progression or Regression?* Journal of International Women's Studies, 15(2), 2014, pp. 197-211, available at: <http://vc.bridgew.edu/jiws/vol15/iss2/13>; and J. Cook and G. Vale, *From Daesh to Diaspora: Tracing the Women and Minors of Islamic State*. International Centre for the Study of Radicalisation. Department of War Studies, King's College London, available at: <https://icsr.info/wp-content/uploads/2018/07/ICSR-Report-From-Daesh-to-%E2%80%98Diaspora%E2%80%99-Tracing-the-Women-and-Minors-of-Islamic-State.pdf>.

ii. The differentiated propaganda approach targeting women can envisage a recruitment methodology based on the prosaic and attractive idea of becoming part of significant groups, getting active roles, achieving assignments, overcoming marginalisation, experiencing alternative ways of life, receiving work opportunities and social visibility, sometimes as a decision deriving from family or partners' choice. Terrorist groups have used propaganda as a recruitment device to convince both men and women with the promise of some form of compensation, despite the differentiated interests involved and gender-specific narratives (success, money

and sexual benefit for men in comparison with broader social relevance and community appreciation for women).

iii. As a strategy to recruit men, women have been largely employed to recruit fighters in some groups through sophisticated online platforms, either to encourage other women to marry combatants or to attract them with the promise of rewards of a sexual nature, presumably taking advantage of their real or perceived sense of inequality, injustice, lack of opportunities.

iv. In order to defeat terrorism it is crucial to understand the complex motivational structure behind the ideology of the different groups. Moreover, when we analyse the personal motivations attracting individuals to join them, we can undoubtedly identify political, ideological or religious reasons, while the stereotypical perception of women joining the same groups is merely linked to emotional factors, such as love or revenge or hate (e.g. personal hurt for having lost family members during hostilities). Nevertheless, the motivational factors can be multifaceted, and a further holistic analysis would consider gendered factors for a better understanding and more appropriate response to acts of terrorism.

See *Enhancing Women's Role in International Countering Violent Extremism Efforts*, Advanced Research Workshop, NATO, 19-21 March 2018, available at: <http://ebooks.iospress.nl/volume/enhancing-womens-roles-in-preventing-and-countering-violent-extremism-p-cve>.

v. In order to prevent female recruitment it is necessary to start by understanding how terrorist groups manage to recruit women and what kind of motivation is successful in attracting and affiliating them. However, it is essential to bear in mind that each terrorist group is relatively specific, because in general they have shaped their own methodologies based on environment-specific traditions, cultures and ideologies, therefore they may use different procedures and practices.

### **6.2.3 *Make trainees aware of the role of women as fighters in terrorist groups.***

#### **Commentary**

i. Strategic and tactical use of women exploits gender dynamics, gendered assumptions and gaps in security to ensure continuation of fighting efforts. In the 1980s women started playing a more visible role, taking up suicide bombing and even frontline roles. Female suicide attacks attract widespread media attention causing terror among the population.

ii. To get a broader understanding of the phenomenon, it may be relevant to understand that not all women experience coercion and obligations in the action. Stereotypically, we consider women as victims of the group and not as willing actors. There is a spread assumption that there is no deliberate choice in their joining process, so they do not obtain strategic or significant roles in the fight, but they are confined in a passive acceptance of family/partner decisions and lifestyle. Nevertheless, some women have joined voluntarily because of deep motivational convictions, as much as their male counterparts.

iii. The Liberation Tigers of Tamil Eelam (LTTE) established in 1976 a nationalist, secessionist insurgency group in North-eastern Sri Lanka which was designated as a terrorist organisation by 32 countries. The group aggressively recruited women in the 1980s and in 1986 it created an all-female military wing, the Birds of Freedom, that eventually represented 15-30% of the combat force. Motivations that led women to participate in the fighting were largely the same for men and women.

For further examples see C. Boutron, *La participation des femmes aux luttes armées. Pour un renouvellement des approches de l'acteur combattant*. Institut de Recherche Stratégique de l'École Militaire (IRSEM), 25 Juillet 2018, pp. 2, 5.  
Available at: <https://www.defense.gouv.fr/english/layout/set/print/media/documents-telechargeables/irsem/pdf-publications/notes/nrs/2018/nr-n-60-2018-la-participation-des-femmes-aux-luttes-armees.-pour-un-renouvellement-des-approches-de-l-acteur-combattant>.

iv. Between 2014 and 2018, according to some reports for the first time in a jihadist group, the so-called Islamic State (IS) has increasingly allowed women to undertake active security roles and combat-related training, also making it compulsory for women to take up arms. The al-Khansa brigade, or female morality police, acted in support of IS in enforcement of sharia laws, surveillance, combat, intelligence, assassination, and infiltration.

See A. Speckhard and A. Almohammad, *The Operational Ranks and Roles of Female ISIS Operatives: From Assassins and Morality Police to Spies and Suicide Bombers*. International Center for the Study of Violent Extremism, Research Reports (2017).  
Available at: <http://www.icsve.org/research-reports/the-operational-ranks-and-roles-of-female-isis-operatives-from-assassins-and-morality-police-to-spies-and-suicide-bombers/>.

#### **6.2.4 Address gender considerations in prevention policies and counter-terrorism strategies.**

## Commentary

i. International operations are increasingly confronting security risks due to the threat of terrorist attacks that are likely to become more frequent in mission areas. Terrorism is a quite complex threat, with deep motivational roots in the social dimension of communities. Understanding the phenomenon requires a comprehensive approach in order to apply consistent prevention and contrast strategies. Among driving factors, it may be worth mentioning the perceived – or effective – lack of governance and/or justice, as well as a political, economic, ideological crisis, loss of values, mistreatment, violence, danger, revenge, perception of prosecution, injustice, marginalisation (due to religious, cultural or ethnical reasons). This can generate deep dissatisfaction in individuals and a certain sense of revanchism. In such a scenario, personal and social constraints would allow new ideologies and non-state organisations to gain positions while providing support, protection and motivation.

Given the prospect of peace operations in countries considered hotbeds of terrorism and violent extremism, this is likely to become a common, if not predominant, feature of mission areas. T. Smit, in *Multilateral Peace Operations and the Challenges of Terrorism and Violent Extremism*, explores the ‘non-traditional’ security challenges that terrorism and violent extremism present to multilateral peace operations. See SIPRI Background Paper (2017).

Available at: <https://www.sipri.org/sites/default/files/2017-11/sipribp1711.pdf>.

ii. In order to approach counter-terrorism with a proficient strategy it may be beneficial to analyse those factors that normally are not largely taken into consideration, such as the gendered impacts of terrorism on local communities and the differentiated consequences of their actions. In principle, because of the nature of the violence and the type of exploitation perpetrated, the selection of victims, the procedures and the motivations behind, women are not equally at risk compared to men. Moreover, during the reconstruction phase, they normally do not equally participate to recovery and reintegration processes.

iii. At the international level, the UN plays a significant role. The **UN Global Counter-Terrorism Strategy** was adopted by the General Assembly in 2006. It represents a ‘living document’ which is reviewed every two years and which embodies the broader coordination of international commitment to counter terrorism, in accordance with national and regional initiatives. It consists of four pillars, namely: addressing the conditions conducive to the spread of terrorism; measures to prevent and combat terrorism; measures to build states’ capacity to prevent and combat terrorism and to strengthen the role of the UN system in that



regard; and measures to ensure respect for human rights for all and the rule of law as the fundamental basis for the fight against terrorism.

iv. The international community is particularly concerned about the linkages between sexual violence and transnational organised crime, especially connected to the trafficking of human beings (see Chapter 5.2.4. of this Handbook). There are also many examples of abuses committed for the purposes of labour and sexual exploitation, which can be interpreted as a strategic aspect behind the ideology of terrorist and armed groups. The profit earned by the latter can easily be obtained through the criminal misuse of communication systems and internet sophisticated platforms. Specific gendered propaganda has been addressed to men and women, with dedicated and differentiated messages. UNSCR 2388/2017 outlines these strong connections, while indicating that such links can deeply exacerbate the conflict and spread instability, while recalling the role of designated agencies/departments.

UNSCR 2388/2017 para 12: '[the Security Council] Requests the Counter-Terrorism Committee Executive Directorate (CTED), within its existing mandate, under the policy guidance of the Counter-Terrorism Committee (CTC), and in close cooperation with UNODC and other relevant entities, to increase its efforts to include in CTED's country assessments, as appropriate, information regarding Member States efforts to address the issue of trafficking in persons where it is committed for the purpose of supporting terrorism, including through the financing of or recruitment for the commission of terrorist acts;' available at: <http://unscr.com/en/resolutions/2388>.

v. CRSV (see Chapter 4 of this Handbook) can be a strategy of terrorist groups strategy, a resource to obtain monetary profit, group cohesion, adherence to ideals and – at the same time – it is a functional tool to destroy minorities communities and individuals, not adhering to their conceptual mission. UN resolutions and international documents have addressed those topics.

vi. When designing/conducting an international operation, the strategic planning phase should encompass when appropriate exhaustive understanding of emerging and asymmetric threats in the specific area of interest. If not addressed properly, this may characterise a significant training gap and may result in a shortage of efficiency. Understanding threats linked to the specific environment also includes recognising how terrorist and armed groups strategically exploit gender stereotypes. Stemming from lessons learned and identified, such groups understood the impact of gendered inequalities, while for a long time, security forces did not take into appropriate account the relevance of similar strategies and the impact on response capacity.

vii. Gender considerations in counter-terrorism strategies should approach alternative prevention mechanisms, such as targeting females within families, in order to prevent young people from radicalisation or confronting vulnerable and traditionally marginalised groups, for instance empowering women and increasing their participation at decision-making level. Moreover, effective contrast policies should entail equal attractive and similar level of affiliation as much as it can be foreseen in terrorist organisations.

See F. Ní Aoláin and J. Huckerby, *Gendering Counterterrorism: How to, and How Not to*, Just Security, 1 May 2018, available at: [www.justsecurity.org/55522/gendering-counterterrorism-to/](http://www.justsecurity.org/55522/gendering-counterterrorism-to/)

viii. Among preventive measures, it may be worthwhile connecting with the different communities represented in the area and with local relevant personalities: different groups, whether religious representatives, female organisations and/or youth. Social and interfaith dialogue may, for instance, support the prevention from further radicalisation. In destabilised contexts, when abuses and exploitation is used for strategic purposes, also gender-specific counterstrategies should be very specific e.g. in the case of sexual enslavement for recruitment purposes or ethnicity motivations.

See Council of Europe, *Gender Equality, Counter-terrorism*: ‘Looking at the gendered impact of terrorist activities implies recognising the fact that people are not equally at risk and not equally able to recover from attacks, especially the most vulnerable, where women are often over-represented. In the same way, responses to terrorism can impact differently on women and men, for example it is crucial to ensure that negotiations with terrorist groups are not carried out at the expense of the rights of women. Understanding the gender equality dimension can also improve terrorism prevention policies, by deconstructing stereotypical perceptions of women’s and men’s roles in terrorism and counter-terrorism, whereby men are often seen as perpetrators and women as passive victims. In fact, women’s patterns of involvement in terrorism (their recruitment, motives, rewards and roles), may differ from those of men. In addition, women and men often highlight different concerns and bring different perspectives, experiences and solutions to policy-making. Understanding these differences can help ensure a more comprehensive approach to counter-terrorism.’

Available at: <https://www.coe.int/en/web/genderequality/counter-terrorism>.

### **6.2.5 Focus on how to enhance local capacity-building in particular through women’s agency.**

#### **Commentary**

#### **i. The role of women and female organisations in preventing and**

**countering terrorism** has been increasingly recognised in recent years. UNSCR 2242/2015 calls for synergies between efforts aimed at countering terrorism and those furthering the WPS agenda. Gender perspectives should be integrated in all policies, activities and efforts undertaken by states participating in an international operation.

**ii.** Protecting and monitoring local communities with specific attention on vulnerable categories – including women and children – is a strategic measure to prevent radicalisation and to avoid terrorist groups overcoming social dynamics while enshrining their ideologies for recruitment and exploitation purposes. Several international operations have undertaken a range of activities addressing the consequences of terrorism either directly or indirectly by providing support to host governments with developing or revising domestic legislation, including in criminal matters. Women’s groups should be involved in strategies and action plans aimed at reinforcing the national frameworks for prosecuting those responsible for acts of terrorism.

**iii.** Engaging women involved in the life of communities, particularly in the health and education sectors, in urban as well as in remote locations, is crucial to building the resilience of local communities in the face of terrorism. Barriers to the active and meaningful participation of women in operations, missions and crisis management should be reduced. Listening to the needs and terms of local women’s rights groups and community leaders, considering self-protection practices and daily activities of women’s groups and enabling and supporting the organisation of women are key factors in supporting women’s agency for countering terrorism. Programmes on women, peace and security should be initiated and carried out in the deployment zone.

On the role of women and women’s organizations in preventing and countering terrorism see S. Zeiger, R. Alonso, J. Herrera, L. El Sayed, eds. *Enhancing Women’s Roles in Preventing and Countering Violent Extremism (P/CVE)*, The NATO Science for Peace and Security Programme, IOS Press (2019). See also J. Gaudry Haynie and C. de Jonge Oudraat, *Women, Gender, and Terrorism: Policies and Programming*, Women in International Security (WIIS), POLICYbrief, January 2017. Available at: <https://wiisglobal.org/wp-content/uploads/2014/02/Women-Gender-and-Terrorism-Policies-and-Programming.pdf>.

## CHAPTER 7

### DETENTION

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#### 7.1 Definitions

**7.1.1 Detention** consists of the **deprivation of personal liberty**, i.e. the **confinement of a person in a restricted space or location**. It begins when a person is apprehended/taken into detention and ends with their release. Although confinement qualifying as detention is normally involuntary, relevant rules on the treatment of persons deprived of their liberty also apply to cases of voluntary confinement. Depending on the mandate of the force, persons may be apprehended/taken into detention in the context of an international operation and this must be done in accordance with the applicable law. Detention is regulated by domestic law, IHRL and, in the context of an armed conflict, IHL.

**7.1.2 IHRL** establishes the right of all individuals to personal liberty but, at the same time, allows for certain limitations thereto. Thus, under certain circumstances, deprivations of liberty are admissible under IHRL.

The right to personal liberty is enshrined in Art. 9 of the International Covenant on Civil and Political Rights (ICCPR), Art. 6 of the African Charter on Human and Peoples' Rights (ACHPR), Art. 7 of the American Convention on Human Rights (ACHR), Art. 14 of the Arab Charter on Human Rights (ArCHR), and Art. 5 of the European Convention on Human Rights (ECHR). These provisions all admit deprivations of liberty insofar as these are neither unlawful nor arbitrary, with the exception of Art. 14 ArCHR – which only expressly prohibits unlawful detention – and Art. 5 ECHR – which does not expressly mention a requirement of non-arbitrariness and provides instead for an exhaustive list of admissible grounds for deprivation of liberty.

**7.1.3** In the context of an IAC, IHL regulates the following categories of deprivation of liberty: a. internment; b. retention; c. criminal detention.

- a. Internment, i.e. the deprivation of liberty of a prisoner of war (PoW) or, under certain circumstances, a civilian initiated/ordered by administrative authorities (i.e. the executive branch) without any criminal charge being brought against the individual concerned. The categories of persons who may be interned as PoW include (i) combatants who have fallen into the hands of the enemy and (ii) certain non-combatants specifically identified

by IHL rules. These persons are interned with a view to precluding their further involvement in the conflict and must be released and repatriated without delay after the end of hostilities.

Art. 4 GC III identifies the categories of persons who are entitled to the status of PoW. Besides members of the regular armed forces of a party to the conflict (para A sub-paras 1 and 3, and para B sub-paras 1 and 2) and members of irregular armed forces meeting certain conditions (para A sub-para 2), this provision also refers to civilians accompanying the armed forces of a party to the conflict (para A sub-para 4), members of crews of the merchant marine or civil aircraft of a party to the conflict (para A sub-para 5), and participants in a *levée en masse* (para A sub-para 6). For states which are parties to AP I, Articles 43 and 44 thereof also regulate entitlement to PoW status, departing from GC III in some respects, notably in respect of the entitlement to PoW status if combatants fail to distinguish themselves from the civilian population.

The categories of persons who may be interned as civilians include (i) aliens in the territory of a party to the conflict and (ii) civilians in occupied territories. Civilians are generally defined in negative terms as those persons who do not belong to the category of combatants. Internment of civilians is based on imperative reasons of security or absolute necessity. It is initiated/ordered on the basis of an individual assessment of the security threat posed by the person concerned and it must be regularly reviewed at least every six months by a court or administrative board. It must end when the threat no longer exists or as soon as possible after the close of hostilities. In the case of aliens in the territory of a party to the conflict, internment may also be prompted by the concerned person's request (voluntary internment). In occupied territories, under certain circumstances, persons convicted for certain minor offences may be sentenced to internment and therefore benefit from the same protection granted by IHL rules to security internees.

Art. 50 AP I defines civilians as those persons who are not entitled to PoW status by virtue of their combatant privilege. However, most IHL rules on internment of civilians are provided by Part III of GC IV, whose personal scope of application is defined at Art. 4 GC IV with reference to the notion of 'protected persons', i.e. persons who are not protected by GC I, GC II or GC III and who, at a given moment and in any manner whatsoever, find themselves, in case of an IAC or occupation, in the hands of a party to the conflict or occupying power, provided that they are not nationals of the detaining power, of a state that is not party to GC IV, of a neutral state, or of a co-belligerent state with normal diplomatic representation in the detaining state.

- b. Retention of medical and religious personnel who have fallen into the hands of the adverse party to the conflict. The holding of these persons is

only permitted when the state of health, the spiritual needs and the number of PoW so require. Although these persons are not PoW, they benefit at least from the same protection granted by relevant IHL rules to PoW.

Retention of medical and religious personnel is regulated by Art. 28 para 1 GC I and Art. 37 GC II. Art. 33 GC III expressly states that, even though these persons are not considered as PoW, they shall receive as a minimum the benefits and protections of GC III.

- c. Criminal detention, i.e. the deprivation of liberty of an individual in the context of criminal proceedings. As regards civilians, both aliens in the territory of a party to the conflict and civilians in occupied territories may be detained pending criminal proceedings or serving a sentence involving loss of liberty for the (alleged) breach of, respectively, the laws of the detaining state in whose territory they are or the laws of the occupied territory, supplemented by the penal legislation enacted by the occupant. PoW may not be prosecuted by the detaining state for lawful acts of war, but may be prosecuted and tried for suspected war crimes. GC III and GC IV set out the judicial guarantees that must be observed in any criminal proceedings against a PoW or civilian, respectively. AP I provides additional safeguards.

Detention of civilians in connection with criminal proceedings is regulated by Articles 37 and 64-70 GC IV. Penal and disciplinary sanctions of civilian internees are regulated by Part III, Section IV, Chapter IX GC IV. Penal and disciplinary sanctions of PoW are regulated by Part III, Section VI, Chapter II GC III. Art. 75 AP I also applies.

**7.1.4** In the context of a NIAC, IHL does not establish any specific grounds or procedures for deprivation of liberty. However, certain rules expressly mention detention/internment and regulate the treatment of persons who have been deprived of their liberty. Two types of deprivation of liberty may occur in NIAC: (a) internment, i.e. the deprivation of liberty of an individual initiated/ordered by administrative authorities (i.e. the executive branch) on imperative grounds of threats to security without any criminal charge being brought against the individual concerned; (b) criminal detention, i.e. the deprivation of liberty of an individual in connection with criminal proceedings, in which case the usual judicial guarantees apply.

Common Art. 3 to the GCs applies, *inter alia*, in respect of persons who have been placed *hors de combat* by detention (i.e. persons who cannot take part in hostilities as a consequence of their deprivation of liberty) and establishes fundamental protections including guarantees for detainees. AP II also refers to persons whose liberty has been

restricted: Art. 4 establishes certain fundamental guarantees that apply to all persons who do not take a direct part or who have ceased to take part in hostilities, whether or not their liberty has been restricted; Art. 5 expressly applies to persons whose liberty has been restricted by way of internment or detention for reasons related to the armed conflict; Art. 6 AP II regulates penal prosecution and the jurisdictional guarantees of detainees subject to criminal proceedings.

## 7.2 Guidelines

### **7.2.1 *Instruct trainees to conduct a gender analysis covering each group of detained persons.***

#### **Commentary**

i. Detainees are especially vulnerable to gender-related violations of relevant domestic and international rules and standards. Training should give all mission personnel who handle detainees or operating in detention facilities appropriate tools to assess the specificities of each group of detainees, with a special emphasis on diversity intersectional factors. In particular, the cultural background of detainees, their age, their sexual orientation, possible language barriers and disabilities are some of the factors which may increase the risk of gender-related violations and, at the same time, may mean that certain policies/practices or conducts by mission personnel affect or are perceived as affecting certain groups of detainees in a different way. Consider, by way of illustration, the case of medical examinations or searches, which for certain detainees or detainees with a certain cultural background may be particularly upsetting if conducted by personnel of the opposite (or of a certain) sex or in the presence of personnel of the opposite (or of a certain) sex. Consider also, for instance, effective access to complaints mechanisms, with may be impaired by language barriers or discouraged when impunity/lack of accountability for gender-related violations is perceived as the norm in certain detainees' societal context.

On gender analysis and gender mainstreaming, see Chapter 2 of this Handbook. Several toolkits or guides on how to conduct gender analyses are available online. See, among others, UNDP, *How to Conduct a Gender Analysis: A Guidance Note for UNDP Staff*, Bureau of Policy and Programme Support, Gender Team, 2016 (<https://info.undp.org/>).

ii. Gender-related issues should also be taken into account in the planning phase of an international operation. In particular, it is important that these issues are anticipated and duly considered, among others, in the force generation phase, in

selecting/building detention facilities, in allocating spaces, in planning supplies, etc.

***7.2.2 Make trainees aware of existing legal obligations and relevant standards on the treatment of detainees and, in particular, gender-related protection in detention.***

**Commentary**

i. Where applicable, IHRL provides for several safeguards that protect all individuals, including detainees. In particular, several treaty-based rules prohibit torture and any cruel, inhuman or degrading treatment or punishment. This prohibition is absolute – i.e. it cannot be derogated from under any circumstances – and is also established under customary international law. Furthermore, certain fundamental safeguards against abuse specifically apply to detainees.

Freedom from torture and any cruel, inhuman or degrading treatment or punishment is established by the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the Inter-American Convention to Prevent and Punish Torture, and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, as well as by Art. 7 ICCPR, Art. 5 ACHPR, Art. 5 ACHR, Art. 8 ArCHR, and Art. 3 ECHR. Treaty-based rules expressly dealing with the treatment of detainees include, but are not limited to, Art. 10 ICCPR on the detaining state's obligation to treat all persons deprived of their liberty with humanity and with respect for their inherent dignity, as well as Art. 20 ArCHR on the humane treatment of individuals who are detained in connection with criminal proceedings.

Several IHRL rules specifically address gender-related issues. Besides the prohibition of all discrimination that is established in most human rights treaties, certain international human rights treaties especially deal with specific aspects of gender protection.

On the prohibition of discrimination on the basis of sex, see below at 7.2.A. Treaties dealing with gender specific issues include, but are not limited to, the following: the ACHPR's Protocol on the Rights of Women in Africa (Maputo Protocol); the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Belém do Pará Convention); the Council of Europe Convention on preventing and combatting violence against women and domestic violence (Istanbul Convention).

ii. In the context of an armed conflict, IHL comprehensively regulates the treatment of persons deprived of their liberty. In the context of an IAC, a large number IHL rules deal with the treatment of PoW and civilian internees. Some of these rules specifically apply to female detainees. In times of NIAC, applicable



IHL rules also establish certain fundamental safeguards regulating the treatment of detainees, some of which especially protect women. The substance of these rules is addressed under the subsequent guidelines, but generally they require humane treatment, prohibit adverse discrimination and various forms of ill treatment, and set out relevant procedural and judicial guarantees.

Treaty-based IHL rules concerning the treatment of PoW are mostly found at Articles 12-108 GC III. Amongst these, Articles 14.2), 25.4, 29.2, 88.3, 97.4 and 108.2 specifically concern female PoW. The treatment of civilian internees is thoroughly regulated by Part III Section IV of GC IV (Articles 79-141). Within this section, several provisions expressly apply to female internees (Articles 76.4, 85.4, 98.2, 124.3, and 132.2), while certain provisions from other sections generally apply to civilian women – i.e. Articles 27.2 and 38.5. Within AP I, whereas Art. 76 AP I generally deals with the protection of women in IAC, Art. 75.5 specifically applies to female detainees. As for IHL rules applicable to NIAC, those regulating the treatment of detainees include, but are not limited to, Common Art. 3 to the GCs and Art. 5 AP II, whose para 2(a) expressly applies to female detainees, as does Art. 6.4. See also Rules 119 and 134 of the ICRC Customary IHL Study, which apply to both IAC and NIAC.

**iii.** Several non-legally binding instruments also provide relevant guidance as to the treatment of detainees in line with international legal obligations and relevant standards. Some of them specifically address the treatment of female detainees. The substance of these rules is addressed under the subsequent guidelines.

United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), resolution adopted by the General Assembly on 27 December 2015, A/RES/70/175, 8 January 2016, Annex, p. 7 (hereinafter Mandela Rules); UN Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), Adopted by General Assembly resolution 40/33 of 29 November 1985 (hereinafter Beijing Rules); Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Adopted by General Assembly resolution 43/173 of 9 December 1988 (hereinafter BoP); United Nations Rules for the Protection of Juveniles Deprived of their Liberty, Adopted by General Assembly resolution 45/113 of 14 December 1990 (hereinafter **RPJ**); United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), resolution adopted by the General Assembly on 21 December 2010, Annex, A/RES/65/229, 16 March 2011 (hereinafter Bangkok Rules).

**A.** Mission personnel should be aware of existing legal obligations prohibiting gender-based discrimination and related international standards.

iv. Where applicable, IHL prohibits discrimination based on several criteria, including, but not limited to, sex-based discrimination which has been interpreted as including sexual orientation.

See HRC, *Toonen v. Australia*, Communication No. 488/1992, available at: <https://www.refworld.org/cases,HRC,48298b8d2.html>

Generally, relevant rules also include reference to discrimination ‘on any ground’, which could in principle encompass gender-based discrimination. Several non-legally binding standards also expressly prohibit sex-based discrimination and, generally, discrimination ‘of any kind’.

Discrimination against women is specifically addressed by the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). See also General recommendation No. 30 on Women in conflict prevention, conflict and post-conflict situations (CEDAW/C/GC/30). A prohibition of discrimination on the basis of sex is also enshrined in Art. 2 of the Universal Declaration of Human Rights and established by several international human rights treaties: Art. 2 ACHPR; Articles 2 and 18 ACHPR; Art. 14 ECHR and Art. 1 Protocol 12 ECHR; Articles 2.1 and 3 ICCPR; Articles 2.2 and 3 of the International Covenant on Economic, Social and Cultural Rights (ICESCR); Art. 2 of the Convention on the Rights of the Child (CRC); Art. 7 of the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. For non-legally binding standards, see Rule 2 of the Mandela Rules; Bangkok Rules 1 and 37; Principle 5 BoP; Standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), CPT/Inf/E (2002) 1 - Rev. 2006 (hereinafter CPT Standards), para 24.

The above notwithstanding, it is important to bear in mind that, if substantial gender equality is to be achieved, gender-specific needs of each detainee or group of detainees are to be taken into account. Taking these needs into due account does not amount to a violation of the general prohibition of discrimination.

Art. 4 CEDAW states that temporary special measures aimed at accelerating *de facto* equality between men and women shall not be considered discrimination. In the same vein, Bangkok Rule 1 clarifies that the general principle of non-discrimination can only be put into practice when the specific needs of female detainees are taken into account and that, in this perspective, providing for specific needs in order to accomplish substantial gender equality is not to be considered as discriminatory. See also Principle 5.2 BoP. On the legal obligations and standards concerning gender-specific needs and circumstances of detainees, see below at 7.2.B.

v. In the context of an armed conflict, IHL rules applicable to the treatment of detainees/internees also prohibit gender-based discrimination. In an IAC, IHL

requires that female PoW benefit in all cases by treatment as favourable as that granted to men, recognising that certain exceptions may be required in order to treat women with all the regard due to their sex. As for civilians, IHL forbids any adverse distinction based upon sex and/or other criteria, recognising that specific measures may be justified by the regard that is due to their state of health, age and sex. As for IHL rules applicable to NIAC, they require that persons taking no active part in the hostilities be treated humanely, without any adverse distinction based on sex and/or other criteria.

Amongst IHL treaty-based rules applicable to IAC, those related to gender-based discrimination against PoW include Articles 14.2 and 16 GC III, whereas Art. 27.3 GC IV specifically concerns civilians (protected persons as defined by GC IV) and Art. 75.1 AP I applies in respect of persons who are in the power of a belligerent and do not benefit from more favourable treatment under the Geneva Conventions or AP I. See also Art. 12.2 GC I and GC II. As for NIAC, relevant rules include Common Art. 3.1 to the GCs and Art. 2.1 AP II. See also Rule 88 of the ICRC Customary IHL Study, which applies to both IAC and NIAC.

Available at: [https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule88](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule88).

**B.** Mission personnel must always take gender-specific needs and circumstances of detainees into account.

**vi.** Gender-sensitive classification of detainees entails careful consideration of both their specific needs and circumstances. The gender-related needs of each detainee or group of detainees should be appreciated in reflection of intersectional factors such as, but not limited to, sex, age, culture, religion, and/or sexual orientation. The personal circumstances to be taken into account relate to each detainee's background, including, for instance, violence he/she may have experienced, history of or current mental and/or physical disability and substance abuse, as well as parental and other caretaking responsibilities. Each detainee's or group of detainees' diverse needs and circumstances should be taken into account in respect of personal hygiene, medical care, nutrition, etc.

See Bangkok Rule 1. As regards IHL applicable to IAC, see Art. 14.2 GC III ('women shall be treated with all consideration due to their sex'), as well as Art. 76.1 AP I ('women shall be the object of special respect.'). The 2016 updated Commentary to Art. 12.4 GC I – which has the same wording as the abovementioned provisions – notes that 'women, men, girls and boys may have specific needs and capacities linked to the different ways armed conflict may affect them', as they 'may face particular physical and psychological risks.' As for NIAC, a general obligation of humane treatment is established at Common Art. 3, which, according to the 2016 updated Commentary, requires 'sensitivity to the individual's inherent status, capacities and needs, including how these differ among men and women due to social, economic, cultural and political structures in society'. Available at: <https://ihl->

databases.icrc.org/ihl/full/GCI-commentary. See also Rule 134 of the ICRC Customary IHL Study ('The specific protection, health and assistance needs of women affected by armed conflict must be respected.'). which applies to both IAC and NIAC. Available at: [https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule134](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule134).

**vii.** In all detention sites where women are held, facilities and materials required to meet women's specific hygiene needs should be made available. Access to sanitary and washing facilities (especially for pregnant, nursing or menstruating women), provision of hygiene items (e.g. sanitary towels/pads), as well as a regular supply of water for the personal care of women and children are particularly important. This will also include facilities and materials for the caretaking of children (e.g. nappies).

See Bangkok Rule 5. Under IHRL, the right to adequate sanitation stemming from Articles 11 and 12 ECESCR may be essential to human dignity and privacy (see UN Committee on Economic, Social and Cultural Rights, General Comment No. 15: The Right to Water, 20 January 2003, E/C.12/2002/11, para 29). According to the CPT Standards, the failure to provide women with basic necessities such as those mentioned above can amount, in itself, to degrading treatment (see CPT Standards, para 31).

IHL also establishes relevant rules concerning hygiene. See, among others, Articles 29 and 97.2 GC III: although the only provision expressly referring to female PoW is Art. 29.2 ('In any camps in which women prisoners of war are accommodated, separate conveniences shall be provided for them'), all relevant provisions within GC III must be read in conjunction with Art. 14.2 ('Women shall be treated with all the regard due to their sex [...]') and, therefore, require that facilities meet the specific needs of female PoW (e.g. during menstruation). See N. Quéniwet, *Chapter 61. Special Rules on Women*, in A. Clapham, P. Gaeta and M. Sassòli, *The 1949 Geneva Conventions. A Commentary* (2015) p. 1271 at p. 1283. As regards civilian internees, see Articles 85 and 124 GC IV.

**viii.** Proper medical screening should be performed, with informed consent, on each detainee as soon as possible upon his/her admission to a detention facility. Medical screening should include gender-specific health-care needs, included, but not limited to, the reproductive health of female detainees (e.g. current or recent pregnancies, childbirth or any other related reproductive health issue, such as common menstrual irregularities), as well as sexual abuse and other forms of violence that a detainee may (male or female) have suffered prior to admission in a detention facility. Medical care and treatment should be provided to each detainee whenever necessary. This should also take gender-specific needs and circumstances into account. In particular, to the extent that it is feasible, preventive health-care measures or treatments of particular relevance for women (e.g. screening for breast and gynaecological cancers, as well as contraceptives) and accompanying children should be made available. This may require additions to

pharmacies or staff medical training. On availability of same-sex medical staff, see below at xiv).

Pursuant to Art. 12 ICESCR, all individuals have the right to the enjoyment of the highest attainable standard of physical and mental health. IHL also requires that the detaining authorities grant all internees the medical attention required by their state of health. See Art. 81 GC IV; Articles 30 and 31 GC III; Art. 5.2.(d)-(e) AP II). For relevant non-legally binding standards, see Principle 24 BoP; Bangkok Rules 6 and 18; Mandela Rule 30; CPT Standards, paras 32-33.

**ix.** Due regard must be had to the needs and circumstances of pregnant women, nursing mothers and (female and male) detainees with parental or other caretaking responsibility. In particular, necessary and appropriate pre-natal and post-natal care and treatment should be made available, and specific medical and nutritional needs (e.g. of breastfeeding women or women who have just given birth) should be taken into account. When children are held in detention with their primary caretaker (either female or male), this decision must be based on the best interests of the children in question, who shall never be treated as detainees. The rules ensuring family contact in detention should also be respected.

See Mandela Rules 28 and 29, Bangkok Rules 48-49, and CPT Standards, paras 26-29. For the principles of the best interests of the child, see below at x. As for relevant IHL rules, see Articles 89.5 ('Expectant and nursing mothers and children under fifteen years of age, shall be given additional food, in proportion to their physiological needs. '), 91.2 ('Maternity cases [...] must be admitted to any institution where adequate treatment can be given and shall receive care not inferior to that provided for the general population. '), and 127 GC IV ('[M]aternity cases shall not be transferred if the journey would be seriously detrimental to them, unless their safety imperatively so demands. '); Art. 76.2 AP I ('Pregnant women and mothers having dependent infants who are arrested, detained or interned for reasons related to the armed conflict, shall have their cases considered with the utmost priority. ').

**x.** Due regard must be had to the needs and circumstances of minors held in detention. All minors must be treated in a manner consistent with international rules and relevant standards, taking into account their special status and needs, including education. They can only be held if there is a legal and justifiable reason, as a measure of last resort, for the shortest possible time frame, and with their best interests as a primary consideration. When female minors are detained, they should have access to age and gender-specific services, e.g. counselling for sexual abuse or violence, education on women's health care, as well as regular access to gynaecologists. They may also have needs associated with the caretaking of children that should also be taken into account.

The principle that, in all actions concerning minors, their best interests shall be a primary consideration is enshrined in Art. 3 CRC. Relevant standards on the protection of minors in detention can be found in the abovementioned RPJ, which apply to every person under the age of 18 (Rule 11). Specifically on female minors held in detention, see Beijing Rule 26.4, as well as Bangkok Rules 36-39. On the right to education of all children, see also Art. 29 CRC, as well as Rule 18(b) RPJ. As for IHL rules, in regulating the treatment of civilian internees, Art. 94.2 GC IV expressly refers to the education of minors, as does Art. 4.3.(a) AP II in general terms. Other relevant IHL rules include, but are not limited to, the following: Art. 89.5 GC IV (see above at sub-section ix); Art. 94.3 GC IV ('Special playgrounds shall be reserved for children and young people.');

Rule 135 of the ICRC Customary IHL Study ('Children affected by armed conflict are entitled to special respect and protection'), which applies to both IAC and NIAC.

Available at: [https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule135](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule135).

**C. Mission personnel must respect and protect all detainees' dignity and privacy, while duly taking into account gender-related vulnerability in detention.**

**xi.** Several international rules and standards prescribe that the dignity of all individuals be respected at all times. When women are held in detention, respect for their dignity is particularly at risk. Mission personnel should be familiar with applicable legal obligations and relevant standards aimed at protecting the dignity and privacy of female detainees.

IHRL expressly requires that all individuals be treated with respect for their dignity. See, in particular, Art. 10.1 ICCPR ('All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person'), as well as Art. 5.2 ACHR, Art. 5 ACHPR and Art. 20 ArCHR. See also: Mandela Rule 1 ('All prisoners shall be treated with the respect due to their inherent dignity and value as human beings'). IHRL also establishes the right of all individuals to respect for their private life (e.g. Art. 17.1 ICCPR). This right clearly also applies to detainees, although lawful and non-arbitrary restrictions thereto are admissible.

**xii.** Female detainees must be accommodated separately, although a different approach should be followed for family units. They must be placed under the direct supervision of female staff. Separate accommodation and supervision by other women contributes to maintaining privacy and ensuring dignity. It also contributes to protecting female detainees from violence, abuse and intimidation (see below Guideline 7.2.3). As a rule, minors should also be accommodated separately, except where families are accommodated as units.

See Mandela Rules 11(a)-(d) and 81; Rule 29 RPJ; Secretary-General's Bulletin: *Observance by United Nations Forces of International Humanitarian Law*, 6 August 1999, ST/SGB/1999/13, Section 8(e)-(f). Relevant IHRL on separate accommodation of minors

include Art. 10(2)(b) and (3) ICCPR, as well as Art. 37(c) CRC (‘[...] every child deprived of liberty shall be separated from adults unless it is considered in the child’s best interest not to do so [...].’). On women, see CPT Standards, para 24.

As a rule, IHL obliges states to provide separate accommodation for men and women, as well as for children and adults. As regards civilian internees in IAC, GC IV expressly requires separate quarters for women and their direct supervision by other women. It also provides that, whenever possible, members of the same family shall be lodged together and allows internees to request that their children who are left at liberty without parental care be interned with them. Also, if it is necessary, as an exceptional and temporary measure, to accommodate female detainees who are not members of a family unit in the same place as men, GC IV requires that they be provided with separate sleeping quarters and sanitary conveniences. See Articles 76.4, 82.3-4, 85.4, and 124.3 GC IV. As for PoW, GC III refers to separate dormitories for women and, in respect of female PoW who are undergoing disciplinary punishment or punishment following a penal sanction, separate quarters and supervision by other women. See Articles 25.4, 29.2, 97.4, and 108.2. Similarly to GC IV but covering all persons whose liberty has been restricted, see Articles 75.5 and 77.4 AP I; Art. 5.2.(a) AP II. See also Rules 119 and 120 of the ICRC Customary IHL Study, which apply to both IAC and NIAC.

Available at: [https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule119](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule119); [https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule120](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule120).

**xiii.** When personal searches are needed, effective measures shall be taken in order to ensure that the dignity and privacy of all detainees are protected. To the extent feasible, detainees shall only be searched by persons of their same sex. In many cases non-invasive searches ‘pat-downs’ will be sufficient and must also be conducted with due respect for the detainees’ dignity. As far as possible, alternative screening methods (e.g. body scans) should replace strip searches and invasive body searches, as the latter especially carry some risk of injury (both physical and psychological) and may constitute serious assaults on a person’s privacy and dignity. Whilst total body searches may be necessary, avoiding complete nudity helps protect dignity. To this end, it is advisable to conduct strip searches in two distinct steps (e.g. upper body first, lower body thereafter), thereby sparing detainees from standing completely naked in front of mission personnel. Caution is especially required in respect of minors.

In interpreting the right to privacy, the HRC has held that, in so ‘far as personal and body search is concerned, effective measures should ensure that such searches are carried out in a manner consistent with the dignity of the person who is being searched’ (see CCPR General Comment No. 16: Article 17 (Right to Privacy), 8 April 1988, para 8). In particular, it has clarified that ‘[p]ersons being subjected to body search by State officials, or medical personnel acting at the request of the State, should only be examined by persons of the same sex’ (ibid.). Certain non-legally binding rules also expressly deal with searches and require that they be carried out ‘in a manner that is respectful of the inherent human dignity

and privacy of the detainee. See, in particular, Mandela Rules 50-52. On gender-sensitive aspects, see, in particular, Bangkok Rules 19-21, as well as CPT standards, para 23.

xiv. Whenever possible, female medical staff should be made available to female detainees, who may not wish to be examined by male medical staff due to cultural or other reasons. In principle, the same should apply to male detainees, where advisable. To the extent feasible, only medical staff should be present during medical examinations, which must be conducted in a manner that ensures, as far as possible, privacy, dignity and confidentiality.

On female detainees' access to female medical staff, see Bangkok Rules 10.2 and 11. On the confidentiality of personal medical files and examinations, see also Mandela Rules 26 and 31.

### ***7.2.3 Ensure that trainees develop appropriate skills for the prevention and repression of gender-related acts of violence, abuse and/or intimidation in detention settings.***

#### **Commentary**

i. SGBV, CRSV and SEA, against both women and men, as well as girls and boys, are a risk in all detention settings and can manifest themselves in a variety of ways (e.g. voyeurism or sexual humiliation) and contexts (e.g. searches, interrogations, medical examinations, washing, food distribution, and visits.). Mission personnel should be aware of these potential risks and those handling/supervising detainees should be especially aware of their custodial responsibilities. In particular, it should be borne in mind that certain spaces in detention facilities may be especially conducive to the occurrence of acts of gender-related violence. On SEA and CRSV see Chapters 3 and 4 of this Handbook, respectively.

ii. Mission personnel must be aware of existing legal rules and relevant standards prohibiting rape and other forms of sexual violence.

Where applicable, IHRL prohibits torture and cruel, inhuman or degrading treatment or punishment. See above Guideline 7.2.2.i. On several occasions, relevant treaty-based monitoring organs have held that cases of sexual violence, gender-based violence and SEA may constitute torture or cruel, inhuman or degrading treatment or punishment. IHL also forbids rape and other forms of sexual violence, and establishes specific obligations meant to minimise the risks thereof.



iii. Preventing gender-related acts of violence, abuse and intimidation in detention contexts requires, *inter alia*, that separate accommodation of female detainees be ensured, as well as their direct supervision/handling by female staff. It also requires special caution in the context of, among others, searches, medical examinations, and interrogations. The recruitment of supervising personnel, interrogators, interpreters, etc. should take these considerations into account and be accompanied by appropriate specific training.

On accommodation and supervision, see Guideline 7.2.5.xii. On the importance of appropriate training, see Mandela Rules 75 and 76. On searches, see Guideline 7.2.5.xiii. On medical examinations, see also Guideline 7.2.2.xiv.

iv. All detainees shall be allowed to make complaints concerning their treatment, including on whether they have been subjected to gender-related acts of violence, abuse and/or intimidation. If, while examining a detainee (both male and female), medical personnel become aware of any signs that the detainee in question has been subjected to these acts, they must document and report these cases to the competent authorities. Detainees submitting a complaint must always be protected against risks of retaliation and/or intimidation. They must be provided with the requisite physical and mental health care, as well as with access to legal assistance.

See Mandela Rules 34, 56 and 57; Bangkok Rules 7, 25 and 38; Rules 75-78 RPJ; Principle 33 BoP. See also UNGA Res. 61/143 of 19 December 2006 'Intensification of efforts to eliminate all forms of violence against women', para 8(f). Where applicable, IHRL establishes the right of any individual whose rights have been violated to an effective remedy before competent authorities. See, among others: Art. 2.3 ICCPR; Art. 25 ACHR; Art. 23 ArCHR; Art. 13 ECHR. IHL also requires that appropriate complaint mechanisms be made available to detainees. See, in particular, Articles 78 GC III and 101 GC IV.

***7.2.4 Make trainees aware of existing legal obligations pertaining to the release, repatriation and return to places of residence of detainees, as well as to their transfer to other authorities.***

### **Commentary**

i. IHL specifically deals with the release, repatriation and return to places of residence of detainees.

Amongst applicable IHL rules, see Articles 118 and 119 GC III, as well as Articles 46 and 48 GC III, which apply to the release of PoW by virtue of Art. 119 GC III; Articles 132 and 133 GC IV; Art. 85.4.(b) AP I; Art. 5.4 AP II. See also Rule 128 of the ICRC Customary IHL Study, differentiating rules applicable to IAC and rules applicable to NIAC.

Belligerents may conclude agreements, including, where provided for, with neutral states concerning the release, repatriation and return to places of residence or accommodation in neutral countries of certain categories of detainees, including children, pregnant women and women with infants and young children. However, only a few IHL rules expressly take gender-related needs and circumstances into account.

See the Model Agreement Concerning Direct Repatriation and Accommodation in Neutral Countries of Wounded and Sick Prisoners of War annexed to GC III, which includes pregnancy amongst the conditions which may warrant direct repatriation of PoW and mentions all women who are pregnant or mothers with infants and small children amongst the categories of detainees eligible for accommodation in a neutral state (Sections A.3.(f) and B.7).

ii. Detainees must not be transferred to an authority that does not ensure respect for applicable international rules. When detainees are transferred to another authority, released or returned, their safety must be ensured. As the risk of violation is to be assessed on an individual basis, gender-related considerations shall also be duly considered in this context.

Where applicable, IHRL forbids states to transfer or return any individual to another state where there are substantial grounds for believing that he or she would be in danger of being subjected to torture or to cruel, inhuman or degrading treatment or punishment, as well as to a violation of other fundamental rights (e.g. the right to life). See among others: Art. 3.1 CAT; Art. 7 ICCPR, as interpreted by the Human Rights Committee in General Comment No 20 (1992), para 9; Art. 6.1 ICCPR, as interpreted in General Comment No 36 (2017), para 31. See also UN Committee on the Elimination of Discrimination Against Women, General recommendation No 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women, 5 November 2014, CEDAW/C/GC/32, para 21; *M.N.N. v. Denmark*, Communication No. 33/2011, Decision of 15 July 2013, paras 8.7 ff. Art. 12.2 GC III and Art. 45 GC IV entail that the detaining authorities bear some degree of responsibility for the safety of a person when detention ceases. See also Art. 5.4 AP II.

***7.2.5 Make trainees aware of applicable international rules governing individual criminal responsibility for violations of relevant rules on the treatment of detainees.***

## **Commentary**

i. Certain violations of specific IHL rules entail individual criminal responsibility.

- a. IHL treaty-based rules applicable to IAC list certain acts amounting to grave breaches and lay out the following obligations: (i) states parties must enact all legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any grave breaches; (ii) states parties must search for persons alleged to have committed, or to have ordered to have committed, grave breaches; (iii) states parties may either bring these persons before their courts, irrespective of their nationality, or hand them over for trial to another party. Certain acts that are listed as grave breaches also concern the treatment of detainees. Whilst no explicit reference is made to acts against female detainees, some of these are clearly covered by some of the acts that are expressly listed, i.e. acts of sexual violence.

Under Art. 130 GC III, wilful killing, torture or inhuman treatment of PoW, including biological experiments, as well as wilfully causing them great suffering or serious injury to body or health constitute grave breaches of GC III. As regards the notion of ‘inhuman treatment’, the ICTY defined it as ‘an intentional act or omission, that is an act which, judged objectively, is deliberate and not accidental, which causes serious mental or physical suffering or injury or constitutes a serious attack on human dignity’ (ICTY, *Zejnir Delalić et al.*, IT-96-21-T, Trial Judgement, 16 November 1998, para 543). Pursuant to Art. 147 GC IV, wilful killing, torture or inhuman treatment of civilian internees, including biological experiments, as well as wilfully causing them great suffering or serious injury to body or health also constitute grave breaches. See also Rule 156 of the ICRC Customary IHL Study. For a detailed analysis of responsibility for sexual violence crimes, see Chapter 4.2.4. of this Handbook.

- b. In both IAC and NIAC, certain violations of IHL rules other than grave breaches may constitute war crimes. Amongst those which may be of special relevance in respect of female detainees, consider, in particular, that of committing outrages upon personal dignity. This has been defined, under appropriate circumstances, as a war crime in both IAC and NIAC (in the latter case, as a serious violation of Common Art. 3).

See, in particular, Articles 8.2.(b)(xxi) and 8.2.(c)(i)-(ii) ICC Statute. See also Rule 156 of the ICRC Customary IHL Study.

Available at: [https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule156](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule156)

ii. Certain conduct in respect of female detainees may also constitute, under certain circumstances, crimes against humanity.

See Art. 7.1.(f) ICC Statute (torture), Art. 7.1.(g) ICC Statute (rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation, or any other form of sexual violence of comparable gravity), as well as Art. 7.1.(h) ICC Statute (other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health).

**iii.** Mission personnel must also be aware of applicable domestic legislation criminalising certain conducts in respect of detainees. On domestic prosecution of sexual crimes according to the law of the host state, see Chapter 4.2.5 of this Handbook.



## CHAPTER 8

### ENGAGEMENT OF WOMEN IN PEACE PROCESSES

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#### 8.1 Definitions

**8.1.1 Peace processes** consist of meetings, negotiations, and agreements in which people such as military, politicians, community or faith leaders, and other stakeholders are involved when they are trying to resolve a conflict by peaceful means. Peace processes are often carried out through peacekeeping, peace building, conflict prevention, conflict resolution and management and post conflict reconstruction. Today's multidimensional operations are called upon not only to maintain peace and security, but also to facilitate the political process, protect civilians, assist in the disarmament, demobilisation and reintegration of former combatants; support the organisation of elections, protect and promote human rights and assist in restoring the rule of law.

See United Nations Peacekeeping helps countries torn by conflict create conditions for lasting peace.

Available at: <https://peacekeeping.un.org/en/what-is-peacekeeping>

**8.1.2 Conflict prevention** aims at creating sustainable peace. The General Assembly and Security Council resolutions on sustaining peace, adopted in 2016 (A/70/262 and S/2282, respectively) which encompass activities to prevent the outbreak, escalation, continuation and recurrence of conflict further reinforce this approach. The UN works at a variety of points along the conflict cycle, addressing issues that present long-term risks of conflict, engaging with parties that are on the brink of violence, helping to negotiate the end to conflicts, and assisting countries to achieve reconciliation and build resilient and inclusive societies. In addition to the General Assembly and the Security Council, the Peacebuilding Commission and the Human Rights Council play important roles in advising, directing and supporting the UN's efforts to prevent conflict and sustain peace.

See United Nations Conflict Prevention and Preventive Diplomacy in Action. An overview of the role, approach and tools of the United Nations and its partners in preventing violent conflict. United Nations, Department of Political Affairs.

Available at: [https://dppa.un.org/sites/default/files/booklet\\_200618\\_fin\\_scrn.pdf](https://dppa.un.org/sites/default/files/booklet_200618_fin_scrn.pdf)

**8.1.3 Conflict resolution** is a way for two or more parties to find a peaceful solution to a disagreement among them. This is usually achieved after a protracted process of negotiations. The goals of negotiation are:

- To produce a solution that all parties can agree to;
- To work as quickly as possible to find this solution; and
- To improve, not hurt, the relationship between the groups in conflict.

Conflict resolution through negotiation (see below at 8.2.1.ii) is good for all parties involved. Often, each side will get more by participating in negotiations than they would by walking away, and it can be a way for a group to get resources that might otherwise be out of reach.

**8.1.4 Peace building** consists of a range of measures targeted at reducing the risk of lapsing or relapsing into conflict by strengthening national capacities at all levels for conflict management, and to lay the foundation for sustainable peace and development. Peace-building strategies must be coherent and tailored to the specific needs of the country concerned, based on national ownership, and should comprise a carefully prioritised, sequenced, and relatively narrow set of activities aimed at achieving the above objectives.

See Report of the Secretary-General on Women's Participation in Peace Building (A/65/354-S/2010/466) of 7 September 2010.  
Available at: <https://www.peacewomen.org/content/report-secretary-general-womens-participation-peacebuilding>

**8.1.5 Post conflict reconstruction** is broadly understood as a complex, holistic and multidimensional process encompassing effort to simultaneously improve military (restoration of law and order), political (governance), economic (rehabilitation and development) and social conditions (justice and reconciliation). It also entails building and sustaining peace by addressing the roots of conflict, which often lie in poverty, exclusion, inequality, discrimination and serious violations of human rights.

See Briefing Security Council, Secretary-General Calls for 'Quantum Leap' in Funding Activities to Prevent Conflict, Address Root Causes, 25 April 2018.  
Available at: <https://www.un.org/peacebuilding/ru/news/briefing-security-council-secretary-general-calls-%E2%80%99quantum-leap%E2%80%99-funding-activities-prevent>

## 8.2 Guidelines

### 8.2.1 *Enable trainees to assess the level and size of women's involvement in peace processes and its correlation with the implementation and duration of peace agreements.*

#### Commentary

i. In regard to gender analysis, trainees should be referred to Chapter 2 of this Handbook. Trainees should then be made aware that women participation in peace processes is important to its success. Indeed, on 22 June 2011, the UN General Assembly unanimously approved the first resolution (A/RES/65/283) on *Strengthening the role of mediation in the peaceful settlement of disputes, conflict prevention and resolution* that has ever been adopted by this body. This resolution encourages strengthening the position of women in conflict resolution efforts and underscores the need for further engagement with all stakeholders to ensure this occurs. Progressively, women in various parts of the world have been able to participate in peace processes in different numbers and at different levels. Regardless of their numbers and levels of participation, women's presence in peace teams has made the peace process workable for both women and men better than when the process is conducted only by men.

See UN Women, *Women's Participation in Peace Negotiations: Connections between Presence and Influence*.

Available at: <https://reliefweb.int/sites/reliefweb.int/files/resources/03AWomenPeaceNeg.pdf>;

Council on Foreign Relations, *Women's Participation in Peace and Security Processes*, Blog post by R.B. Vogelstein, October 26, 2017. Available at:

<https://www.cfr.org/blog/womens-participation-peace-and-security-processes>; UN Women, Facts and figures: Peace and security.

Available at: <http://www.unwomen.org/en/what-we-do/peace-and-security/facts-and-figures>.

ii. Some recent studies argue that women's participation in peace negotiations increases the durability and the quality of peace. It was found that peace agreements signed by female delegates are associated with more durable peace and demonstrate higher implementation rate for the agreements' provisions. Moreover, absence or fewer numbers of women in the peace building processes denies them of the right to influence outcomes intended to serve them and the whole community. Peace building processes include mitigating risk around building peace, going to communities, having conversations, addressing marginalisation and building trust to ensure real sustainable peace. This can best be done when a mixed



team of women and men works towards achieving a common goal in the peace building processes.

See J. Krause, W. Krause and P. Bränfors, *Women's Participation in Peace Negotiations and the Durability of Peace*, *International Interactions*, 44:6 (2018) pp. 985-1016. Available at: <https://www.tandfonline.com/doi/full/10.1080/03050629.2018.1492386>; See also *Women's Participation in Peace Processes: Peace negotiators often overlook a strategy that could reduce conflict and advance stability: include women*. Updated January 30, 2019. Available at: <https://www.cfr.org/interactive/womens-participation-in-peace-processes>.

iii. It is important to note that much as some women have led peace movements and driven community recovery after conflict, they are almost completely missing from peace negotiations and reconstruction processes. Exclusion of women from peace negotiations and reconstruction processes limits access to opportunities to recover economically, to gain justice for human rights abuses, and to participate in shaping reformed laws. Exclusion of women in a society to participate in formal decision-making further limits adoption of decisions that favour gender equality in peace building processes.

iv. Recent studies indicate that women are not often called to the peace table when the aim is to put in place a ceasefire or peace agreement because they are not often recognised as spoilers or belligerents in the conflict. They, however, have a role to play in the whole process of peacebuilding because they are adversely affected by conflicts which they are not a party to initially. Women's participation in peace processes is a right and a duty to consolidate peace. Lastly, trainees should understand that expanding women's participation in peacebuilding and recovery is critical to addressing gender-based violations in times of conflict and to advance gender equality.

See L. J. Shepherd, *Women's Participation in Peace building: Lessons from the UN*. Australian Institute of International Affairs, Australian Outlook. Available at: <https://www.internationalaffairs.org.au/australianoutlook/womens-participation-in-peacebuilding/>; UN Security Council, 'Wherever There Is Conflict, Women Must Be Part of the Solution,' Security Council Told in Day-Long Debate Urging Their Inclusion in Restoring Fractured Societies. Security Council, 6877th Meeting (AM), SC/10840, 30 November 2012. Available at: <https://www.un.org/press/en/2012/sc10840.doc.htm>.

### **8.2.2 Focus on recent negotiations at regional level with a view to assessing trends in women's participation.**

## Commentary

i. Women's participation in recent peace processes should be analysed and discussed by means of case studies and practical simulations. Use of case studies will enable trainees to understand the challenges women face in negotiating peace in conflicts. Some examples are suggested below.

a. *Uganda*

The government of Uganda fought internal conflict with many rebel groups including the Lord's Resistance Army led by Joseph Kony. Military efforts to stop the violence and establish peace talks had not succeeded to date. One of the greatest challenges to the peace process was convincing Kony and his men to engage with the government representatives. Betty Oyella-Bigombe initiated contact with Kony in June 1993, when she travelled with a small team into the bush to urge him to stop the violence and participate in talks with the government. She initiated talks that brought the rebel leaders and government ministers face to face for the first time. This initial contact set the stage for face-to-face negotiations between LRA leaders and Ugandan government officials. These negotiations, dubbed the 'Bigombe talks,' generated global interest, and members of the international community observed the negotiation. Bigombe acted as a lead negotiator on behalf of the Ugandan government, and then later became an independent mediator in the peace process. She promoted change from all sides: locally, as well as by trying to move the government's approach to pacification. Bigombe succeeded in ratifying an amnesty law, and in so doing, brought ten thousand rebels from the bush to participate in the negotiations. Bigombe's attempts to pacify LRA violence were controversial. She was frequently the object of harassment and death threats. Compounding the obvious danger of her work was the fact that she is a woman, operating in a high-profile role traditionally reserved for men. Yet Bigombe persevered, dedicating many of her own financial and personal resources to the peace process. Her firm commitment to the negotiations won her the honour of being named Uganda's Woman of the Year in 1994.

Also in Uganda, Robinah Rubimbwa, the National Coordinator of the Coalition for Action on resolution 1325/2000 (CoACT 1325), pioneered the implementation of UNSCR 1325/2000 action process in Uganda, adopting the model developed by the Global Network of Women Peacebuilders (GNWP) and customising it for Uganda. She was among the women who marched for days to Juba to take part in the negotiation process between Uganda and the armed rebel group the Lord's Resistance Army (LRA) from October 2005 to March 2006.

See <https://www.icanpeacework.org/2017/04/20/robinah-rubimbwa-uganda/>.

*b. Democratic Republic of the Congo (DRC)*

The Inter-Congolese Dialogue that took place from 2001 to 2003 formally ended the civil war in the Democratic Republic of the Congo – one of the deadliest armed conflicts worldwide since the Second World War. The Dialogue was inclusive, with participants from the main armed conflict parties, unarmed political parties, and civil society. However, the armed conflict parties *de facto* dominated the decision-making process. Women’s organisations in the country initially faced difficulties joining the negotiations due to exclusive selection procedures and negative attitudes towards their presence. With some support from international and regional women’s organisations, they nonetheless managed to deploy strategies to increase the number of women delegates participating in the Dialogue and successfully lobbied for the final agreement to include several provisions on gender. Famously, they safeguarded the signing of the Sun City Agreement of 19 April 2002 by forming a human chain to block the exits to the committee room, insisting that the men negotiating inside would not leave until the final Agreement was validated.

See Democratic Republic of the Congo (2001-2003), Inclusive Peace and Transition Initiative, Case Study Series, Women in Peace and Transition Processes. Available at: <https://www.inclusivepeace.org/sites/default/files/IPTI-Case-Study-Women-DRC-2001-2003.pdf>.

*c. South Sudan*

In the case of South Sudan, thousands of women had joined the southern liberation struggle in response to a political situation that affected whole communities, leaving the comfort and security of their homes not just to accompany their husbands but to fight for freedom, democracy, equity, justice, rights and dignity. Their roles in the conflict ranged from combatants to providers of support to fighters, including feeding and caring for sick and wounded soldiers. Sudanese women worked very hard to keep families and communities together during conflicts through singing peace songs, persuading their husbands, sons and brothers to stop fighting, risking dangerous peace missions across enemy territories, or marrying across enemy lines to unite or reconcile warring communities. There were times when women stopped conflict from escalating by defying or opposing decisions by male members of the community to go to war. In one case women from a community in South Sudan were reported to have threatened not to comply with their conjugal

obligations until their husbands stopped killing each other, while in some areas of the south women threatened to expose their nakedness (a curse in most Sudanese customary beliefs) to protest ethnic conflict. Another example where women stood together in solidarity against their husband's political position was the period following the split in the Sudan People's Liberation Movement. Women from both sides of the split continued to visit one another, maintain communication and provide a forum to discuss issues that affected their communities, something no man was capable of.

See Isis-WICCE, *Where Are South Sudan Women During Formal Peace Processes?* Available at: <http://isis.or.ug/where-are-south-sudan-women-during-formal-peace-processes/>; A. Itto, *Guests at the table? The role of women in peace processes*, in M. Simmons and P. Dixon (eds.) *Peace by piece. Addressing Sudan's conflicts*, in Conciliation Resources Accord: The Sudanese conflict and peace processes, Issue 18/2006, pp. 56-59. Available at: [http://www.operationspaix.net/DATA/DOCUMENT/5610~v~Peace\\_by\\_piece\\_\\_Addressing\\_Sudan\\_\\_8217s\\_conflicts.pdf](http://www.operationspaix.net/DATA/DOCUMENT/5610~v~Peace_by_piece__Addressing_Sudan__8217s_conflicts.pdf).

The signing of the Agreement on Cessation of Hostilities, Protection of Civilians and Humanitarian Access for the Republic of South Sudan, in Addis Ababa on 29 December 2017 was witnessed among others by Mrs Amer Manyok Deng, the Representative of Women's Bloc of South Sudan.

See <https://igad.int/attachments/article/1731/1712%2021%20Signed%20CoH%20Agreement.pdf>.

*d. Burundi*

The Barundikazi – the women and girls of Burundi – have been at the centre of the current political and security crisis, as victims, activists and peace builders. The Barundikazi stood up and organised non-violent marches as early as December 2014 to demand that peace and security be a *sine qua non* condition for free elections and that the Constitution and agreements which ended the 1993-2005 civil war, be respected.

See The Hague Global Institute for Global Justice, *The Barundikazi–Burundian Women's Quest for a Voice in the Peace Process*. 26 February 2016. Available at: <http://www.thehagueinstituteforglobaljustice.org/latest-insights/latest-insights/commentary/the-barundikazi-burundian-womens-quest-for-a-voice-in-the-peace-process/>

e. *Colombia*

The 2016 comprehensive peace agreement between the Government of Colombia and the Revolutionary Armed Forces of Colombia (FARC) set an international example for women's involvement. When formal talks opened in Cuba in November 2012, only one of the twenty negotiators was a female. In 2013, civil society leaders organised a National Summit of Women and Peace to demand an inclusive peace process, and by 2015, women comprised 20% of the government negotiating team and 43% of FARC delegates (a level consistent with the percentage of women fighters in the guerrilla group). Women also contributed to the peace process at all levels, including through official sub-commissions – notably the first-ever Gender Sub-commission – and through influential roles in the government's Office of the High Commissioner for Peace. Women's participation on both sides of the formal negotiating table and in civil society helped ensure the success of the years long Colombian peace-making effort with the FARC.

See Council on Foreign Relations, *Women's Participation in Peace Processes: Colombia*, Blog post by J. Bigio, R.B. Vogelstein, December 15, 2017. Available at: <https://www.cfr.org/blog/womens-participation-peace-processes-colombia>

See also: UN Women, *Preventing Conflict, Transforming Justice, Securing the Peace. A Global Study on the Implementation of United Nations Security Council resolution 1325*. FACT SHEET: Latin America and the Caribbean Region.

Available at: <http://wps.unwomen.org/resources/r-fact-sheets/GS-FactSheet-LAC.pdf>.

f. *Asia and the Pacific*

Extensive research on the actual experiences of women peacemakers in Asia and the Pacific has explored the reasons why women remain under-represented in peace processes, and identified concrete options to expand women's contribution to peace making, both quantitatively and substantively. A review of the role of women as peacemakers in diverse countries from Asia and the Pacific in the first decade of the new millennium has revealed that, although the region suffers from gender gaps across a range of human development indices, and despite not always being present around peace tables, women have made and are making robust contributions to peace making. Examples taken from the Philippines, Sri Lanka, Indonesia, Timor Leste, India, the Solomon Islands and Nepal demonstrate how women have made their voices heard, expressed their views and created their own forms of peace processes.

See for a detailed country analysis: Centre for Humanitarian Dialogue, *Peacemaking in*

**g.** *Afghanistan and Iraq*

Studies conducted in Afghanistan and Iraq in regard to women's participation in peace-building processes have revealed that there remain a number of obstacles to women's participation in the political sphere, including the security situation, cultural barriers, and the tribal/high ranking nature of negotiations. Women are underrepresented in peace processes as core actors and when they do participate their role is limited.

Some of the lessons learnt from the Afghanistan and Iraq experiences include:

- Cultural and national stereotypes can be quickly overcome by the shared backgrounds, accomplishments, obstacles, and aspirations of women in transitioning countries.
- Women living in countries in transition value opportunities to network with women from other countries in similar situations.
- It is essential that women work together and with men to further women's rights.
- Women must plan for a transition before it happens and have a strategy of work going into the transition process.
- International donors need a long-term view of women's programming, as much of the required work will take time.
- Donors should consider non-urban areas when working with women, and when possible non-elite partners, as these leaders understand the limitations of local conditions.
- It is possible for women's groups to find common ground with religious leaders.
- Economic, social, and political empowerment are each crucial and intertwined.

There are several opportunities to increase gender equality in the immediate aftermath of conflict and it is important that these are harnessed whilst the window is open. Whilst women's participation in peace building is limited at a local level, there are number of important initiatives led by civil society that are gradually increasing women's role in peace building at a micro level.

The following best practices from Iraq and Afghanistan experiences should be made a focus of the training:

- Mobilise early during conflict rather than wait for the post conflict period.

- Lobby to join the legislation drafting processes.
- Take advantage of transition periods to advocate for legal reforms that benefit women.
- Bring together women from diverse sectors, provinces, ethnic groups, and backgrounds.
- Ensure advocacy on key issues is timely.
- Reach out to men to form partnerships, especially religious and tribal elders.
- Work quickly to establish a wide range of civil society groups focused on women's empowerment.
- Establish effective communication and networking systems between women's groups.
- Establish clear goals and develop effective lobbying and advocacy campaigns.
- Use mass media effectively.

See K. Kuehnast, S. Steiner, M. Omar, and H. Sultan, *Peacebuilding Efforts of Women from Afghanistan and Iraq* (Special Report No. 319) Washington, DC: United States Institute of Peace (USIP). Available at:

[https://www.researchgate.net/publication/303130391\\_Peacebuilding\\_Efforts\\_of\\_Women\\_from\\_Afghanistan\\_and\\_Iraq\\_Lessons\\_in\\_Transition](https://www.researchgate.net/publication/303130391_Peacebuilding_Efforts_of_Women_from_Afghanistan_and_Iraq_Lessons_in_Transition); World Economic Forum, *The vital role of women in creating a lasting Afghan peace*.

Available at: <https://www.weforum.org/agenda/2019/03/why-women-need-to-be-included-in-peace-talks-and-what-happens-when-they-re-not/> ; D. O'Driscoll, *Women's participation in peacebuilding and reconciliation in Iraq*, Helpdesk Report, 27 November 2017.

Available at: <https://reliefweb.int/sites/reliefweb.int/files/resources/239-Womens-Participation-in-Peacebuilding-Iraq.pdf>.

### ***8.2.3 Explore the role of mediation, including with respect to regional frameworks aimed at promoting women's capabilities to participate in peace processes.***

#### **Commentary**

i. The mediation strategy is important in conflict resolution processes because the mediator helps parties to the conflict to reach an agreement. Mediation is a process whereby a third party assists two or more parties, with their consent, to prevent, manage or resolve a conflict by helping them to develop mutually acceptable agreements. Mediation, which has proven to be an effective instrument in both inter-state and intra-state conflict, is a voluntary endeavour that varies in scope, sometimes tackling a specific issue in order to contain or manage a conflict and sometimes tackling a broad range of issues within a comprehensive peace

process. Such processes offer a critical opportunity for states and societies to reshape their political, security and socio-economic landscapes in order to lay the foundation for a sustainable peace. Mediation strategies that systematically include women, and civil society more broadly, are more likely to generate broad national ownership and support for a negotiated settlement and to lead to a more sustainable peace. Drawing on the body of research and practice developed in the framework of UNSCR 1325/2000, it holds that:

- Women’s participation can expand the range of domestic constituencies engaged in a peace process, strengthening its legitimacy and credibility.
- Women’s perspectives bring a different understanding of the causes and consequences of conflict, generating more comprehensive and potentially targeted proposals for its resolution.
- Peace agreements that are responsive to the specific needs of women and girls, men and boys, contribute to sustainable peace.

*Guidance on core UN Gender Inclusive Mediation Commitments*

‘Mediators and their teams should:

- Use normative and legal frameworks (including relevant regional and national frameworks) to promote the effective participation of women in the peaceful settlement of disputes, particularly in formal conflict mediation processes.
- Develop and resource concrete strategies on gender and mediation to increase the meaningful inclusion of women, particularly at the senior level in formal peace negotiations.
- Provide gender and inclusion expertise to all mediation processes from the onset.
- Engage parties to armed conflict in dialogue to seek time-bound commitments to cease all acts of conflict-related sexual violence, in compliance with international law.
- Conduct systematic consultations with civil society, women’s organisations and survivors of sexual violence in all peace-making efforts.
- Encourage parties to increase women’s political participation (elected and appointed), including through the promotion of temporary special measures (TSMs), such as quotas, where relevant.
- Encourage the incorporation of gender-relevant language and provisions in all ceasefire and peace agreements.’

Source: United Nations Department of Political Affairs, *Guidance on Gender and Inclusive Mediation Strategies* (2017) p. 12.

Available at: <https://peacemaker.un.org/sites/peacemaker.un.org/files/1.%20English%20-GIMS.pdf>

ii. The role of women and the gender dimensions of conflict resolution remain marginal in conflict resolution and post-conflict reconstruction processes, despite several resolutions, such as UNSCR 1325/2000, and commitments made to increase women’s participation in mediation and peace processes. There are, however, national, regional and continental frameworks which supplement UNSCR



1325/2000 in this drive. Apart from governments, civil society is also actively participating in ensuring that the objectives of that resolution are achieved. Civil society works hand-in-glove with governments.

iii. During the recent years several networks have been established such as Women Mediators across the Commonwealth (WMC), African Women Mediators (FemWise-Africa), Femmes Africa Solidarité (FAS), Nordic Women Mediators (NWM) and the Mediterranean Women Mediators Network (MWMN).

See *Women Mediators Networks: From Paper to Practice. How to strengthen synergies and complementarities for greater efficiency and impact*. Concept note, 21 September 2017.

Available at: <https://www.un.org/webcast/pdfs/170921pm-women-mediators-italy.pdf>

a. *Women Mediators across the Commonwealth (WMC)*

WMC is an innovative new network of women mediators coming together to exchange and learn from each other, and to advocate for the increased representation of women in peace processes globally. Coordinated by Conciliation Resources, WMC is a platform for the peer-to-peer exchange and learning of women mediators from across Commonwealth countries. By mid-2020, the network will include more than 50 women peace builders from diverse backgrounds and geographic locations. WMC members have mediation experience ranging from mediating conflict at the community level, to formally mediating conflicts as part of official peace processes. A unique feature of this network is that it will connect the grassroots with the national and international – enabling the women to share their diverse experiences with each other. Through peer-to-peer mentoring, a series of workshops, and an online platform, the network will bring together these experienced mediators for the valuable sharing of lessons learned and best practices. The network will also raise the profile of individual mediators with specific thematic and geographic expertise who can be called upon for mediation work when required. The WMC network is part of a broader programme which also supports practical, community-level peace building projects, with a focus on women’s participation in local peace processes. Through these multiple strands, the programme will contribute to advocacy for the increased representation of women in peace processes globally.

See Conciliation Resources. *Women Mediators across the Commonwealth (WMC)*. Available at: <https://www.c-r.org/where-we-work/global/women-mediators-across-commonwealth>

*b. African Women Mediators*

Under a sustaining peace paradigm, peace would be more than the absence of violence, or what is called ‘negative peace.’ Peace would be the presence of the conditions that foster and sustain it, including, but certainly not limited to, accountable and inclusive governance, access to food and clean drinking water, education for women and children, security from physical harm, and the pursuit of other inviolable human rights. This is what is called ‘positive peace’. In Africa, the women mediation initiative is undertaken among others by Femmes Africa Solidarité (FAS) and FemWise-Africa.

- Femmes Africa Solidarité (FAS) is a women’s organisation founded in June 1996 by women leaders from various African countries representing different professions. Since its inception in 1996, FAS has been working to promote the leading role of women in the prevention, management and resolution of conflicts on the African continent. It does so through advocacy to bring women’s concerns to the attention of national, regional and international bodies and by facilitating dialogue among women groups. FAS believes that political crises in Africa that turn into internal wars derive mainly from the absence of good governance and failure to respect human rights and rule of law. Denial of participation and politics of exclusion further add to the multiple factors and forces that cause conflict and political instability on the continent. It is important to develop more comprehensive policies and practices for conflict prevention and management in order to strengthen capacity to manage conflict at national and regional levels. To this end FAS advocates the involvement of women in the peace process at national level, notably through peace and solidarity missions. Such missions have been carried out in Liberia, Sierra Leone and Burundi. This advocacy and lobbying programme targets local governments, political parties, diplomatic corps, UN and AU representatives and the media. Another specific characteristic of this strategy is the use of the experience and influence of African women leaders to sensitise these actors to women’s best practices so that their role can be visible and fully recognised. This forceful strategy enables local women NGOs to interact with different actors involved in the decision-making process in order to adequately involve women, mainstream gender into policies and programmes, and get support from these actors. As an advocacy network dealing with peace, gender and development, FAS targeted four main institutions at regional level. These are the African Union; the Economic Commission for Africa; the African

Development Bank and the African Commission on Human and Peoples' Rights. FAS also works with other sub-regional institutions like the Economic Community of West African States (ECOWAS), the Intergovernmental Authority for Development and the South African Development Committee.

See C. George, *Engendering the Peace Process in Africa*, Graduate Institute Publications, Geneva, 2001, pp. 225-226.

Available at: <https://books.openedition.org/iheid/6158>

- On 13 March 2017, the AU Peace and Security Council endorsed the modalities for the Network of African Women in Conflict Prevention and Mediation, officially referred to as FemWise-Africa. FemWise-Africa was then officially established through a decision of the AU Assembly of Heads of State (AU Summit) on 4 July 2017 (Assembly/AU/Draft/Dec.21(XXIX). Membership of Fem-Wise is open to both institutions and individual women. The Network is located within the African Peace and Security Architecture (APSA), as a subsidiary mechanism of the Panel of the Wise. Its location within the APSA places it in a strategic position for policy formulation and advocacy for narrowing the gap between the commitments for women's inclusion and the implementation. FemWise-Africa aims to strengthen the role of women in conflict prevention and mediation efforts in the context of APSA. The Network provides a platform for strategic advocacy, capacity building and networking aimed at enhancing the implementation of the commitments for women's inclusion in peace making in Africa.

See <http://www.peaceau.org/en/article/media-advisory-the-african-union-s-au-femwise-africa-network-convenes-2nd-general-assembly-trains-100-women-in-conflict-prevention-and-mediation>, 28 November 2018; African Union, Assembly of the Union, Twenty-Ninth Ordinary Session, 3-4- July 2017, Addis Ababa, Ethiopia. Decisions, Declarations and Resolution. Assembly/AU//Dec.642-664 (XXIX) Rev.1; Assembly/AU//Decl.1-4 (XXIX); Assembly/AU//Res.1 (XXIX).

Available at: [https://au.int/sites/default/files/decisions/33559-assembly\\_au\\_dec\\_642\\_-\\_664\\_xxix\\_e\\_1.pdf](https://au.int/sites/default/files/decisions/33559-assembly_au_dec_642_-_664_xxix_e_1.pdf). See also Y. Mahmoud, International Peace Institute, *Can FemWise-Africa Make Mediation Work for Sustaining Peace?* IPI Global Observatory, June 7, 2018. Available at: <https://theglobalobservatory.org/2018/06/can-femwise-make-mediation-work-sustaining-peace/>.

c. *Nordic Women Mediators*

Nordic Women Mediators (NWM) is a network of women from the five Nordic countries who have professional expertise relevant to conflict mediation, peace building and negotiations. NWM network members share a commitment to sustaining peace through the inclusive and meaningful participation of women in all phases of peace processes. NWM is an instrument for the involvement of Nordic women in advocacy and operational engagement in support for peace. The NWM's mission is to enable Nordic women mediators and peace builders to advance the inclusion and meaningful participation of women in all phases of peace processes, in order to contribute to achieving and sustaining peace. To achieve the mission of the network, the NWM works according to the following objectives:

- amplifying the voices of women mediators and peacemakers in conflict affected areas;
- advocating for all peace processes to be inclusive;
- developing and fostering partnerships with other mediation and peace building networks and organisations;
- creating and supporting joint activities among members and with partners, as appropriate;
- enabling the sharing of experiences, knowledge and know-how among members, including through networking opportunities;
- promoting and supporting members in their functions, as well as drawing on members' expertise across networks; and
- facilitating access and providing networking opportunities with mediating and peacebuilding actors globally.

See Peace Research Institute Oslo (PRIO) Nordic Women Mediators (NWM), November 2015.

Available at: <https://www.prio.org/Projects/Project/?x=1725>.

d. *Mediterranean Women Mediators*

The Mediterranean Women Mediators Network (MWMN) was launched in Rome on October 26 2017 at the Ministry of Foreign Affairs and International Cooperation. A multigenerational group of approximately 40 women mediators and experts on mediation from the four shores of the Mediterranean Sea came together and agreed on the adoption of the 'Founding Principles and Declaration of Intent' of the network. The initiative for a Mediterranean Women Mediators Network aims to fulfil the need to increase the number of women involved in peace-making efforts, and at facilitating the appointment of high-level

women mediators at local and international level. It intends, in particular, to reduce and fill a networking capacity gap in the Mediterranean area. Stability in the Mediterranean is a prerequisite for human security in the entire region.

In this particular area, with its complex socio-cultural context, women mediators can bring strategic knowledge and contribute to conflict resolution and sustainable peace.

This initiative was promoted by the Italian Ministry of Foreign Affairs and International Cooperation in collaboration with Istituto Affari Internazionali (IAI) and Women in International Security Italy (WIIS). The establishment of the MWNM is also included in Italy's III National Action Plan (NAP) on Women, Peace and Security for the 2016-2019 period. See <https://womenmediators.net/>.

#### ***8.2.4 Focus on available strategies for ensuring women's engagement in peace processes.***

##### **Commentary**

**i.** The normative frameworks in place require that peacekeeping and peace building missions should promote the inclusion of gender parity at all levels and support implementation of all frameworks advocating full gender parity. Gender-sensitive provisions in peace agreements are critical to setting a foundation for gender-inclusion during the peace-building phase.

**ii.** Aiming to strengthen women's role in all stages of conflict prevention, on 18 October 2013 the UNSC adopted UNSCR 2122/2013, a resolution that puts stronger measures in place for women to participate in all phases of conflict prevention, resolution and recovery, placing the onus of providing them with seats at the peace table on member states, regional organisations and the UN itself. The focus should be directed more on women's leadership in conflict resolution and peace building, largely through a mediation process. UN Mediators work within the framework of the Charter of the UN, relevant Security Council and General Assembly resolutions and the Organisation's rules and regulations, global and regional conventions, as well as the international humanitarian, criminal, and human rights law applicable in a given situation. Regional and sub-regional organisations, such as the AU, EU, OSCE and ECOWAS have adopted region-specific agendas or action plans to integrate UNSCR 1325/2000 commitments in continental, regional and national legal and policy instruments and programmes, and to set up annual reporting mechanisms on women's empowerment and equality.

iii. In 2013, when few formal mediation processes had effectively included women, the UN Department of Political Affairs (DPA) developed a curriculum based on interviews with 30 mediators and initiated a series of High-Level Seminars on Gender and Inclusive Mediation Processes. Hosted by the Governments of Norway and Finland and their respective implementing partners the Peace Research Institute Oslo and the Crisis Management Initiative, the seminars provided a space to explore alternative ways of designing more inclusive and effective peace processes.

*Guidance on Gender-Relevant Language for Ceasefire and Peace Agreements*

‘Mediators and their teams should work with conflict parties to:

- Use inclusive terminology and pronouns that designate neutral concepts covering both men and women (e.g.: “the people, men and women, of country X”; “she or he”) where possible and avoid terminology that is gender exclusive (e.g. “he”).
- Anticipate how the translation of gender terminology into other languages may alter the meaning or result in unintended restrictions.
- Cite international and national norms and standards on gender (including UNSCR 1325/2000, CEDAW, the Beijing Platform for Action, the Universal Declaration of Human Rights, UN-issued guidance, National Constitutions and laws, National Actions Plans, etc.) in the preamble and state the commitment of parties to those obligations and to compliance at the national, regional and local levels.
- When specifying women, do so separately and as actors in the political, economic and social realms, rather than as (only) part of a list of “marginalized” or “victimized” groups or as “women and children” or “women and youth”; but also note their special post-conflict needs as victims where applicable.
- Where possible, include determinative rather than aspirational language in women-related clauses (such as “will” or “must” rather than “should”) to ensure specific action in the implementation phase.
- Include provisions for equal rights of men and women and inclusion of women in interim or transitional administrations, including temporary special measures for women, including quotas where appropriate.’

Source: United Nations Department of Political Affairs, *Guidance on Gender and Inclusive Mediation Strategies* (2017) p. 29.

Available at: <https://peacemaker.un.org/sites/peacemaker.un.org/files/1.%20English%20-GIMS.pdf>.

iv. Women’s participation in the security sector has been recognised as essential for the success of UN peacekeeping missions. The number of female military personnel deployed in current peacekeeping missions and military operations is, however, still very low. On an average, only three per cent of military personnel in UN missions are women, most of whom are employed as support staff rather than in protection tasks. There is need for specific training for female officers and soldiers, supporting women politicians, and female escorts in peace processes.

See United Nations in India, Special Peacekeeping Training Programme for Female Military Officers, 2 April 2015.  
Available at: <http://in.one.un.org/page/special-peacekeeping-training-programme-for-female-military-officers/>.

Actions planned or undertaken in the conduct of international operations can have different impacts on men, women, boys and girls respectively.

This Handbook aims to provide a practical framework for gender mainstreaming in the training of the military, police officers and civilians who are taking part or who will be involved in such operations. It is not inspired by any specific national, regional or international context, nor does it intend to reflect the policy of a particular state or organization. It has rather been developed to further human rights and universally-shared values of human dignity.

