

Chapter 5: Exercising Rights and Ensuring Protection

Overview

Introduction

The international community has made particularly concerted efforts since the early 1990s to promote and protect the rights of women and girls. Of critical importance has been the recognition that

- women's and girl's rights are human rights;
- violence against women and girls, whether in war, in peace, at the hands of family members, the community or the State, is a human rights violation that should incur individual criminal responsibility;
- States and other actors, including UN agencies such as UNHCR, have clear responsibilities to ensure that these are respected; and
- the extent to which women and girls are able to enjoy one right or set of rights often affects their enjoyment of other rights.

With regard to the latter issue, if displaced, returnee, (re)integrating or stateless women cannot, for instance, exercise their right to pass on nationality to their children, they may lose their custody rights. If teenage girls cannot exercise their right to reproductive health, they may not be able to enjoy their right to education. Where women cannot exercise their right to housing, land and property, this may result in a host of other rights violations, including violations of their right to food and adequate shelter.

Purpose

The purpose of this chapter is to:

- strengthen understanding of the particular challenges faced by women and girls of concern in exercising their rights, and
 - provide information on how applicable legal standards and guidelines can be used to respond to these challenges and ensure the protection of women and girls.
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What this chapter does

This chapter examines the extent to which women and girls of concern are able to exercise and enjoy specific rights. These are grouped under human rights themes, although the list is not exhaustive and not all rights are covered. For each right, the chapter:

- considers some of the gaps in protection;
- outlines key challenges, including some of the differences between securing access to rights in asylum, in situations of internal displacement, return, (re)integration and/or of statelessness, as well as in urban and rural settings;
- identifies applicable international legal standards;
- identifies the responsibilities of States, UNHCR and other actors; and
- suggests responses and actions we and our partners can take to address those challenges so as to enable women and girls to enjoy their rights.

Notes: The sections on applicable international legal standards and guidelines use abbreviations to refer to key human rights instruments, which are listed in full in the List of Abbreviations at the start of the Handbook.

Suggested responses and actions are organized according to the six broad types of protection response outlined in chapter 4, section 1.2.

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Overview, continued

Other resources

Further information on the various conventions and other legal instruments referred to in this chapter as “international legal standards and guidelines” and on the broader legal framework governing our work is given in chapter 6.

This chapter is also complemented by the Annexes and CD-Rom which give further detail on applicable international and regional legal standards and guidelines, essential reference materials, and standards and indicators.

In this chapter

This chapter contains the following sections, each of which relates to a specific right or group of rights.

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5.1 Access to information

"We are kicked like a ball from one service to the next and we don't get the help we need... The implementing partner's offices are all in fenced compounds. When we go there for help, we have to take a token and wait outside in line. There is no shelter from the sun and no drinking water. We often have to wait most of the day and those who are sick and old can't do it."

Refugee women at a workshop in New Delhi, India, on the identification and protection of women at risk, September 2005

Introduction

The right to access information underpins all other human rights. It is essential if women and girls are to be able to access and enjoy other rights. Access to information allows them to make informed choices regarding their rights, gender roles, power relations, their current situation, and their future. It allows them to protect themselves and represent their own interests more effectively. Sharing information also helps empower a community, including women and girls.



Panama / A UNHCR staff member visits a Colombian refugee family to discuss their concerns and rights, and whether UNHCR needs to intervene on their behalf / UNHCR / B. Heger / 2006

Purpose

Ensuring persons of concern are able to access information – and empowering a community in the process – helps community members take informed decisions about their lives.

There are many areas where information relevant to humanitarian programmes can be vital. For example, it can help reduce tensions if the security situation changes, if assistance is reduced, if the delivery of food or non-food items is late, or if the availability of medicines is modified, or community structures or programmes change.

The more information we share with people of concern to us, the more we will learn from them and the greater our capacity will be to work with the community to build effective protection strategies. Sharing information is thus a two-way process essential to ensuring the protection of women and girls, as well as to providing security to those working with them.

Access to information

It is important that women and girls, as well as men and boys, are able to access information and know about:

- decision-making structures, assistance and services;
 - rights, including women's rights, gender equality and the rights of children;
 - livelihood projects, education and training programmes;
 - SGBV prevention and response activities;
 - the Secretary-General's Bulletin on special measures for protection from sexual exploitation and abuse and related complaints mechanisms;¹
 - return programmes; and
 - who is accountable for delivering in each of these areas.
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¹ Secretary-General, "Bulletin on Special Measures for Protection from Sexual Exploitation and Sexual Abuse", ST/SGB/2003/13, 9 October 2003, at <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain/opensslpdf.pdf?docid=451bb6764> and circulated in IOM/FOM/77/2003 of 13 November 2003.

5.1 Access to information, continued

Summary of challenges

Some of the challenges faced by UNHCR and its partners in sharing information with forcibly displaced and returnee communities and ensuring women and girls of concern can access the right information include:

- ensuring we do it regularly and in an appropriate and timely manner;
- reaching all members of the community regardless of the setting and in particular women and adolescent girls;
- ensuring awareness of power relations between UNHCR and the community;
- ensuring awareness of women's and girls' position in society;
- avoiding the concentration of information with a few representatives creating elitism and manipulation of access to information;
- ensuring that women and girls living in urban settings have access to information; and
- avoiding security risks for people who speak out, including in situations of internal displacement.

Note: Some of these challenges are discussed further below.

Challenge: Awareness of power relations

When we fail to share enough information, this is often because we are not sufficiently aware of the power relations between ourselves and the affected community. Often we do not realize how important the information we hold is or might appear to be to those who cannot access it. As a result, rumours easily heighten tensions, create confusion and frustration and even lead to violence because individuals feel a sense of impotence and inability to control their future.

Challenge: Women's and girls' position in society

For women and girls, information is often in even shorter supply as their position in society often leaves them with fewer opportunities to get information because they lack education and basic literacy skills and also because they are less likely to be invited to meetings or attend them due to other chores. They are also less likely to be members of decision-making bodies in their community which are often the main target of our information sharing activities.

Regular dialogue with UNHCR staff has confirmed that we most frequently target leaders, who because of gender roles are more likely to be men, and that, even when we have offices who work closely with women, the focus can be on certain leaders.

"Information is power and lack of it is lack of power."

Noor Abdi Ali, 24-year-old refugee youth leader, Dadaab refugee camp, Kenya²

Challenge: Power games

The concentration of information with a few representatives creates elites and paves the way for manipulation of others in the displaced community by giving them greater power, particularly over those who are regularly marginalized or discriminated against such as minority ethnic or religious

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² UNHCR, "Thanks for the Classrooms, Now we Need Computers, say Refugee Students", 15 March 2006, at <http://www.unhcr.org/news/NEWS/4417df344.html>.

5.1 Access to information, continued

**Challenge:
Power games
(continued)**

groups, community members with disabilities, unaccompanied and separated girls and boys and older women and men.

Such manipulation can become quite evident in situations where return is being planned and leaders have political allegiances to one group or another. Women and girls are often entirely dependent on husbands, fathers and/or leaders for information on conditions for return. The type of information provided may not relate to their particular concerns and interests.

**Challenge:
Access to
information in
urban settings**

Women and girls living in urban settings often have no independent access to information. Consultations with women in these settings have highlighted how their dependency on what their partners/husbands tell them can result in their accepting domestic violence, as they believe they have no individual right to refugee status, assistance or individual documentation. A pro-active community outreach approach is important to reach such individuals.

**Challenge:
Confidentiality**

There can sometimes appear to be a conflict between principles of transparency and confidentiality. Women and girls may be put at risk if principles of confidentiality are not upheld. For instance, in situations where SGBV programs are being established and women are being encouraged to understand their rights and report violations, if it becomes known that someone has been subjected to SGBV, they may face ostracism and/or renewed risk of attack.

**Challenge:
Security risks**

Information sharing can be made more complex, particularly in situations of internal displacement, if informants for security forces or illegal armed groups are intermixed with the displaced population. This is particularly so in situations where forced displacement is not the result or by-product of armed conflict but is rather used as a tactic of war and/or the objective of the conflict is to seize territory, as for instance in Colombia or Darfur, Sudan. Consequently, there can be security risks for those who speak up and information sharing must be done in such a way as to avoid exposing people to security problems.

**International legal
standards and
guidelines**

Article 18 of the 1948 Universal Declaration of Human Rights (UDHR) and Article 19 of the 1966 International Covenant on Civil and Political Rights (ICCPR) guarantee the right to freedom of expression, which includes the right to seek, receive, and impart information and ideas of all kinds.

Articles 13 and 17 of the 1989 Convention on the Rights of the Child (CRC) oblige States to respect the right of children to receive information from various national and international sources regardless of frontiers.

Responsibility

States have an obligation to respect, protect and fulfil the right of everyone within their jurisdiction to freedom of expression, including the freedom to seek, receive and impart information and ideas of all kinds.³

Continued on next page

³ ICCPR, Article 19.

5.1 Access to information, continued

Responsibility (continued)

UNHCR has a responsibility to ensure that all persons of concern, including women and girls, are provided with information about their rights. Sharing information and transparent working practices are integral to ensuring the protection of women and girls. As UNDP has noted more generally: “There can be no democratic participation in decision-making without transparency and sharing information.”⁴

Staff and partners must respect fundamental principles of confidentiality, including the confidential nature of personal data and information.⁵ At the same time, under the Secretary-General’s Bulletin, we are obliged to report all cases of sexual exploitation and abuse.⁶

How to respond

Consultation, listening and providing feedback from and to all sections of the community, including women and girls, underpin the concept of participatory assessment and are integral to ensuring all persons of concern can enjoy their right to access information.⁷

Suggestions for actions which UNHCR, together with local, national and international partners, should carry out in order to ensure that women and girls have access to information include:

Response	Actions
Coordinate	<ul style="list-style-type: none"> • Discuss with different members of, and groups in, the displaced/returnee community as to what they would like to know about and how information should be disseminated. • Coordinate with, and be guided by, women and girls on how best to ensure information reaches them and on which mechanisms they consider trustworthy. Informal information and communication networks are particularly useful in this respect. • Develop a community outreach strategy with partners and people of concern to identify and coordinate ways of reaching those least likely to come to UNHCR. • Agree with all partners and the community on the creation of an information board or “spot” where relevant information will be posted, including a description of each agency’s and partner’s mission, mandate and principles, including to uphold gender equality and children’s rights, and who to contact in case of need.
Assess, analyse and design	<ul style="list-style-type: none"> • Use participatory assessments to identify and analyse the obstacles confronting women and girls in accessing information and work with them to devise ways of overcoming these obstacles, including by developing appropriate communication channels. • Observe who attends information meetings and who uses the information provided. • Identify, understand, and use the communication channels and networks, whether informal or formal, that exist within the community.

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⁴ UNDP, “Right to Information: Practical Guidance Note”, July 2004, p. 9.

⁵ For further guidance on this issue, see UNHCR, “Confidentiality Guidelines”, UNHCR/IOM/71/2001, UNHCR/FOM/68/2001, 24 August 2001.

⁶ Implementation Guidelines for the Field on the Secretary-General’s Bulletin on Special Measures for Protection from Sexual Exploitation and Sexual Abuse (ST/SGB/2003/13), 2006.

⁷ See UNHCR’s *Tool for Participatory Assessment in Operations*, May 2006, especially pp. 13–14 on the ethics of participation and p. 41 on the importance of giving feedback to the community and ensuring persons of concern are informed.

5.1 Access to information, continued

How to respond (continued)

Response	Actions
Assess, analyse and design, contd.	<ul style="list-style-type: none"> • Design information campaigns with the community, including women and girls, after a participatory assessment and analysis, so that they will reach all members of the community and build on capacities and skills within the community to design and implement them. • Design confidential individual complaints mechanisms with partners including the community and hold awareness sessions in the community so that everyone is aware of the complaints mechanism and its purpose.⁸ • Work with governments and asylum-seekers to create information leaflets for asylum-seekers and refugees, which include information regarding their rights and the asylum procedure, so that these can be distributed in relevant languages at border crossing points, air and sea ports, making sure that the information contained therein takes account of the particular needs of asylum-seeking women and girls, including in particular those who may be unaccompanied and separated. • Ensure that all information avoids portraying women, girls, boys, and men in stereotyped gender roles.
Intervene to protect	<ul style="list-style-type: none"> • Ensure women and girls are fully aware of whom they should approach if they need information and further support.⁹ • Ensure that all information is shared verbally, in written form in appropriate languages, and in pictorial form, for those who cannot read or write, using appropriate and varied media, including meetings, picture story-boards, film, radio, posters, T-shirts, theatre, and training sessions. • Distribute wind-up or solar-powered radios to women so they can access information. • Ensure that the rights and well-being of displaced and returnee women and girls who may share their experiences with us or with the authorities are safeguarded by ensuring the confidentiality of any personal information shared.
Strengthen national capacity	<ul style="list-style-type: none"> • Ensure that information on the authorities' responsibility to ensure all within their jurisdiction, including in particular women and girls, are able to seek, receive and impart information is included in training programmes for national border, immigration and refugee status determination officials. • Lobby national authorities to ensure that they fully inform displaced and returnee women and girls about asylum procedures, registration and documentation, and assistance to be provided.
Strengthen community capacity to support solutions	<ul style="list-style-type: none"> • Strengthen women's leadership, including by enhancing their representation and meaningful participation in displaced community and camp management committees, in decision making, and in dispute resolution systems, by enhancing their access to and control over services and resources, promoting their rights and leadership skills and supporting implementation of UNHCR's Five Commitments to Refugee Women;¹⁰ • Arrange for regular meetings/drop-in times in urban and rural settings, such as at a health clinic, a UNHCR out-post or in a religious institution in the community, where women and girls can meet and share ideas and information without feeling threatened.

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⁸ See chapter 3, section 3 of this handbook for more on confidential, individual case management systems and "Implementation Guidelines for the Field on the Secretary-General's Bulletin on Special Measures for Protection from Sexual Exploitation and Sexual Abuse (ST/SGB/2003/13)", 2006.

⁹ See generally, ExCom Conclusion No. 105 (LVII) of 2006, para. (n)(ii).

¹⁰ ExCom Conclusion No. 105 (LVII) of 2006, para. (k)(i).

5.1 Access to information, continued

How to respond (continued)

Response	Actions
<p>Strengthen community capacity to support solutions, contd.</p>	<ul style="list-style-type: none"> • Target locations frequented by women and girls, such as water points, and ensure that, if an area is also frequented by men and boys, the information provided does not cause embarrassment, particularly if the prevailing culture requires women and men to be separated. • Build women's and girls' leadership skills and information-sharing techniques and encourage them to be the main disseminators of information. • Ensure legal literacy campaigns for the community that clearly reflect gender equality and rights for women and children, and ensure that women and girls participate. • Provide women and girls with training opportunities to learn about their rights (e.g. in relation to sexual exploitation and abuse where there are peacekeeping operations and about Security Council resolution 1325)¹¹ and about the relevant legal instruments to help them exercise their rights, and participate in decision-making committees. • Identify and work with local women's organizations to strengthen collaboration on women's and girls' rights. • Ensure that women and girls can participate in computer classes and other activities that improve their knowledge of and access to information. • Ensure that women and girls are fully informed about asylum procedures; registration and documentation, including of births, death and divorces; decision-making procedures; opportunities to participate in camp activities, such as in food distribution and medical care, and assistance to be provided. • Provide information on the different options and solutions for the future, including resettlement, its purpose, and when it is used. • Give much greater importance to finding a variety of ways of sharing information with all members of the community.
<p>Monitor, report and evaluate</p>	<ul style="list-style-type: none"> • Provide feedback to the community, for instance, to community leaders (both female and male), women's associations, and youth groups, as this shows how their concerns have been heard and demonstrates commitment to transparency. • Reinforce all communication campaigns regularly and monitor their impact by holding focus groups to evaluate the level of their success and to make changes and corrections as necessary. • Undertake regular evaluations with women and girls of their access to information and the impact on their lives. • Undertake spot checks through home visits to see which women and girls have received the information they need.

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¹¹ For more on Security Council resolution 1325 (2000), see chapter 4, section 3.1 and chapter 6, section 2.3.

5.1 Access to information, continued

**Field practice:
Kenya**

In the participatory assessment in Nairobi, Kenya, UNHCR and its partners made an effort to reach out to refugees who rarely came to the office.

Refugee women who were domestic workers were an important target group. They were often confined to the homes where they worked and were at high risk of exploitation. It was not easy to find or gather the women, but community-based organizations were able to help. The assessment revealed that because they rarely left the homes where they worked, refugee women in domestic labour lacked even basic information about their rights and available services.

UNHCR began to work with a Kenyan NGO that specialized in training domestic workers. The NGO ran a training centre providing women with training in cooking, cleaning and child care, along with literacy classes and rights awareness. The goal was to empower domestic workers with skills and information so that they could protect themselves.

UNHCR, the NGO and refugee community organizers are currently working together to mobilize refugee women to participate in the training programme, which has been adapted to suit the refugee communities and situated in their neighbourhood.

**Field practice:
Algeria**

Refugee women, who had fled from the disputed Western Sahara territory and were living in camps in southern Algeria, formed their own National Union of Sahrawi Women and assumed sole responsibility for local administrative structures in the absence of most adult men.

They ran campaigns informing other women of their rights and encouraging their participation in the political arena. They were in charge of reception, distribution of food and non-food items, running committees, schools and government bodies, sanitation and health projects.¹²

¹² UNHCR, "Refugee Women and Mainstreaming a Gender Equality Perspective", EC/51/SC/CRP.17, 30 May 2001, para. 26.

5.2 Nationality, civil status and family relations

Overview

Introduction

The principle of the equality of women and men in relation to nationality, civil status, and family relations is well established in international law.

Nevertheless, it is often in relation to these rights that discrimination against women and girls is most entrenched.

Such inequalities may be exacerbated during displacement and may create barriers to achieving or sustaining durable solutions.



Kyrgyzstan / A formerly stateless ethnic Tajik refugee receives a new passport for her family in Kyrgyzstan / UNHCR / J. Lunch / 2002

In this section

This section covers the following topics.

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5.2.1 Nationality

“Being said ‘No’ to by the country where I live, being said ‘No’ to by the country where I was born; being said ‘No’ to by the country where my parents are from; hearing ‘You do not belong to us’ continuously! I feel I am nobody and don’t even know why I am living. Being stateless, you are always surrounded by a sense of worthlessness.”

Lara, who was formerly stateless¹³

Introduction

Nationality is critical to full participation in society. Without status as nationals or citizens, women are deprived of the right to vote or to stand for public office and may be denied access to public benefits and a choice of residence.

An adult woman should be able to change her nationality. A woman’s or girl’s nationality should not be arbitrarily removed because of marriage or dissolution of marriage or because her husband or father changes his nationality.¹⁴ Where women and girls face discrimination in such matters, this is a major cause of statelessness.

Purpose

Nationality and citizenship provide women and girls, men and boys, with a sense of identity. Although under international human rights law most human rights are to be enjoyed by everyone under the jurisdiction (effective control) of the State, there are some rights which are limited to nationals such as political rights. Perhaps more importantly, non-citizens, including stateless persons, often face practical obstacles to full enjoyment of their human rights, including recognition as a person before the law, and the rights to education, to work and to freedom of movement.

Summary of challenges

Some of the challenges women and girls face in securing and/or keeping their nationality, even in situations of displacement and/or return as well as more generally include:

- discrimination against girls and women in regard to birth registration and issuance of personal identity documents;
- renunciation or loss of nationality upon marrying nationals of another country;
- delays obtaining their husband’s nationality; and
- inability to pass on their nationality to their children and associated custody issues in the event of divorce.

Note: Each of these challenges is discussed further below.

Challenge: Discrimination regarding birth registration and identity documents

Birth registration provides proof of *where* a person was born and *whom her or his parents are*. It is therefore a key process for determining who acquires nationality by virtue of birth on the territory (*jus soli* principle) or by descent (*jus sanguinis* principle).

Birth certificates and other personal identity documents are often necessary for enjoyment of a broad range of human rights including education and public sector employment. In some societies a common view is that girls will

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¹³ UNHCR/Inter-Parliamentary Union, *Nationality and Statelessness: A Handbook for Parliamentarians*, 2005, p. 6.

¹⁴ Committee on the Elimination of Discrimination Against Women, General Comment No. 21, Equality in marriage and family relations, 1994, para. 6.

5.2.1 Nationality, continued

Challenge:
Discrimination
regarding birth
registration and
identity documents
(continued)

not go to school and women will not work beyond the confines of the family and it is therefore not worth using time and money to register a girl's birth or obtain an identity document for an adult woman.

As a result, girls and women may face greater difficulties in proving their nationality, which puts them at greater risk of statelessness. Even if they are legally nationals, they may face obstacles in exercising the rights which are linked to nationality such as the right to vote, to obtain a passport and to travel abroad and return.

Challenge:
Marriage and
statelessness

In some countries, women who marry nationals of another country may be granted their husband's nationality. This, in turn, guarantees the right to family life, that is, the right of spouses to live together. In the case of refugee women, this can lead to local integration as a durable solution. In some countries, however, the nationality of the wife is dependant on that of her husband. As a result, even if a woman acquires her husband's nationality, she will automatically lose it if she is divorced or widowed and become stateless if she has not retained her previous nationality.

Similarly, when the national law of the woman's country of origin makes her nationality dependant on that of her husband, she may become stateless if she marries a man with a different nationality, since she will lose her own nationality if there are no safeguards against this, even if she has not yet acquired that of her husband.

In still other countries, stateless refugee and other women may face an increased risk of domestic violence or sexual abuse, if they seek to use marriage as an escape from the limbo of statelessness and marry men despite suspicions that they may be subject to such treatment.

Where refugees have become stateless, they may be prevented from exercising their right to return voluntarily to their country of origin, should they wish to do so in the future. Even if they are able to return, women who have lost their nationality may have difficulty gaining access to their housing, land property, as well as fundamental services. In the event of divorce, women may lose their husband's nationality and, having already lost their own, thus become stateless.

Challenge:
Statelessness
when applying for
naturalization;
delays obtaining
husband's
nationality

In many countries, when a woman (such as a refugee woman who marries in the country of asylum) marries a foreign man, she may be required by the national law of his country to renounce her old nationality before she can be naturalized in his country. This leads to statelessness during the intervening period or sometimes for much longer if the marriage ends before she is naturalized.

In other countries, women may not automatically lose or have to renounce their nationality when they marry men of another country, but they may have

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5.2.1 Nationality, continued

Statelessness when applying for naturalization; delays obtaining husband's nationality
(continued)

to reside in the country for a specified period before being granted their husband's nationality through naturalization. This creates a legal limbo until they are able to secure the nationality of the country in which they reside. Where such women are economically, socially, culturally, and even linguistically dependent on their husbands, they may be vulnerable to violence and abuse.¹⁵

Challenge: Passing nationality on to children

Some women married to nationals of another country (such as refugee women married to men from the asylum country), cannot pass on their nationality to their children because discriminatory laws provide for nationality by descent based only on the father's nationality. In these cases, women may not be able to have custody of, or access to, their children if the marriage is terminated by divorce or death. Women in abusive relations may be forced to choose between staying with their husband or losing their children.¹⁶

In some situations, children may be left stateless, if they are unable to acquire the nationality of their father if he is stateless, if he is from a country which does not allow for transmission of nationality to his children born abroad, or if he is unable or unwilling to register them at a consulate.

Children born as a result of rape, whose father is unknown or a foreigner, may not have any nationality and thus no identity papers or access to other rights.

Other children may be unable to acquire the nationality of their mother or father, including if the latter is not known or does not acknowledge paternity, as is the case for mothers who are victims/survivors of rape. Such children may be prevented from repatriating with their mothers. Even if they can do so, they may not be able to go to school or access fundamental services because they are not considered to be nationals.

International legal standards and guidelines

Under Article 15 of the Universal Declaration of Human Rights "everyone has the right to a nationality" and "no one shall be arbitrarily deprived of his [or her] nationality nor denied the right to change his [or her] nationality".

Women and men have equal rights under international law to acquire, change or retain their nationality. CEDAW specifically affirms that States "shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband." The 1957 Convention on the Nationality of Married Women includes similar provisions.

Children also have the right to acquire a nationality.¹⁷ Women have the right on an equal basis with men to pass on their nationality to their children.¹⁸

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¹⁵ UN Division for the Advancement of Women, Department of Economic and Social Affairs, "Women, Nationality and Citizenship, *Women2000 and Beyond*, Department of Economic and Social Affairs, June 2003, <http://www.un.org/womenwatch/daw/public/w2000.html>.

¹⁶ Most legal systems that provide for nationality by descent accord the nationality of the father to his children, regardless of the nationality of his spouse. In many States, nationality through descent by the mother is conferred only where she is unmarried or the father is unknown or stateless. See UN Division for the Advancement of Women, Department of Economic and Social Affairs, "Women, Nationality and Citizenship", *Women2000 and Beyond*, June 2003, pp. 8–10.

¹⁷ ICCPR article 24 and CRC article 7.

¹⁸ CEDAW article 9(2).

5.2.1 Nationality, continued

International legal standards and guidelines (continued)

The Human Rights Committee has indicated that “States are required to adopt every appropriate measure, both internally and in cooperation with other States, to ensure that every child has a nationality when he [or she] is born”.

The 1961 UN Convention on the Reduction of Statelessness, the African Charter on the Rights and Welfare of the Child, the American Convention on Human Rights and the European Convention on Nationality all establish that a child shall acquire the nationality of the State on whose territory she was born if she would otherwise be stateless.

The non-discrimination clauses of human rights treaties implicitly prohibit discrimination in the enjoyment of the right to acquire a nationality between children born in and out of wedlock. The Human Rights Committee has stated that discrimination with regard to the acquisition of nationality is not admissible between children born in and out of wedlock, those born of stateless parents or based on the nationality status of one or both of the parents.¹⁹

Responsibility

The rights mentioned above primarily create obligations for States regarding persons who are on their territory. When applying their nationality legislation States nevertheless also have duties to persons not on their territory. For example, they may not discriminate on the basis of gender with regard to acquisition of nationality by children born to their nationals abroad, e.g. by allowing for men to pass on their nationality to their children but not women.

There is now growing awareness that States are obliged to prevent and resolve problems of statelessness. Governments must acknowledge, formally and in practice, that they do not have the right to arbitrarily withdraw or withhold the benefits of citizenship from individuals who can demonstrate a genuine and effective link with the country.²⁰

Responsibility: UNHCR

UNHCR has a mandate from the UN General Assembly to help States prevent and reduce statelessness and to protect non-refugee stateless people. Article 11 of the 1961 Convention on the Reduction of Statelessness also empowers UNHCR to assist those affected and to examine their claims before presenting them to the State Party concerned. ExCom has provided detailed guidance on how to implement this mandate through a series of Conclusions on international protection.²¹

UNHCR therefore has an important role to play in preventing and reducing statelessness and protecting stateless persons, not only in situations of asylum, internal displacement and return, but also in relation to persons who have not been forcibly displaced. To these ends, UNHCR works closely with States, OHCHR, UNICEF, UNFPA, UNIFEM, UNDP, ILO, and NGOs.

Note: For more on providing birth and marriage registration and documentation to help prevent and avoid statelessness, see chapter 4, sections 2.2 and 2.3.

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¹⁹ ICCPR, Article 24; CEDAW, Article 9; CRC Article 7; Human Rights Committee, “General Comment No. 17”, 1989, paras. 7–8.

²⁰ UNHCR/Inter-Parliamentary Union, *Nationality and Statelessness: A Handbook for Parliamentarians*, 2005, p. 3.

²¹ See most notably ExCom Conclusions Nos. 78 (XLVI), 1995, and 106 (LVII), 2006.

5.2.1 Nationality, continued

How to respond

Suggestions for actions which UNHCR, together with local, national and international partners, should carry out in order to promote equality in relation to nationality include:

Response	Actions
Coordinate	<ul style="list-style-type: none"> • Coordinate with the national office or ministry for gender, women, and family affairs, relevant UN agencies, NGOs, including women's rights organizations, and the displaced/returnee community involved. • UNICEF is a particularly important partner when it comes to registration and certification of births, since it has an important role to play in promoting this and supporting governments in establishing a birth registration programme for the general population. (See field practice example relating to Papua New Guinea in chapter 4, section 2.2.)
Assess, analyse and design	<ul style="list-style-type: none"> • Work with relevant ministries and other partners to identify discriminatory provisions in legislation relating to civil status and nationality and establish safeguards to prevent statelessness in cases of change of nationality. • Work with partners to identify particular groups that are at risk of becoming stateless or are at risk because they do not have a nationality. • Undertake participatory assessments with stateless women and girls to identify and analyse the particular protection risks they face. • Work with partners to establish programmes e.g. for the registration of births of refugee children born in exile and to address the causes and consequences of women's and girls' statelessness.
Intervene to protect	<ul style="list-style-type: none"> • Intervene with the authorities in individual cases to persuade them to grant nationality to girls and boys born on their territory who would otherwise be stateless. • Intervene with national authorities to grant residence (and readmission if necessary) of stateless women and girls who have a genuine and effective link with a country so that such individuals have somewhere to reside and are not at risk of <i>refoulement</i>. • Intervene with national authorities to ensure stateless women and girls can gain a nationality and are able to enjoy resulting rights.
Strengthen protection capacity of national bodies	<ul style="list-style-type: none"> • Work with relevant ministries and other partners to <ul style="list-style-type: none"> – analyse nationality laws and revise such legislation if it provides for automatic loss of citizenship when women or men marry non-nationals; – ensure that the restoration of nationality is facilitated or even automatic when someone has lost his/her nationality because of a change in his/her marital or other status; and – ensure that women, as well as men, can pass on their nationality to their children, regardless of whether the latter were born in or out of wedlock. • Advocate at high levels within UNHCR and with relevant ministries to persuade parliaments to revise discriminatory laws and to enact and/or enforce legislation that guarantees the equality of women and men in relation to nationality. • Train government officials to raise their awareness of State obligations regarding nationality and of problems that arise e.g. if women cannot pass on nationality to their children or lose their own nationality upon marriage.

Continued on next page

5.2.1 Nationality, continued

How to respond (continued)

Response	Actions
Strengthen community capacity to support solutions	<ul style="list-style-type: none"> • Use training sessions, communication networks and school classes to raise the awareness of women, girls, men, and boys about the equal rights of women and men in relation to civil status, including nationality. • Help empower women and girls to exercise and enjoy their rights in relation to civil status and family relations, including by improving birth registration, access to documentation and participation in citizenship campaigns. • Provide information on the consequences of marriage where women may be at risk of losing their nationality.
Monitor, report and evaluate	<ul style="list-style-type: none"> • Evaluate whether all relevant individuals have been included in programmes to identify stateless persons. • Ensure birth registration programmes facilitate registration of all children on the territory on an on-going basis. • Monitor and report on women's and girls' access to, and inclusion in, citizenship campaigns.

Field practice: Nepal

Following a peace accord in Nepal, a new Citizenship Law and Interim Constitution were adopted under which persons born in Nepal before April 1990 and resident there since that time were recognized as nationals. Previously, nationality had been transmitted only through descent (*jus sanguinis*).

The law provides that a certificate is necessary in order to prove nationality and exercise a broad range of rights. These include registration of marriages, births and deaths, enrolment in higher education, property transactions, government employment, access to banks, registration of businesses and obtaining benefits for the internally displaced. The authorities undertook a massive citizenship campaign in which they distributed almost 2.6 million certificates in just four months in early 2007.

When such campaigns are undertaken, people who historically have been subject to discrimination may be left out. In order to verify that all stateless persons in Nepal were able to benefit from the campaign, UNHCR conducted a series of monitoring missions in affected areas.

The monitoring teams found that in some communities it was believed that women and girls did not need certificates because their interests were represented by their husbands or fathers and because men did not want to share rights to property. It was also found that, contrary to the law, some authorities required the cooperation of the husband or father when processing applications submitted by married women, women and girls. Such monitoring provided the basis for follow-up action by UNHCR and its partners with national and local authorities.

5.2.2 Marriage, civil status and family relations

A pained look crossed 11-year-old Madiha's face as she quietly told the story of her father's plans to marry her off – without her knowledge and against her wishes – to one of his friends, a man of 38. The man paid a bride price for Madiha, the eldest daughter of a Sudanese refugee family living in Mile camp in Eastern Chad. But in a rare move, Madiha's mother, who had been forced to marry at 11 and gave birth to Madiha three years later, stepped in to prevent the marriage.

Standing up to her husband came at a price, however, in a society where men do not listen to women, and women have little or no say in the future of their children. Despite the fact that Madiha's mother had just given birth to a baby boy, her husband beat her severely for refusing to let Madiha be married. After the intervention of UNHCR and CARE, Madiha's father eventually agreed to call off the marriage, but the bride price paid by the groom was long gone. Once more Madiha's mother took action and sold her jewellery to pay back the bride price.

Story of Madiha, 11-year-old refugee girl in Mile camp, Chad²²

Introduction

Women and girls can sometimes face serious challenges ensuring their right to equal rights vis-à-vis men and boys as regards their civil status – the right to a name, the registration of births, marriages, divorces, and deaths – as well as in their family relations. These problems are further exacerbated by the disruption caused by conflict and forced displacement.

Note: See chapter 4, section 2.3 for more on registration and certification of marriage and divorce as a tool to protect women and girls.

Purpose

Ensuring women and men enjoy equal rights in relation to marriage and family relations are integral to ensuring the protection of women and girls, not only in the domestic sphere, but also more broadly in terms of ensuring they can access other rights and services.

Summary of challenges

Some of the challenges faced by displaced and returnee women and girls in relation to marriage and civil status are outlined briefly below and include:

- child or early marriage;
- forced marriage;
- wife inheritance;
- polygamy; and
- divorce and custody.

Note: Each of these challenges is discussed further below.

Challenge: Child or early marriage

Child marriage or early marriage has been defined as “the union of two persons at least one of whom is under 18 years of age”.²³ It is common in many countries in the world and is also a serious problem in situations of displacement and return.

When resources are scarce, girls are married at earlier and earlier ages. Parents who consider their daughters to be burdens at home may regard them as assets to be sold to improve the family's welfare. The dowries

Continued on next page

²² This story is adapted from a UNHCR news article of 1 December 2005, at <http://www.unhcr.org/cgi-bin/texis/vtx/news/openssl.htm?tbl=NEWS&id=438f07434>. Madiha is not the real name of the refugee girl.

²³ See Council of Europe, Parliamentary Assembly, Resolution 1468 (2005), forced marriages and child marriages, para. 7, at <http://assembly.coe.int/main.asp?Link=/documents/adoptedtext/ta05/eres1468.htm>; UNICEF, “Early Marriage: Child Spouses”, Innocenti Digest No. 7, 2001, at <http://www.unicef-icdc.org/publications/pdf/digest7e.pdf>, p. 2; and also <http://www.forwarduk.org.uk/key-issues/child-marriage>.

5.2.2 Marriage, civil status and family relations, continued

Child or early marriage (continued)

which parents receive for their daughters may be used to enable their sons to marry or simply for the family to survive.

Child or early marriage robs girls of their childhood and time to develop physically, emotionally, and psychologically. When girls are removed from their parents' home to live with their husbands and in-laws, this can cause great emotional stress for them²⁴ and generally also results in their removal from school.

Although girls may not be physically fully developed, they will be obliged to have intercourse with their husbands. Pregnancy at early ages can result in severe health risks, including obstructed labour, which may provoke fistulas²⁵ and maternal death. Girls who are married as children are at greater risk of domestic abuse and HIV/AIDS infection.²⁶

As OCHA/IRIN notes: "The leading cause of death for 15–19-year-old girls worldwide is complications from pregnancy and child-bearing. According to public health experts, for every girl that dies during pregnancy or childbirth, 30 more will suffer injuries, infections and disabilities. And the risks are not limited to the mother: if a girl is under the age of 18 when she gives birth, her baby's chance of dying in its first year of life is 60 per cent higher than a baby born to an older mother."²⁷

Challenge: forced marriage

Forced marriage has been defined as "the union of two persons at least one of whom has not given their full and free consent to the marriage".²⁸ Like child or early marriage, it is common in many countries in the world and is a serious problem in situations of displacement and return.

Decisions of some traditional dispute-resolution mechanisms may result in girls being forced into marriage to pay family debts or commitments. In some situations, girls who are raped are forced to marry the perpetrators of that crime. Abductions of girls for forced marriage can also be a problem.

Forced marriage has been recognized as a form of contemporary slavery, trafficking and sexual exploitation.²⁹

Child marriage can be seen as forced marriage "since children are, by definition, incapable of consent or of exercising the right of refusal ... and as such [it] violates fundamental human rights standards and must therefore be strictly prohibited".³⁰

Continued on next page

²⁴ OHCHR, Fact Sheet 23: Harmful Traditional Practices Affecting the Health of Women and Children, pp. 11–12.

²⁵ A fistula is a rupture of the tissue that results in an opening between the vagina and the bladder or the rectum, or both, which can only be repaired by surgery. It can result from pregnancy at too early an age and from rape. As most women and girls of concern do not have access to surgery, the impact on their lives is devastating. They become incontinent and are often isolated and marginalized by their families and communities. See also section 5.1 of this chapter on reproductive health.

²⁶ OCHA/IRIN, *Broken Bodies, Broken Dreams: Violence Against Women Exposed*, 2005, pp. 64–68.

²⁷ *Ibid.*, pp. 67–68.

²⁸ See Council of Europe, Parliamentary Assembly, Resolution 1468 (2005), forced marriages and child marriages, para. 4.

²⁹ "Report of the Working Group on Contemporary Forms of Slavery on its 28th Session", 27 June 2003, E/CN.4/Sub.2/2003/31; Report of the Special Rapporteur on the Human Rights Aspects of the Victims of Trafficking in Persons, Especially Women and Children, Sigma Huda, "Implementation of General Assembly Resolution 60/251 of 15 March 2006", A/HRC/4/23, 24 Jan. 2007, para. 33.

³⁰ Report of the Special Rapporteur on the Human Rights Aspects of the Victims of Trafficking in Persons, Especially Women and Children, Sigma Huda, "Implementation of General Assembly Resolution 60/251 of 15 March 2006", A/HRC/4/23, 24 Jan. 2007, para. 21. See also para. 28 of this report for examples of other kinds of forced marriage.

5.2.2 Marriage, civil status and family relations, continued

Challenge: Wife inheritance

Another form of forced marriage is the traditional practice known as “wife inheritance”. Under this practice, widows are forced to marry their husbands’ brothers or cousins in what is sometimes called a “ghost marriage” or risk losing custody of their children and/or title to housing, land and property, creating serious protection risks for women returning to their homes after displacement.³¹ The practice can also lead to increased risk of HIV and other infections.

“My husband threw me and our three children off the plot of land where we lived [in the camp]. He now lives on that plot with his girlfriend, and I have nowhere to stay with the children. I reported the case to the police, and they did nothing to help me. I also reported the case to UNHCR and suggested a plot and separate ration card. UNHCR has not yet responded to my requests. I made the requests four weeks ago.”

Burundian refugee woman, Tanzanian refugee camp³²

Challenge: Polygamy

Polygamy, a practice whereby a man has more than one wife, is common in a number of societies. When the social fabric of the community is ripped apart, as it is during displacement, the incidence of polygamy often increases. In some cases, single women may agree to become a man’s second wife because they have no protection as a single woman. In others, husbands cease to support their wives and families during displacement and move from one family to the other, leaving their wives and children destitute. In some cases, children are required to follow their fathers, losing their right to be cared for by both parents, and risking abuse at the hands of second or third wives. In other cases, children remain with their mothers, but often do not see or receive support from their fathers.

“I was comfortable with my husband until six months after the marriage when he began hitting me. I tried to run away three times. The first time I went to my parents and my husband came and he pleaded with me to come back. I went but he began beating me after a month. The second time I went again to my parents. I stayed there for five months. My husband came armed and threatened my family if I did not return. My husband refused to let me come to my parent’s home after that. Once he hit me [on] the head with a large stone.”

Afghan woman married 20 years ago at the age of 10³³

Challenge: Divorce and custody

Many women are trapped in violent and abusive marriages that they cannot leave. In some countries, women are not even permitted to apply for divorce and may risk violence or even death for trying to do so. Traditional practices and even national laws sometimes dictate that, in the event of separation or divorce, custody of the child is given to the father. As noted above, this practice may be reinforced by laws through which nationality by descent is passed on from the father. As a result, many women are faced with the choice of losing their children or remaining in abusive relationships. In other situations, divorced women may lose custody of their children if they decide to marry again.

Other challenges

In some societies, the place of girls and women is seen as being in the home rather than in school or, later in life, working outside the home.

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³¹ For more on this practice, see section 8 of this chapter below on housing, land, and property.

³² Human Rights Watch, “Seeking Protection: Addressing sexual and gender-based violence in Tanzania’s refugee camps”, October 2000, at <http://www.hrw.org/reports/2000/tanzania/>, p. 69.

³³ Amnesty International, “Afghanistan: Women Still under Attack – A Systematic Failure to Protect”, 2005, p. 6.

5.2.2 Marriage, civil status and family relations, continued

Other challenges (continued)

In addition, individuals from certain groups without citizenship may be required to obtain “marriage permission” from the local authorities before their marriage and, if they do not do so, may risk lengthy prison terms, while any children born to them are not registered.

Alternatively, marriages lawfully concluded in exile may not be authorized upon return to the country of origin, with the result that children born from that marriage are not registered and are therefore unable to access other rights and services.

International legal standards and guidelines

Under international law, women and men have equal rights in marriage and family relations. These rights include the right to freely choose a spouse and to enter into marriage with free and full consent. Women and men have the same rights and responsibilities during marriage and its dissolution.³⁴ They also have the same rights and responsibilities as parents, regardless of their marital status, including equal rights to custody of their children. The best interests of the child must always be a primary consideration.³⁵

Children have the right to know and be cared for by both parents. They shall not be separated from their parents against their will, except when determined by competent authorities and subject to judicial review that such separation is necessary for the best interests of the child. Children who are separated from one or both parents have the right to maintain personal relations and direct contact with both parents, except if such relations and contact are contrary to their best interests.³⁶

International legal standards and guidelines: Child marriage

Child marriage is explicitly prohibited under international law and the marriage of a child shall have no legal effect.³⁷ Child marriage is considered to be a form of violence against girls.

International legal standards and guidelines: Polygamy

Polygamy violates the principles of equality of women and men in marriage. The Human Rights Committee has noted: “Polygamy violates the dignity of women. It is an inadmissible discrimination against women. Consequently, it should be definitely abolished wherever it continues to exist.”³⁸ The Committee on the Elimination of Discrimination against Women has affirmed that polygamy violates Article 5 of the 1979 Convention on the Elimination of Discrimination against Women (CEDAW), “contravenes a woman’s right to equality and can have serious emotional and financial consequences for her and her dependants”.³⁹

Continued on next page

³⁴ ICCPR Article 23; ICESCR, Article 10; CEDAW, Article 16 and the General Comments of the Committee on Human Rights and the General Recommendations of the Committee on the Elimination of Discrimination Against Women. While some States have entered broad reservations to CEDAW, seeking thereby to subject compliance with the treaty to the terms of their domestic legislation, others have objected to these reservations. See also chapter 4, section 2.3.

³⁵ CRC, Articles 3, 9.

³⁶ CRC, Articles 7, 9, and 10.

³⁷ CEDAW, Article 16(2), CRC, Article 24(3). Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages. As highlighted in this section, early or child marriage also results if further violations of the rights of children.

³⁸ Human Rights Committee, General Comment No. 28, para. 24.

³⁹ See CEDAW Committee, General Recommendation No. 21, Equality in Marriage and Family Relations, 1994, para. 14.

5.2.2 Marriage, civil status and family relations, continued

International legal standards and guidelines: Wife inheritance

As the Human Rights Committee has noted: “Everyone has the right to be recognized everywhere as a person before the law. This implies that women may not be treated as objects to be given, together with the property of the deceased husband, to his family.”⁴⁰

Responsibility: Right to marry and divorce freely

States have a responsibility to register and certify marriages and divorces of everyone within their jurisdiction.⁴¹ As the Committee on the Elimination of Discrimination against Women has noted, the registration of all marriages, whether contracted civilly or according to custom or religious law, operates to “establish equality between partners, a minimum age for marriage, prohibition of bigamy and polygamy, and the protection of the rights of children”.⁴²

The 1962 UN Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages reaffirms: “All States ... should take all appropriate measures with a view to abolishing such customs, ancient laws and practices [relating to marriage and the family] by ensuring, *inter alia*, complete freedom in the choice of a spouse, eliminating completely child marriages and the betrothal of young girls before the age of puberty, establishing appropriate penalties where necessary and establishing a civil or other register in which all marriages will be recorded”.⁴³

As the Human Rights Committee has noted: “States have a responsibility to ensure equality [between women and men] in regard to the dissolution of marriage, which excludes the possibility of repudiation. Grounds for divorce and annulment should be the same for men and women, as well as decisions with regard to property distribution, alimony and the custody of children.”⁴⁴

Responsibility: Forced marriage

In addition to the responsibilities outlined above, Article 1 of the 1956 Supplementary Convention on the Abolition of Slavery obliges States parties to abolish or abandon any institution or practice whereby:

- “(c)(i) a woman, without the right to refuse, is promised or given in marriage on payment of a consideration in money or in kind to her parents, guardian, family or any other person or group; or
 - (ii) the husband of a woman, his family, or his clan, has the right to transfer her to another person for value received or otherwise; or
 - (iii) a woman on the death of her husband is liable to be inherited by another person;
 - (d) any institution or practice whereby a child or young person under the age of 18 years, is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour”.
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⁴⁰ Human Rights Committee, General Comment No. 28, equality of rights between men and women (Article 3), 2000, para. 19.

⁴¹ 1951 Refugee Convention, Articles 12 and 25; CEDAW, Article 16(2); Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, Article 3; Agenda for Protection, Goal 1, Objective 11; ExCom Conclusion No. 105 (LVII), 2006, para. (j)(iii). See also chapter 4, section 2.3 for more details.

⁴² Committee on the Elimination of Discrimination against Women, General Recommendation No. 21, equality in marriage and family relations, 1994, para. 39, referring to Article 16(2) of CEDAW.

⁴³ 1962 UN Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, preamble. See also Council of Europe, Parliamentary Assembly, Resolution 1468 (2005), para. 10, concurring with this provision.

⁴⁴ Human Rights Committee, General Comment No. 28, para. 26.

5.2.2 Marriage, civil status and family relations, continued

Responsibility: Child or early marriage

The principle of the best interests of the child entails a positive obligation upon States, including in the context of child marriage. Bearing in mind the serious health consequences of child marriage, States' responsibility to "take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children" is also relevant.⁴⁵

The 1990 African Charter on the Rights and Welfare of the Child obliges States parties to take "effective action, including legislation, ... to specify the minimum age of marriage to be eighteen years and make registration of all marriages in an official registry compulsory" (Article XXI(2)).

The Human Rights Committee has affirmed that States have a responsibility to set a minimum age for marriage on the basis of equal criteria for women and men and that these criteria should ensure women's capacity to make an informed and uncoerced decision.⁴⁶

ExCom has given UNHCR a responsibility, in conjunction with States, other relevant agencies and partners, to "take effective and appropriate measures ... to prevent and eliminate traditional practices that are harmful to children taking into account the physical and mental harm caused to the child, and the different impact on girls and boys".⁴⁷

How to respond

Suggestions for actions which UNHCR, together with local, national and international partners, should carry out in order to promote equality in relation to marriage, civil status and family relations include:

Response	Actions
Coordinate	<ul style="list-style-type: none"> Coordinate with the national office/ministry for gender, women, and family affairs, relevant UN agencies, and NGOs, including women's rights organizations.
Assess, analyse and design	<ul style="list-style-type: none"> Work with partners, including relevant ministries, social services, other UN agencies, other international and non-governmental organizations, using participatory assessments with displaced and host communities to establish a system that identifies women and girls at risk of protection problems because of inequalities in their family relations and civil status, focusing on girls and women at risk of early or forced marriage, women trapped in systematically abusive marriages, and on problems associated with polygamous relations. Work with partners to identify discriminatory provisions in legislation relating to civil status, including nationality, marriage, divorce, and custody. Work with partners, including the government and displaced and returnee communities, to identify and analyse the causes of practices that violate the rights of women and girls, including polygamy and child or early and/or forced marriage. Identify male and female leaders who can be agents of change and develop with them a strategy to end such practices. Identify and build relations with key individuals in the community who can identify those who are at risk.

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⁴⁵ CRC, Article 24(3). See, Report of the Special Rapporteur on the Human Rights Aspects of the Victims of Trafficking in Persons, Especially Women and Children, Sigma Huda, "Implementation of General Assembly Resolution 60/251 of 15 March 2006", A/HRC/4/23, 24 Jan. 2007, para. 21.

⁴⁶ Human Rights Committee, General Comment No. 28, para. 23. See also Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, Art. 2.

⁴⁷ ExCom Conclusion No. 107 (LVIII), 2007, children at risk, para. (h)(vii)

5.2.2 Marriage, civil status and family relations, continued

How to respond (continued)

Response	Actions
Intervene to protect	<ul style="list-style-type: none"> • Support women of concern seeking divorce from abusive husbands, by <ul style="list-style-type: none"> – informing them of their rights under the law of the country of asylum; – working with lawyers and NGOs to secure their access to courts where needed; – in situations where divorce is not allowed under traditional justice mechanisms, advocating on behalf of such women so that they are able to leave abusive marriages; and – supporting such women to secure divorce as well as custody of, or at least access to, any children. • Where a case of child or early or forced marriage comes to our attention, work with national authorities and community leaders to prevent it and, if this fails, ensure that a best interests determination is made and appropriate action taken. • Support families wishing to protect their daughters from child/early marriage and/or forced marriage and work with the community to ensure their protection.
Strengthen national capacity	<ul style="list-style-type: none"> • Advocate at high levels with relevant ministries to revise discriminatory laws and to enact and/or enforce legislation that promotes the equality of women and men in relation to civil status, including marriage, divorce, and custody. • Work with government ministries, policy makers, politicians, academics, lawyers, the media, religious leaders, and others in civil society to raise awareness of the health, educational and other problems faced by married girls and to prevent or discourage early and/or forced marriage. • Work with relevant ministries to ensure that national law provides for the recognition of the civil status of returning refugees and changes thereto, including as a result of births, deaths, adoptions, marriage and divorce, as well as for recognition of documentation or registration proving that status, which has been issued by the competent bodies in the country of asylum or elsewhere. Ensure this legislation takes into account the special situation of returning refugee women and girls who may not have documentation proving their civil status or who may face difficulties securing recognition of documentation issued by the authorities of the country of asylum.⁴⁸
Strengthen community capacity to support solutions	<ul style="list-style-type: none"> • Work with community members to develop mediation and counselling mechanisms that respect confidentiality and the equal rights of women and men in marriage, divorce, and custody proceedings. • Use training sessions, communication networks and school classes to raise the awareness of women, girls, men, and boys about the equal rights of women and men in relation to civil status, marriage, and family relations. • Work with community judicial officials to change traditional justice systems to allow women to divorce, particularly in abusive or violent relationships. • Work with communities to understand and address the health risks associated with under-age marriage, including teenage pregnancy and obstetric fistula. • Ensure that awareness-raising initiatives regarding the health, educational and other problems faced by girls married as children reach both unmarried and married girls, so that the latter are better able to gain access to reproductive healthcare, stay or return to school, and are better equipped to adopt strategies to protect themselves, for instance, if they fear their husband may be infected or could be exposed to HIV.

Continued on next page

⁴⁸ See ExCom Conclusion No. 101 (LV), 2004, para. (I).

5.2.2 Marriage, civil status and family relations, continued

How to respond (continued)

Response	Actions
Strengthen community capacity to support solutions, contd	<ul style="list-style-type: none">• Help empower women and girls to exercise and enjoy their rights in relation to civil status and family relations, including by ensuring individual registration and access to documentation and by initiatives to support girls continuing education (see also chapter 4, section 2.3).
Monitor, report and evaluate	<ul style="list-style-type: none">• Monitor the systems established to identify women and girls at risk, e.g. of repeated domestic violence due to inability to divorce, or of early or forced marriage, to ensure that they enable action to be taken to address these risks and problems and include ongoing monitoring of these actions and the situation of the women and girls concerned.

5.3 Personal liberty and security

Overview

Introduction

Everyone who is displaced is likely to find their right to personal liberty and security violated, perhaps in numerous ways.

Although all displaced persons and returnees are at risk of becoming victims of sexual and gender-based violence (SGBV), smuggling, trafficking, and abduction, women and girls are most frequently targeted.

They, along with men and boys, may also have their right to freedom of movement violated and may be forcibly recruited into armed groups.

Liberia / The need to collect firewood puts displaced women and adolescent girls at risk of sexual and gender-based violence when they leave camps and settlements to search for fuel / UNHCR / L. Taylor / 1993



In this section

This section covers the following topics.

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5.3.1 Sexual and gender-based violence (SGBV)

Overview

Introduction

Sexual and gender-based violence (SGBV) remains the most widespread and serious protection problem facing women and girls of concern. As highlighted throughout this Handbook, when women and girls are unable to enjoy other rights, the risk of exposure to SGBV increases.

Purpose

This section outlines some of the challenges we face when seeking to tackle SGBV in our work. It then sets out applicable legal standards, guidelines, and responsibilities, and suggests how to respond to and prevent SGBV.

Other resources

This Handbook does not seek to duplicate the wealth of existing information on this core protection concern but rather to summarize it briefly. Clear policy and practical guidance on prevention and response using an inter-agency, multi-sectoral approach is, for instance, provided in:

- UNHCR Policy on Harmful Traditional Practices (1997)⁴⁹
 - IASC Plan of Action on Protection from Sexual Exploitation and Abuse in Humanitarian Crises (2002)⁵⁰
 - UNHCR Sexual and Gender-Based Violence against Refugees, Returnees and Internally Displaced Persons: Guidelines for Prevention and Response (2003)⁵¹
 - Secretary-General's Bulletin on Special Measures for Protection from Sexual Exploitation and Sexual Abuse (2003)⁵²
 - IASC Statement of Commitment on Action to Address Gender-based Violence in Emergencies (2004)⁵³
 - IASC Guidelines for Gender-based Violence Interventions in Humanitarian Settings (September 2005)⁵⁴
 - UNHCR Standard Operating Procedures for Prevention of and Response to SGBV (July 2006)⁵⁵
 - Building Safer Organizations and International Council of Voluntary Agencies, Guidelines and Handbook on receiving and investigating allegations of abuse and exploitation by humanitarian workers⁵⁶
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In this section

This section covers the following topics.

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⁴⁹ UNHCR/IOM/83/1997, UNHCR/FOM/90/1997, 19 December 1997.

⁵⁰ See "Report of the Inter-Agency Standing Committee Task Force on Protection from Sexual Exploitation and Abuse in Humanitarian Crises", 13 June 2002.

⁵¹ See <http://www.unhcr.org/protect/PROTECTION/3f696bcc4.pdf>. These build on earlier guidelines issued in 1991.

⁵² Secretary-General, "Bulletin on Special Measures for Protection from Sexual Exploitation and Sexual Abuse", ST/SGB/2003/13, 9 October 2003, at <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain/opendocpdf.pdf?docid=451bb6764>.

⁵³ "Action to Address Gender Based Violence in Emergencies: IASC Statement of Commitment", 22 December 2004.

⁵⁴ See <http://www.unhcr.org/protect/PROTECTION/453492294.pdf>.

⁵⁵ See UNHCR/IOM/62/2006 UNHCR/FOM/62/2006, 28 July 2006.

⁵⁶ For both the Guidelines (42 pages) and Handbook (395 pages) containing training materials, see <http://www.icva.ch/doc00001412.html>.

5.3.1.1 SGBV challenges

"If they [raped women] come home, they would be better off shooting themselves. If anyone laid a hand on them they'd be written off for good here in Chechnya. It's a kind of law. A sullied daughter is worse than a dead one to her father. It's a terrible disgrace. She'll never get married and no one will say a kind word to her, even though it's not her own fault she was dishonoured."

Woman displaced within the Russian Federation⁵⁷

Introduction

Sexual and gender-based violence (SGBV) refers to violence that is directed against a person on the basis of her or his gender or sex. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion, and other deprivations of liberty, whether occurring in public or in private life.⁵⁸ While women, men, boys, and girls can all be victims of gender-based violence, women and girls are the main victims.

This section examines the root causes and consequences of SGBV and outlines a number of key risks and challenges faced by women and girls of concern. Section 3.1.2 of this chapter which follows describes how to respond to and prevent SGBV.

Root causes and risk factors

Gender inequality and discrimination are the root causes of SGBV. Such violence may result from discriminatory legislation or persecution by the authorities, from circumstances such as conflict, or from prevailing societal norms and practices, which may discriminate against or persecute particular groups in that society or discriminate against or persecute individuals who oppose norms which violate their rights.

Young girls are especially at risk; nearly 50 per cent of all sexual assaults worldwide are against girls aged 15 years or younger.⁵⁹

Displacement increases the risks to which women and girls are exposed at the hands of armed groups, the host community, other displaced persons, smugglers and/or traffickers. Disability also increases the risk of SGBV. Some UNHCR offices have, for instance, reported higher numbers of women with speech and hearing difficulties among reported rape cases.

Perpetrators of SGBV

Perpetrators regularly go unpunished, especially in situations of armed conflict. Sometimes, they are the very people upon whom the person concerned depends to assist and protect them. They may include not only the guardians or foster parents of unaccompanied and separated children, but also humanitarian workers and peacekeepers.

The sexual exploitation scandals of the early 2000s involving humanitarian workers in refugee camps in West Africa and Nepal raised awareness of this problem. As a result, the Secretary-General issued a Bulletin on special measures for protection from sexual exploitation and sexual abuse.⁶⁰

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⁵⁷ Commission on Human Rights, "Report of the Special Rapporteur on violence against women its causes and consequences, Yakin Ertürk, Mission to the Russian Federation", E/CN.4/2006/61/Add.2, 26 January 2006, para. 58.

⁵⁸ This definition is based on the 1993 Declaration on the Elimination of Violence against Women. See also Chapter 6, section 2.1.

⁵⁹ See http://www.unfpa.org/swp/2005/presskit/factsheets/facts_adolescents.htm. More detail on factors which may put women and girls at risk is provided in Chapter 3, section 1.

⁶⁰ Secretary-General, "Bulletin on Special Measures for Protection from Sexual Exploitation and Sexual Abuse", ST/SGB/2003/13, 9 October 2003, at <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain/opendocpdf.pdf?docid=451bb6764>.

5.3.1.1 SGBV challenges, continued

Consequences of SGBV

The consequences of SGBV are devastating and can lead to a whole range of further rights violations. Women and girls exposed to SGBV face possible death, including from HIV/AIDS, or acute and chronic physical injury,⁶¹ reproductive health problems, emotional and psychological trauma, stigmatization, rejection, isolation, increased gender inequality, and further exposure to other forms of SGBV.⁶²

Securing redress is often very difficult. Women and girls who have been raped may be treated as criminals. In Darfur, Sudan, for instance, some women and girls who have been raped have been imprisoned and fined by police for “illegal pregnancy”.⁶³ In camps, traditional dispute-resolution systems generally do not provide adequate redress to women and girls.⁶⁴

Summary of challenges

Particular risks and challenges in relation to protecting women and girls from SGBV arise in the following situations:

- during war and flight from conflict zones;
- during displacement and upon return;
- when seeking to access water and fuel;
- because of unsafe work and/or school conditions in urban and rural settings;
- in the domestic environment; and
- resulting from harmful practices violating the rights of women and girls.

“At 13, I was raped by four men because I couldn’t run away. My daughter is the result. I count myself lucky because I didn’t catch AIDS. ... AIDS doesn’t know that you are different. ... I think the people [carrying out attacks on women] are mentally ill. In my condition someone can take advantage of me and I feel bad. That’s why it is important to talk against it.”

Fatouma, a 22-year-old refugee disabled by polio⁶⁵

Challenge: Conflict situations

Rape and other forms of SGBV may provoke flight, especially when such violence is used as a weapon of war, including in the context of ethnic cleansing. Too often, attacks “are not random acts of violence in the theatre of war but a deliberate attempt to dehumanize and destroy entire communities”.⁶⁶ SGBV may also be perpetrated during flight at the hands of bandits, traffickers, border guards, and other individuals in authority.

Disability and age are factors increasing the risk of such attacks.

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⁶¹ One such example is the medical condition of fistula, which occurs when the wall between the vagina and the bladder or bowel is ruptured during obstructed labour. Severe pain and chronic incontinence ensue. Fistula is found where health infrastructure and childbirth care are poor, and is common in girls subject to early marriage. It can also be caused by rape. Surgery can repair the injury, but several operations may be required if the case is severe. When fistula results from rape, survivors are routinely rejected and ostracized by their husbands, parents, and communities.

⁶² UNHCR, *Sexual and Gender-based Violence against Refugees, Returnees, and Internally Displaced Persons: Guidelines for Prevention and Response*, May 2003, pp. 23–24.

⁶³ Médecins sans Frontières, “The Crushing Burden of Rape: Sexual Violence in Darfur”, 8 March 2005, p. 6.

⁶⁴ For more on this issue, see section 4.3 of this chapter.

⁶⁵ UNHCR, “Harmony Centre Leads 16 Days of Activism Campaign in Ghana Camp”, 7 December 2006, at <http://www.unhcr.org/news/NEWS/457838f54.html>.

⁶⁶ “Report of the Secretary-General on the Protection of Civilians in Armed Conflict”, S/2007/643, 28 October 2007, para. 45.

5.3.1.1 SGBV challenges, continued

“People are drunk and fighting. Everything is different from home. My father hits my mother and drunken people destroy light bulbs and buildings.”

Girl, 14, in transit centre for internally displaced persons, Sri Lanka⁶⁷

**Challenge:
During and after
displacement**

Rape and other forms of SGBV may continue during displacement, where prior exposure often leads to continuing problems, including further violence. This is particularly true if camps are raided by militia and during protracted displacement. Consultations with the refugee communities in Bangladesh, for instance, highlighted that wives and daughters of men in prison, including on false premises, were at particular risk of being raped by police, “mahjees” (refugees designated by government officials to administer justice) or local villagers.⁶⁸

When women and girls return, they may be attacked or abused during the journey or afterwards, especially if peace is tenuous.⁶⁹

**Challenge:
Accessing fuel and
water**

Displaced women and girls run the risk of rape, harassment and other forms of violence every time they leave camps to collect firewood and water.⁷⁰ Sometimes, they are at risk merely by setting foot outside the camp. In other situations, relative risk may depend on the current state of relations between the displaced community and the local community, government or security forces. Relative risk may decline over time or may increase.

Cooking fuel is traditionally seen by both displaced communities and humanitarian organizations as a “women’s” issue, since it is a part of the cooking process and the task of collection falls almost exclusively to women and girls. Displaced women and girls are often at their most vulnerable when gathering fuel, often alone, in remote environments outside the camps.

**Challenge:
Urban and rural
settings**

In urban and rural settings, displaced women and girls may be sexually harassed or abused when looking for employment and/or if they are obliged to work in unsafe conditions. Girls may also face violence at school. Women and girls may be harassed or attacked on their way from or to their homes by members of the displaced or the host community.

The often uncertain status of displaced and stateless women and girls leaves them more vulnerable to violence, including forced prostitution, especially if they are not officially permitted to work and cannot otherwise meet their basic needs and those of their families. Too often, UNHCR is not aware of these kinds of incidents and generally has limited resources and capacity to monitor and provide protection.

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⁶⁷ Machel Study 10-year Strategic Review, UNICEF, Global Youth Action Network, UNFPA, Women’s Commission for Refugee Women and Children, “Will you Listen?’ Young Voices from Conflict Zones”, October 2007, p. 4.

⁶⁸ See field practice example in this chapter below in section 3.3 and UNHCR, *Refugee Consultations Bangladesh*, March 2007, pp. 20–24, at <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain/opendocpdf.pdf?docid=46f0ec002>.

⁶⁹ For a more detailed listing, see UNHCR, *Sexual and Gender-based Violence against Refugees, Returnees, and Internally Displaced Persons: Guidelines for Prevention and Response*, May 2003, p. 20.

⁷⁰ Adapted from Women’s Commission for Refugee Women and Children, *Beyond Firewood: Fuel Alternatives and Protection Strategies for Displaced Women and Girls*, March 2006, at <http://www.womenscommission.org/pdf/fuel.pdf>. See also, section 7.1 of this chapter below on livelihoods and food security.

5.3.1.1 SGBV challenges, continued

“G., a 22-year-old Burundian woman, married a Rwandese man in Burundi and had two children with him. They came together to Dzaleka in 2002, their first refugee camp. G.’s husband beats her many times a week and is also verbally and emotionally abusive... G.’s husband did not beat her in Burundi because her family was there to defend her. Now, without her family around, he beats her without restraint. G.’s neighbours have counselled the couple three times, but his behaviour still has not changed. G. attributes this to the fact that the neighbours’ scoldings do not have any meaning for him.”

Interview with refugee woman in Dzaleka refugee camp, Malawi⁷¹

**Challenge:
Domestic violence**

The dangers and uncertainties of displacement place great strain on families and communities. These can, in turn, provoke domestic violence, in both camps and urban settings. High levels of violence can result from flight from conflict, disruption of social structures, men’s loss of their traditional roles, cultural traditions, poverty, frustration, alcohol and drug abuse, and lack of respect for human rights. They are all factors contributing to the domestic violence that is inflicted upon women and children of concern.

Sexual abuse, including incest, and promiscuity can be significant problems, especially in long-term camp situations when accommodation is too small and/or does not provide adequate privacy. It can also be the case in urban environments, where displaced families and individuals live in inadequate accommodation. Such behaviour heightens the risk of sexually transmitted diseases, including HIV/AIDS, and their consequences.

Women and girls may feel obliged to stay in violent and abusive relationships because they see no other way of surviving independently, because there is social or religious pressure to remain in a family, or because divorce is not permitted under traditional justice systems.

Domestic violence is rarely reported and generally remains hidden. It is often regarded as a private matter, including by UNHCR, NGOs, and community members. This makes it more difficult to intervene on behalf of the women and children concerned.

“I lived in Freetown in Sierra Leone. I had a happy childhood... The only difficult thing I had to face was that my aunts used to come from the village to see my father and tell him it was time for me to join the secret society. That meant that it was time for me to be cut, to be circumcised. My father ... didn’t want me to go, he said, it’s evil. ... He protected me and said I didn’t have to do it. But then the war came, and I lost my father and mother and my brothers. I was taken by a soldier into the bush, to be his sex-partner. He would rape me whenever he wanted. These soldiers were terrible. I saw many things that no one should have to see. Then, after the war my uncle came from America, looking to find what had happened to us all. I was the only one of my family left in Freetown. I couldn’t stay in Freetown because everyone knew I had been taken to the bush by Timboi but I couldn’t go back to the village, because I didn’t want to be circumcised. I knew I didn’t want to do it because I have heard how it is done – they don’t even sterilize the knife and the girls bleed a lot and sometimes they die. The government has tried to stop it, I know, but they had to back down because all the people protested. So if a family member wants to do it there is no one to stop them. So my uncle helped me to get to England. ... I am 18 now and I am going to college. I want to be a social worker to help other people.”

Esther, Sierra Leonean who fled to the United Kingdom and was recognized as a refugee⁷²

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⁷¹ Sharon Carlson, “Contesting and Enforcing Patriarchy: An Analysis of Domestic Violence in the Dzaleka Refugee Camp”, RSC Working Paper No. 23, March 2005, p. 34.

⁷² See http://www.refugeewomen.com/real_lives.php. For the House of Lords judgment in this case see *Secretary of State for the Home Department (Respondent) v. K (FC) (Appellant) and Fornah (Appellant) v. Secretary of State for the Home Department (Respondent)*, United Kingdom House of Lords, October 2006, at <http://www.unhcr.org/home/RSDLEGAL/4550a9502.pdf> and for UNHCR submission in the case, which outlines the practice in other States, see <http://www.unhcr.org/home/RSDLEGAL/45631a0f4.pdf>.

5.3.1.1 SGBV challenges, continued

**Challenge:
Harmful practices**

When communities flee, they bring with them their customs and traditions. Among these are harmful practices, such as female genital mutilation (FGM), early or forced marriage, killing and maiming in the name of honour, infanticide and/or neglect, and denial of education for girls or women.⁷³

With regard to FGM, girls sometimes as young as five or six may be subject to FGM. The practice can have severe health consequences for the girls concerned and can result in death. FGM reinforces the subordination of girls and women in the communities where it is practiced. Older women sometimes play a driving role in perpetuating the practice. When conflict and displacement have disrupted the practice of FGM, it may be carried out on adult women once they return.

While often viewed as a cultural tradition that should be respected, these harmful practices are human rights violations. Sometimes, such practices are permitted under national laws.⁷⁴ Even if they have been banned in law, there may be few, if any, prosecutions.

Such practices may be the very reason why women and girls flee and may constitute grounds for refugee status, as some countries have recognized, including in the Sierra Leonean example above. During displacement, these practices are not reduced and may even be exacerbated.

Note: The section which follows provides more information on how to respond to these challenges faced by women and girls.

⁷³ The 1997 WHO, UNICEF and UNFP "Joint Statement on Female Genital Mutilation" defines FGM as "all procedures involving partial or total removal of the external female genitalia or other injury to the female genital organs whether for cultural or other non-therapeutic reasons". Resources on FGM published by WHO are available at <http://www.who.int/reproductive-health/publications/fgm.html>. As of late 2007, a new Inter-Agency Statement on the Elimination of Female Genital Mutilation including suggestions for action was shortly to be released. On harmful traditional practices generally, see UNHCR, *Sexual and Gender-Based Violence against Refugees, Returnees and Internally Displaced Persons: Guidelines for Prevention and Response*, 2003, p. 18.

⁷⁴ Under Article 4 of the 1993 Declaration on the Elimination of Violence against Women, States should condemn violence against women and should not invoke any custom, tradition or religious considerations to avoid their obligations with respect to its elimination. See chapter 2, section 2 for more on cultural relativism and chapter 6, section 2.1 for more on the Declaration.

5.3.1.2 Responding to and preventing SGBV

"Here in the camp, we have protection. You can report if your husband beats you and you can stay in a safe haven. But when we go back to Sudan, there is no one we can report to."

Sudanese refugee women, Kakuma camp, Kenya

"Recognizing that sexual and gender-based violence continues to be a severe impediment to the advancement of women and the enjoyment of their rights, UNHCR commits to developing integrated country-level strategies to address it."

Third of UNHCR's Five Commitments to Refugee Women

Introduction

Preventing and responding to SGBV are integral parts of UNHCR's strategy to enhance the protection of women and girls. Building on the analysis of the challenges faced on this issue set out in the previous topic, this topic briefly outlines applicable legal standard and guidelines, the responsibilities of States, UN agencies, UNHCR and staff, and makes suggestions on how to respond to and prevent SGBV in its various manifestations.

International legal standards and guidelines

Sexual and gender-based violence impairs or nullifies women's and girls' enjoyment of human rights and fundamental freedoms and constitutes discrimination. These rights and freedoms include the right to:

- life, liberty and security of the person;
- freedom from torture, or cruel, inhuman or degrading treatment or punishment;
- freedom of movement, opinion, expression and association;
- enter into marriage with free and full consent and the entitlement to equal rights to marriage, during marriage and at its dissolution;
- equality, including to equal protection under the law, not least (under international humanitarian law) in time of war;
- human dignity and physical integrity;
- be free from all forms of discrimination;
- equality in the family;
- the highest attainable standard of physical and mental health; and
- just and favourable conditions of work.⁷⁵

International humanitarian law prohibits rape, enforced prostitution and any form of indecent assault. International criminal law defines "Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity" as 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 as a "war crime" when committed individually during international and non-international armed conflicts.⁷⁶

Information on the many sources of guidance provided by UNHCR, IASC and others is listed at the start of section 3 of this chapter.

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⁷⁵ See Committee on the Elimination of Discrimination against Women, General Recommendation No. 19, Violence against Women, 1992, para. 7, and Declaration of the Elimination of Violence against Women, GA resolution 48/104, 20 Dec. 1993, Article 3; UNHCR, *Sexual and Gender-based Violence against Refugees, Returnees, and Internally Displaced Persons: Guidelines for Prevention and Response*, May 2003, p. 8.

⁷⁶ See Statute of the International Criminal Court, Articles 7(1)(g); 8 (2)(b)(xxii) and 8(2)(d)(vi) respectively.

5.3.1.2 Responding to and preventing SGBV, continued

**Responsibility:
States**

Governments are required to respect the right to life, the right to physical and mental integrity, and to freedom from torture, inhuman or degrading treatment or punishment, collective punishment, reprisals etc of everyone within their jurisdiction. This includes the responsibility to protect against, and provide remedies for, acts of violence against women and girls.

Under international humanitarian and international criminal law, States have an obligation to search for and prosecute persons suspected of war crimes and crimes against humanity. This includes crimes in relation to rape and other forms of sexual violence.⁷⁷

A number of Executive Committee Conclusions and the Agenda for Protection have also highlighted the need for States and UNHCR to take action to prevent and respond to SGBV.⁷⁸

**Responsibility:
Regarding
traditional
practices**

States parties to the Convention on the Rights of the Child are obliged to take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children (Article 24(3)). ExCom calls on States and relevant parties to take effective and appropriate measures to prevent and eliminate traditional practices harmful to children.⁷⁹

The Declaration on the Elimination of Violence against Women affirms: “States should condemn violence against women and should not invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination.” Rather “women’s right to live a life free of gender-based violence has primacy”.⁸⁰

This means, as the Special Rapporteur on violence against women writes, that States “may not deny, trivialize or otherwise play down the harm caused by such violence by referring to these notions [of custom, tradition or religion]. Instead, States are expressly required to condemn such violence, which entails denouncing any cultural discourse put forward to justify it. For this reason, senior government officials who remain silent when significant sectors of their own population justify certain types of violence against women with reference to culture incur responsibility for a human rights violation. States also have to take active measures to eradicate violence against women committed with reference to culture that go beyond merely criminalizing and prosecuting the violence itself. Instead, they have to identify those aspects of a given culture which are linked to the violent practice and are required to develop a comprehensive strategy to transform those aspects.”⁸¹

The General Assembly has also affirmed: “Governments should give priority to developing programmes and policies that foster norms and attitudes of zero tolerance for harmful and discriminatory attitudes, including son preference, which can result in harmful and unethical practices such as prenatal sex selection, discrimination and violence against the girl child and

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⁷⁷ “Report of the Secretary-General on the Protection of Civilians in Armed Conflict”, S/2007/643, 28 October 2007, para. 49.

⁷⁸ See, for example, ExCom Conclusions Nos. 39 (XXXVI), 1985; 73 (XLIV), 1993; 85 (XLIX), 1998; 98 (LIV), 2003; 99 (LV), 2004, and Goal 4, Objective 4 of the Agenda for Protection.

⁷⁹ ExCom Conclusions Nos. 84 (LXVIII), 1997, para. (a)(v) and 107 (LVIII), 2007, para. (h)(vii).

⁸⁰ Special Rapporteur on Violence against Women, its Causes and Consequences, Yakin Ertürk, “Intersections between Culture and Violence against Women”, A/HRC/4/434, 17 January 2007, para. 30.

⁸¹ *Ibid.*, paras. 30–31.

5.3.1.2 Responding to and preventing SGBV, Continued

**Responsibility:
Regarding
traditional
practices**
(continued)

all forms of violence against women, including female genital cutting, rape, incest, trafficking, sexual violence and exploitation. This entails developing an integrated approach that addresses the need for widespread social, cultural and economic change, in addition to legal reforms.”⁸²

**Responsibility:
During conflict**

In times of conflict, all parties are obliged under international humanitarian law to protect the civilian population and individual civilians “against dangers arising from military operations”, to ensure they are not “the object of attack” and to treat civilians “humanely in all circumstances”.

All parties are also responsible for ensuring that women and children are “the object of special respect” and are “protected against rape, forced prostitution and any other form of indecent assault”. This applies in both camp and non-camp settings.⁸³ It is well established that sexual violence falls within the prohibitions of cruel treatment or torture in the Geneva Conventions.⁸⁴

**Responsibility:
UN agencies**

The 1993 Declaration on the Elimination of Violence against Women affirms: “The organs and specialized agencies of the United Nations system should, within their respective fields of competence, contribute to the recognition and realization of the rights and principles set forth in the present Declaration.”

UN agencies, including UNHCR, have a responsibility under Security Council resolution 1325 (2000) on women, peace and security to take action to implement this resolution under the Secretary-General’s 2005 Action Plan.⁸⁵ They also have a responsibility under Security Council resolution 1612 (2005) to cooperate to establish a monitoring and reporting mechanism on violations and abuses committed against children affected by armed conflict.⁸⁶

Recognizing that the question of fuel is a multi-faceted problem that requires a multi-sectoral and inter-agency approach, an IASC Taskforce on Safe Access to Firewood and Alternative Energy in Humanitarian Settings was formed in March 2007. It is co-chaired by UNHCR, WFP and the Women’s Commission on Refugee Women and Children.

**Responsibility:
UNHCR**

UNHCR’s responsibilities as regards SGBV and its approach to the prevention and response to such violence are situated within the wider framework of gender equality mainstreaming and empowerment. The development of “integrated country-level strategies to address sexual violence, including domestic violence, against refugee women” is also one of UNHCR’s Five Commitments to Refugee Women.⁸⁷

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⁸² UNGA resolution S-21/2, “Key Actions for further Implementation of the Programme of Action of the International Conference on Population and Development”, A/RES/S-21/2, 8 November 1999, para. 48.

⁸³ 1949 IV Geneva Convention relative to the Protection of Civilians in Time of War, Article 27; 1977 Protocol No. 1 additional to the 1949 Geneva Convention, Articles 50, 51, 75, 76 and 77.

⁸⁴ See generally also, IASC, *Women, Girls, Boys and Men: Different Needs – Equal Opportunities*, December 2006, pp. 9–20.

⁸⁵ See chapter 6, section 2.3 for more the Action Plan.

⁸⁶ See below, section 3.4 of this chapter, for more on the use of children in armed conflict and chapter 6, section 2.4 for more on this and other relevant Security Council resolutions.

⁸⁷ See this handbook, chapter 1, section 1.3 “Promoting gender equality to protect women and girls”.

5.3.1.2 Responding to and preventing SGBV, Continued

**Responsibility:
UNHCR (continued)**

Effective action to prevent and respond to SGBV is mandatory if UNHCR is to fulfil its protection mandate. It must be incorporated into the early stages of emergency preparedness and integrated into country programmes. UNHCR's work often puts staff in positions of power vis-à-vis persons of concern. Staff have an obligation not to abuse this power.⁸⁸

With regard to harmful practices, UNHCR has a responsibility to work to prevent and eliminate them at the community level and to protect the individual women or girls concerned. The Office's policy on this issue clearly states: "UNHCR's concern with harmful traditional practices is an integral part of its protection responsibility for persons under its mandate." It further affirms that "a harmful traditional practice that violates the individual rights of refugees will normally require the intervention of UNHCR."⁸⁹ International legal standards must guide our work in this respect.⁹⁰

**UNHCR's
responsibility in
different settings**

UNHCR's responsibilities in different settings are set out below:

If...	Then UNHCR...
In refugee settings	is the coordinating agency for SGBV in collaboration with a lead SGBV NGO and a number of multi-sectoral actors.
In IDP settings where no actions to prevent and respond to SGBV have been taken	should take the lead in coordinating and establishing activities to address SGBV as part of its core mandate.
There is already a coordinating agency, as for instance in situations of internal displacement where UNFPA is the cluster lead	shall participate in and support the inter-agency response and prevention mechanisms.

**Responsibility:
UN and UNHCR
staff**

The Secretary-General's Bulletin "Special measures for protection from sexual exploitation and sexual abuse" (St/SGB/2003/13) of October 2003 applies to all staff of the UN, including UNHCR staff and UN forces conducting operations under UN command and control.

We are obliged not to commit acts of sexual exploitation or sexual abuse and are responsible for creating and maintaining an environment that prevents sexual exploitation and sexual abuse. All UN staff have a particular duty of care towards women and children and must report concerns or suspicions regarding sexual exploitation or sexual abuse by a fellow worker, whether in the same agency or not and whether or not within the United Nations system, via established reporting mechanisms.⁹¹

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⁸⁸ See UNHCR, *Code of Conduct*, 2002, introduction.

⁸⁹ UNHCR/IOM/83/97, UNHCR/FOM/90/97, "UNHCR Policy on Harmful Traditional Practices", 19 December 1997.

⁹⁰ Chapter 2, section 2 on a rights- and community-based approach provides more information on cultural practices and working with communities to ensure respect for women's and girls' rights.

⁹¹ "Implementation Guidelines for the Field on the Secretary-General's Bulletin on Special Measures for Protection from Sexual Exploitation and Sexual Abuse (ST/SGB/2003/13)", 2006. See also, ExCom Conclusion No. 107 (LVIII), 2007, para. (g)(x).

5.3.1.2 Responding to and preventing SGBV, continued

How to respond Suggestions for actions which UNHCR, together with local, national and international partners, should carry out in order to prevent and respond to SGBV include:

Response	Actions
Coordinate	<ul style="list-style-type: none"> • Identify and engage a group of multi-sectoral actors, including actors involved in legal, health and education, to devise and implement a coordinated plan of action covering prevention and response. They will also form the team to coordinate SGBV interventions. • Ensure that inter-agency collaboration, including collaboration with government actors and civil society, is a key component of the programme.⁹² • Use the establishment of Standard Operating Procedures for Prevention and Response to SGBV⁹³ to reach common understandings among different actors of the range of prevention and response activities needed and which actors should undertake which actions. Often, nationals in the country face similar SGBV problems and some national NGOs may have already galvanized efforts to address the issue. • Map current activities and identify gaps in protection against SGBV. • UNHCR cannot meet all needs during reintegration, therefore agencies like FAO, UNICEF, and UNFPA may help to develop a more comprehensive and sustainable approach to prevention and response.
Assess, analyse and design	<ul style="list-style-type: none"> • Ensure that registration identifies displaced women and girls at heightened risk of SGBV. • Conduct regular participatory assessments with displaced women, men, boys, and girls, in order to gather information and understand SGBV-related issues in the context of community capacities, cultural practices, and available services. Use this information to feed into the annual protection report, country report, and country operation plans. • Use an inter-agency collaborative approach with governments to review national legal instruments and protection mechanisms in place in the country/region to determine the extent to which they support ending impunity for violence against women. • Develop a plan of action for prevention and response to SGBV against women and girls of concern based on the guiding principles set out in the SGBV Guidelines to ensure that their rights and dignity are respected. (Given that women and girls are the primary targets of SGBV, they will form the primary focus of such initiatives, although UNHCR and partners also need to be aware of and take action in the relatively smaller number of cases targeting boys and men.) • Use the Committee on the Rights of the Child's General Comment No. 8 on corporal punishment⁹⁴ as a framework to design a strategy with the authorities and with partners to tackle corporal punishment against children, for instance, against girls and boys in schools in camps, against girls undertaking domestic chores or against unaccompanied and separated girls who have been taken into care, for instance by guardians.

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⁹² Where UNHCR does not have direct contact with refugees, the importance of collaborating with relevant networks is all the more important. Relevant networks in Europe, for instance, include the European Women's Lobby (<http://www.womenlobby.org/site/hp.asp?langue=EN>); the Separated Children in Europe Programme (<http://www.separated-children-europe-programme.org/>); and the European Network for the Promotion of the Sexual and Reproductive Health Rights of Refugees and Asylum Seekers' (<http://www.icrh.org/projects/european-network-for-the-promotion-of-the-sexual-and-reproductive-health-rights-of-refugees>).

⁹³ See UNHCR, "Standard Operating Procedures for Prevention of and Response to SGBV", IOM/62/2006, FOM/62/2006, 28 July 2006.

⁹⁴ CRC Committee, "General Comment No. 8 on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment", August 2006, at <http://www.ohchr.org/english/bodies/crc/comments.htm>.

5.3.1.2 Responding to and preventing SGBV, continued

How to respond (continued)

Response	Actions
Intervene to protect	<ul style="list-style-type: none"> • Establish confidential, individual case management systems and committees to coordinate and monitor the response to the situation of all women, girls, men and boys of concern who are at heightened risk, and to support solutions for them, as outlined in chapter 3, section 3. • Establish confidential complaints mechanisms in the community and make sure they are known by the community so that persons of concern can report on abuses etc., as also outlined in section 1 of this chapter on access to information. • Work with host communities, local authorities and other partners to reduce tensions relating to scarce water, firewood and land resources. • Support the provision of quality health services, including medical and psychosocial care, to address the specific needs of women and girls at risk,⁹⁵ ensuring that such care is provided in an age-, gender- and culturally sensitive manner by adequately trained staff and partners. • Provide women and girls with adequate clothing so that they are able to access health services and training classes, can attend school, can maintain their dignity, and reduce their risk of exposure to SGBV. • Provide women and girls who may be particularly at risk of SGBV, such as those with hearing or speech difficulties, with whistles and train them how to avoid danger and how to use the whistles to draw attention if attacked. • Work to provide women and girls, who are victims/survivors of SGBV and who cannot return to their community, with the possibility of emergency voluntary relocation to another town or camp or, for refugee women and girls, emergency resettlement. • Establish and/or implement codes of conduct, including on the elimination of sexual exploitation and abuse, for all humanitarian staff, including those working in the delivery of services and for other staff in authority.⁹⁶ • If incidents of SGBV involving peacekeeping forces come to light, report and follow-up on these with the Department of Peacekeeping Operations (DPKO) and other relevant UN agencies. • Promote the provision of legal assistance and the establishment of victim-support and witness-protection schemes so that perpetrators can be brought to justice.
Intervene to protect: Access to safe houses	<ul style="list-style-type: none"> • Provide women and girls facing domestic violence and abuse or attack by other members of the community with access to safe houses, especially if there are no mechanisms to remove perpetrators,⁹⁷ so that they can find immediate safety and can begin to recover from and reflect on their ordeal before medium- and longer-term solutions can be implemented, thereby reducing the risk of further abuse. • Ensure that such safe housing alternatives: <ul style="list-style-type: none"> – are in a confidential location to avoid stigma and maximize security; – provide safety and security for those living at or managing the shelter; – allow women and their children to be accommodated together; – develop plans, as soon as a survivor is referred, for a longer-term arrangement;

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⁹⁵ ExCom Conclusion No. 105 (LVII) of 2006, paras. (j)(i) and (n)(ii).

⁹⁶ ExCom Conclusion No. 105 (LVII) of 2006, para. (j)(vi).

⁹⁷ ExCom Conclusion No. 105 (LVII) of 2006, para. (n)(ii).

5.3.1.2 Responding to and preventing SGBV, continued

How to respond (continued)

Response	Actions
Intervene to protect, Access to safe houses, contd.	<ul style="list-style-type: none"> – establish guidelines on limits to a stay in the shelter to avoid indefinite stays; and – enable women and children to enjoy fundamental human rights, including the right to an education.
Strengthen national capacity	<ul style="list-style-type: none"> • Support governments in fulfilling their responsibility to maintain the civilian and humanitarian character of asylum,⁹⁸ including through specific measures to support women and girls as outlined in UNHCR's <i>Operational Guidelines on Maintaining the Civilian Character of Asylum</i>.⁹⁹ • Support governments in fulfilling their responsibility to protect against, and provide remedies for, acts of violence against women,¹⁰⁰ including in particular by their implementation of appropriate legislative frameworks, policing systems, and judicial procedures to address SGBV, including domestic violence. • Support law enforcement measures that prevent, deter, and combat SGBV, including measures to criminalize SGBV and bring perpetrators to justice, which include protection procedures to assess the protection needs of victims/survivors. • Support and feed into projects to prevent and to respond to SGBV in countries of asylum, such as that of the International Centre for Reproductive Health, which uses a participatory approach to develop a SGBV prevention tool for use by refugees and asylum-seekers to combat violence against refugees in Europe.¹⁰¹ • Establish and/or implement codes of conduct, including on the elimination of sexual exploitation and abuse, for staff in authority, such as border guards.¹⁰² • Work with the different arms of government to ensure that victims/survivors of SGBV receive adequate care and support to enable their recovery and rehabilitation, including health, education and family welfare. • Lobby asylum authorities to raise their awareness of how gender-related persecution can fall within the 1951 Convention refugee definition and promote the recognition of such claims including through training, submission of <i>amicus</i> briefs before courts, such as that referred to above in relation to the practice of FGM in the <i>Fornah</i> case (see "harmful practices" above) or in relation to domestic violence, as outlined in chapter 4, section 2.6 on "refugee status determination". • Lobby national and local government authorities to persuade them to fund places in women's refuges for asylum-seeking women fleeing domestic violence as common practice and to offer all asylum-seeking women single sex accommodation if preferred.

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⁹⁸ ExCom Conclusions Nos. 94 (LIII), 2002, para.(a); 105 (LVII), 2006, para. (j)(ii).

⁹⁹ UNHCR, *Operational Guidelines on Maintaining the Civilian Character of Asylum in Mass Refugee Influx Situations*, September 2006, pp. 37–38.

¹⁰⁰ Report of the Special Rapporteur on Violence Against Women, its causes and consequences, Yakin Ertürk, "Integration of the Human Rights of Women and the Gender Perspective: Violence Against Women: The Due Diligence Standard as a Tool for the Elimination of Violence Against Women", E/CN.4/2006/61, 20 January 2006.

¹⁰¹ For further information see the website of the International Centre for Reproductive Health at <http://www.icrh.org/projects/development-of-a-prevention-tool-to-combat-violence-against-refugees-in-europe-a-participat>. The results of the project are to be published in February 2008.

¹⁰² ExCom Conclusion No. 105 (LVII), 2006, para. (j)(vi).

5.3.1.2 Responding to and preventing SGBV, continued

How to respond (continued)

Response	Actions
Strengthen national capacity, contd.	<ul style="list-style-type: none"> • Work with relevant civic authorities and NGOs to reach agreement with institutions running safe house shelters to allow non-citizens, including asylum-seeker and unregistered foreigners, access to such shelters. • Train national, UNHCR, and partner staff (including civil and military authorities) on SGBV, including <ul style="list-style-type: none"> – to understand their responsibilities to respond to incidents of SGBV and how to prevent them; – to counter resistance to viewing domestic violence as a private matter but rather to recognize it as a human rights violation requiring prevention and response; – to understand that exposure to domestic violence and to harmful practices can represent a ground for refugee status; – to make sure staff are able to support younger girls and adolescent survivors of SGBV in age and developmentally appropriate ways; and – to promote use of resettlement as a protection tool in SGBV cases.
Strengthen community capacity to support solutions	<ul style="list-style-type: none"> • Provide water supplies close to where women and girls live so that they do not have to go far for water. • Promote skills training and livelihood opportunities to reduce dependency on assistance and promote independence and empowerment. • Analyse with women and girls potential protection risks in shelter design in urban, rural and camp settings and ensure appropriate lighting. • Introduce alternative fuel, more efficient stoves and similar arrangements immediately it is evident that the collection of firewood will lead to SGBV.¹⁰³ • Work with communities to analyse and raise awareness and understanding of the challenges faced by women and girls who have been raped and give birth, to strengthen acceptance of their children, as well as of children of rape who have been abandoned. • Work with leaders who are willing to act as agents of change to promote a different perspective on “women’s and girls’ honour”, so that women and girls are not see as the cause of shame and responsibility is shifted to male perpetrators. • Work with traditional justice systems to have SGBV recognized as a crime so that appropriate penalties are imposed on perpetrators and that victims are not penalized. • In working with communities, recognize that the function of culture and tradition is to provide a framework for human well-being but explain that cultural arguments can never be used to condone violence against individuals, male or female. Moreover, culture is not static, but constantly changing and adapting. Work together to develop and implement activities for the elimination of female genital mutilation (FGM) in a way that is sensitive to the cultural and social background of the communities that practice it. Behaviour can change when people understand the hazards of certain practices and when they realize that it is possible to give up harmful practices without giving up meaningful aspects of their culture.¹⁰⁴

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¹⁰³ See text on “Accessing fuel and water” in this section above and section 7.1 of this chapter below on livelihoods and food security.

¹⁰⁴ See UNFPA “Since FGM/FGC is Part of a Cultural Tradition, Can it Still be Condemned?” and other questions, at <http://www.unfpa.org/gender/practices2.htm#20>. A Norwegian NGO working with immigrant and refugee communities in Norway has a site with information on the practice in Norwegian, English and Somali and on ways to address it at www.okprosjekt.no.

5.3.1.2 Responding to and preventing SGBV, continued

How to respond (continued)

Response	Actions
Strengthen community capacity to support solutions, contd.	<ul style="list-style-type: none"> • Work with communities in conjunction with our partners, so that measures to eradicate harmful practices are effective. Governments, other UN agencies, and local NGOs may already have active campaigns in the country. Inadequate and haphazard efforts to prohibit the practices may only drive them underground. • Work with the community to design and implement innovative campaigns during the “16 Days of Activism against Gender Violence” which run from the International Day for the Elimination of Violence Against Women on 25 November, through World AIDS Day on 1 December until Human Rights Day on 10 December so as to raise awareness about SGBV and initiatives to prevent and respond to it. • Use the international day against FGM – 6 February – to raise awareness of the right of women and girls which the practice violates; to explain that contrary to popular belief FGM is not required by any religion; and to strengthen commitment to prevent the practice. • Establish children’s and adolescents’ clubs where children including adolescents can learn about their rights and educate their peers. • Support both displaced/returnee women and girls and those in the host community when identifying solutions.
Monitor, report and evaluate	<ul style="list-style-type: none"> • Use the Standard Operating Procedures for Prevention of and Response to SGBV issued by UNHCR in July 2006 to monitor the work of different actors for prevention and response to SGBV and ensure a coordinated and ongoing response to the needs of victims/survivors of SGBV. • Ensure that confidential and accessible complaints systems are in place which include investigation and follow-up, so as to encourage the reporting of abuse and exploitation where codes of conduct are breached.¹⁰⁵ • Evaluate the effectiveness of responses to SGBV with the community.

<p>Field practice: Ethiopia</p>	<p>In Shimelba camp, Ethiopia, where young Eritrean males outnumber women by four to one, a transit house was established in 2005 for newly arriving women and survivors of SGBV, who do not have adequate housing. This has helped the women set up longer-term living arrangements without immediately falling prey to men, who at first seem to offer hospitality, but who may go on to abuse the situation and expose them to exploitation and/or HIV/AIDS. Adequate funding and proper management of the project are essential for its ongoing effectiveness.</p>
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¹⁰⁵ ExCom Conclusion No. 105 (LVII) , 2006, para. (j)(vi).

5.3.1.2 Responding to and preventing SGBV, continued

**Field practice:
Austria**

In Austria, the Office has worked to strengthen the protection of, and response to, asylum-seeking and refugee women and girls who may be exposed to sexual and gender-based violence, including domestic violence.

This has involved working to

- raise the profile of the issue,
- persuade both the authorities and NGOs to address the particular concerns of asylum-seekers and refugees regarding this issue, and
- promote better linkages between organizations supporting female victims/survivors of domestic violence and refugee counselling organizations.

The Protection from Violence Act, for instance, helps protect against such violence. Amongst other things, it requires the police to evict individuals who pose an imminent threat to the life, health or freedom of others living in the same apartment/house and its immediate vicinity and to bar them from re-entering it. Since a barring order has to be issued by the police as soon as the requirements are fulfilled and, thus, does not require any application/request of the victim concerned, the Act can especially support individuals who may not be aware of the legal situation in Austria, including asylum-seekers.

At the same time, however, the Office has cautioned the authorities repeatedly regarding potentially harmful effects of a provision included in numerous basic welfare support acts for asylum-seekers. This provides that such support may be restricted or withdrawn from individuals evicted by the police under the Protection from Violence Act. UNHCR is worried that this may have the effect of preventing women and girls exposed to domestic violence from seeking State support.

Communication problems (including cultural aspects) may also hinder the application of the Act. The Office has therefore tried to increase awareness of SGBV prevention and response (including in the context of the Protection from Violence Act) among employees of reception facilities. To do so, the Office works to strengthen links between organizations supporting female victims of violence and refugee counselling organizations and organized several exchange meetings and training events.

As a result, the issuance of barring orders for the benefit of women and children of concern to UNHCR is increasingly reported by our partners and the victims receive better support and assistance.

Field practice: Protection network in Sri Lanka

Introduction A special protection network initiated in north-eastern Sri Lanka in 2004 provides a mechanism to help prevent sexual and gender-based violence (SGBV) and to respond to SGBV incidents and find lasting solutions for the individuals concerned.¹⁰⁶

Rights promoted Among the rights promoted by this initiative are the right to:

- life, liberty and security of the person;
 - freedom from torture, cruel, inhuman or degrading treatment or punishment;
 - personal integrity;
 - equal protection under the law;
 - right of the child to respect for her or his best interests; and
 - right of the child to survival and development.
-

Steps to implementation In early 2004, a panel was formed in Mannar, north-eastern Sri Lanka, bringing together lawyers, policy officers, health officers and local support organizations to work with UNHCR to find lasting solutions for victims/survivors of SGBV. Once the panel established itself, it invited the UN Children's Fund (UNICEF) to become involved.

Before 2004, although it was common knowledge that sexual violence was rampant in Mannar, but very few incidents were reported and even fewer were actually investigated.

UNHCR organized numerous campaigns in the displaced community and with different actors to raise awareness about SGBV, its impact and what can be done about it.

The network also went beyond UNHCR's usual mandate to assist the displaced and served the entire population of the district.

When a victim/survivor of SGBV became known, for instance, by a visiting health worker, the panel was convened to determine what action needed to be taken and worked towards a lasting solution, always assuming this was what the victim/survivor wishes. Once informed, Red Cross workers met with the victim to gather details that were then reported to the panel. All information has been kept confidential.

AGDM and empowerment Enhancing prevention and response to SGBV has mainstreamed both gender and age into UNHCR's work. Many of the survivors of such violence whom the network has been able to help have been children. Those assisted have received counselling and support to cope with the trauma they have experienced and to empower them to begin afresh.

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¹⁰⁶ See UNHCR, "UNHCR Protection Network Brings hope to Abused Women in Northern Sri Lanka", 29 November 2006, at <http://www.unhcr.org/cgi-bin/texis/vtx/print?tbl=NEWS&id=456da9c34>.

Field practice: Protection network in Sri Lanka, continued

Community involvement

In developing the network, it became clear that the contribution of the communities in the area was essential to understanding and finding solutions to the problem. Initially, the communities considered sexual violence a taboo subject and refused to discuss anything even remotely related to it. With time, however, they learnt to accept it as a reality that could not be swept under the carpet. That in itself was a significant achievement. By accepting that sexual violence was a serious problem that needed to be tackled urgently, the communities opened themselves up to discussion.

Partners involved

Partners involved include police officers, health officers, local support organizations and NGOs, lawyers, UN Children's Fund (UNICEF).

Constraints

The volatile security situation has been a hurdle for those trying to tackle abuse. It can itself exacerbate the problem of sexual violence. Police have been unable to pursue perpetrators into hostile territory, but have had to wait until the individual returns to government-controlled areas.

Impact

Since it was set up, the network has identified and resolved 28 cases of gender crimes, which were mostly child-related. Every month the network has handled at least two cases of sexual or physical abuse. For the past two years, a mechanism has been in place that finally offers hope to the women and children in the area.

Lessons learned

The involvement of the trusted and locally respected Sri Lanka Red Cross Society has been crucial in getting communities on board. Respect for confidentiality has been critical.

Note: Other relevant field examples in this Handbook on responding to and preventing SGBV can be found, including for instance, at the end of

- chapter 2, section 4, on the "Through our Eyes" participatory video project in Guinea and Liberia;
 - chapter 2, section 6, on working with men of concern in Sierra Leone and in Egypt to stand against harmful practices and domestic violence;
 - chapter 3, section 2 on prevention of, and response to, risks faced by women and girls in Afghanistan;
 - chapter 3, section 3 on the Women's Protection Clinic in India;
 - chapter 4, section 2.5 on best interests assessments and best interests determinations;
 - chapter 4, section 2.5 on refugee status determination;
 - chapter 4, section 3.2 on voluntary return and reintegration; and
 - chapter 5, section 4.4 on transitional justice and justice in return situations.
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5.3.2 Smuggling, trafficking and abduction

Introduction

Smuggling, trafficking and abduction each endanger the physical liberty and security of women and girls of concern. If they are fleeing conflict and persecution, they, like men and boys, are increasingly obliged to pay people smugglers and undertake perilous journeys if they are to reach a country where they can claim asylum.

The trafficking of people, particularly women and children, is also a growing phenomenon. Victims are tricked or coerced into various exploitative situations, including prostitution, other forms of sexual exploitation, forced labour, begging, and slavery. Women and girls may be targeted by traffickers because of their ethnicity, race or poverty. Once displaced, whether internally or as refugees, women's and girls' often uncertain status also exposes them to greater risk of abduction and trafficking.

Summary of challenges

The text below outlines briefly the challenges faced by women and girls of concern in relation to

- smuggling,
- trafficking, and
- abduction.

"When our boat sank we felt we were going to die. Everyone ... screamed – 'God, God, please help us, save us please' ... I can never forget the unbelievable pictures in front of my eyes. Some people ... in the water, some swallowing the water and choking and choking. I will never forget the bodies lying on the sea. And the moment that pushed me into ... the ... water and ... I saw my son fighting for his life as well... finding a piece of wood, my son started to scream "Mum, Mum, we will choke, we will die. God please save us." At this point, I was anxious to get where my son was, but I saw a dead woman's body beside me. And with my heart burning, I feeling very scared and try to hold the hand of the dead body to support myself to swim to my son's side. Thank God I could arrive near my son. We kissed each other... Some other people were still fighting for their lives. The screaming still rings in my ears... My friend who was holding onto a piece of wood had all her children's dead bodies floating around her. Next morning while we were still waiting for death, the Indonesian fishermen help us and save us."

Amal Basry, survivor of the sinking of SIEV-X in Australia's border-protection surveillance zone on 19 October 2001, in which 353 people, including 146 children and 142 women, drowned. Amal was one of fewer than 50 survivors, of whom only a dozen were women and children, adrift in the water for around 20 hours before they were rescued by Indonesian fishing boats.¹⁰⁷

Challenge: Smuggling

Women and girls who pay smugglers to take them out of their country may be hoping to escape conflict and human rights violations or may be seeking better economic prospects, but they can all too easily find themselves in dangerous and/or degrading situations. Unlike trafficking, smuggling is essentially a voluntary act – at least initially – involving the payment of a fee to the smuggler to provide a specific service.

Women and girls may nevertheless end up being raped and/or exposed to other violence and/or abuse during the journey, including at the hands of those supposed to bring them to safety, pirates, and the authorities, if

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¹⁰⁷ Amal's son survived, largely because when Amal was first rescued, she persuaded the fishermen to keep searching for him and other survivors. Eight months later, the Australian government allowed her and her son into the country on a temporary visa, even though her husband was already living there as a recognized refugee. Three years after that, in mid-2005, she was granted a permanent refugee visa. She died of cancer in March 2006. See <http://sievx.com/>. As one male survivor testified: "The bottom level of the boat had women and children, the middle level had families, and the top level had men only. No one survived from the bottom level." See <http://sievxmemorial.org/accounts.htm>. See also Human Rights Watch, "By Invitation Only: Australian Asylum Policy", 2002.

5.3.2 Smuggling, trafficking and abduction, continued

Smuggling (continued)

detected. They may be abandoned in a country *en route* without papers or any kind of support. Their position in society means they may be less able than men to negotiate safe passage. If unable to meet further demands or pay additional fees or bribes, they may also end up being trafficked or drawn into other abusive situations.

Initial consent or cooperation to smuggling may be nullified or vitiated by subsequent coercive, abusive or exploitative circumstances and thus become trafficking.¹⁰⁸

"Khin is a 13-year-old Muslim girl who lives in a refugee camp near Mae Sot with her mother and three siblings. Khin reported that her father and stepmother took her to Bangkok, where, for approximately a year, she was forced to sell tissues on the street. If she did not make at least 200 baht (US\$ 5) a day, she was beaten. Her father and stepmother then forced her to go back out to the streets until she brought the required amount of profits home. Eventually, Khin was picked up by the Thai police and taken to a government-run shelter for trafficking victims. Later, the police returned her to the border near Mae Sot where she was reunited with her mother and siblings. At that point, a local NGO asked the refugee community in the camp to take in Khin, her mother, and her siblings and care for them, because her mother had few means of generating income. This had been a contributing factor that had compelled Khin to live with her father and, while her mother was unaware of the abuses, left Khin vulnerable to being trafficked..."

From "Abuse without End: Burmese Refugee Women and Children at Risk of Trafficking"¹⁰⁹

"I have five children, but one is missing. She is thirteen years old. In the evening, a girl had come and went away with my daughter. Someone saw her at [the open border crossing between Nepal and India]. After a long interval, there was call from the Mumbai police. This information was given to others, to UNHCR and the [Refugee Coordination Unit implementing government policy in the camps]. No one has come to speak to me. I feel she won't know how to come back home, she doesn't know how to read. Days pass, at night I can't sleep. Children don't know how much we love them."

Lilal B., a refugee in Nepal¹¹⁰

Challenge: Trafficking

The trafficking of people is a modern form of slavery that treats human beings as a commodity to be bought and sold.¹¹¹ Eighty per cent of all people trafficked are women and girls.¹¹²

They are given false promises of a new and better life, but can end up in highly exploitative and hazardous situations, including prostitution, domestic service, begging, and other forced labour, such as child labour. They may be forced to work for a pittance or for nothing at all. Fear of deportation, seizure of papers, and incarceration are all factors exploited by traffickers to keep their victims under their control.

Women and girls may be at particular risk of being trafficked from their homes and villages of origin if they are poor, have disabilities, have been subject to other forms of SGBV, are separated from their family or other support networks, are part of a single-headed household, and/or because they are stateless or of a particular religion, caste or ethnicity.

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¹⁰⁸ See UN Office of Drugs and Crime, *Toolkit to Combat Trafficking in Persons*, 2006, pp. xiii–xviii, at <http://www.unodc.org/unodc/en/human-trafficking/publications.html> and 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, Article 3(b).

¹⁰⁹ Women's Commission for Refugee Women and Children, "Abuse without End: Burmese Refugee Women and Children at Risk of Trafficking", January 2006, p. 22.

¹¹⁰ From Human Rights Watch, "Trapped by Inequality: Bhutanese Refugee Women in Nepal", September 2003, pp. 58–59.

¹¹¹ For a definition see, 2000 Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children, Article 3.

¹¹² OCHA, "Violence Threatens Women in All Stages of Life", 9 December 2005.

5.3.2 Smuggling, trafficking and abduction, continued

**Challenge:
Danger of
trafficking during
displacement**

In addition, women and girls may be fleeing persecution and may have paid smugglers to bring them across borders, but then find that their uncertain situation leads to forced labour, debt bondage and/or trafficking. They may have fled their homes to escape conflict and human rights abuses only to be abducted and/or trafficked from camps or the streets. If women and girls lack adequate protection, assistance and/or livelihood opportunities, they are also at greater risk of abuse and trafficking.

During ongoing conflict and uncertain peace, past trauma and/or abuse can lead to ostracism, while education to raise awareness about this rights violation may be lacking or inadequate. Both of these factors can increase the risk of trafficking.

**Challenge:
Securing protection
for victims of
trafficking**

Where trafficked women and girls manage to escape those who have trafficked them and/or those to whom they have been sold, or if they are discovered, the authorities may view the case primarily as a criminal matter. As a result, victims may be summarily returned with no, or inadequate, consideration of their protection needs. This can, in turn, lead to a cycle of renewed trafficking and abuse.

Trafficked women and girls may be unaware of their rights, may lack access to information and advice, and may face obstacles to gaining access to mechanisms that protect those rights. They may find themselves without personal identity documents and be unable to establish their nationality status, leaving them *de facto* stateless. If they are able to seek asylum, they may find that procedures are not sufficiently age- and gender-sensitive to recognize their claim. Staff and local authorities' attitudes and prejudices can hinder their access to procedures and to protection.

**Challenge:
Abduction**

"Abduction is the removal, seizure, apprehension, taking custody, detention or capture of a child (under 18 years) temporarily or permanently by force, threat or deception for involvement in armed forces or armed groups, for participation in hostilities, for sexual exploitation and forced labour."¹¹³

This working definition has been adopted by both the UN Task Force on this issue and inter-agency consultations in the context of their efforts to enhance the protection of children in armed conflict. Outside this context, individuals may also be abducted for sexual exploitation, child or early marriage, forced marriage, forced adoption, or forced labour.

Women and girls may, for instance, be abducted and pressed into prostitution, for sexual slavery, child or forced marriage, female genital mutilation, or domestic labour. Boys are more vulnerable to abduction for forced military recruitment, but girls may be abducted for this purpose, too. When young girls disappear from camps for days, some label their disappearance, "elopement". In fact, it is more likely that the girls have been trafficked or abducted for child or forced marriage.

Women and girls may be abducted in places where they are isolated or alone, when, for example, they are walking to and from school or the market

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¹¹³ See, "Rights of the Child: Report of the UNHCHR on the abduction of children in Africa", E/CN.4/2006/65, 8 February 2006. para. 10.

5.3.2 Smuggling, trafficking and abduction, Continued

**Challenge:
Abduction
(continued)**

place, or when fetching firewood and water. Even if rescued and returned to their communities, women and girls who have been abducted may face social stigma and discrimination, including by their families, particularly if they have been forced into marriage or sexual slavery and/or to take part in armed conflict.¹¹⁴

**Challenge:
Abduction in
internal
displacement**

Internally displaced women and girls living in remote areas are also more vulnerable to armed attack by raiders and are at heightened risk of abduction, rape and sexual abuse.

In northern Uganda, for instance, tens of thousands of girls and boys living in isolated settlements are obliged to walk several kilometres each night to find the relative safety of towns. Known as “night commuters”, they are seeking to avoid the danger of being abducted by armed militia for use as child soldiers, sex slaves and porters. Some are, in fact, twice displaced. First, they are forced to leave their home as a result of the conflict and then they are uprooted from their place of refuge by rebel incursions.

Night commuting may also take place in camps for the internally displaced. Children whose huts are on the periphery may sleep near public service buildings in the centre of the camp for shelter, as the lack of security prevents monitoring of the camps by night.¹¹⁵

**International legal
standards and
guidelines**

Trafficking is a crime under international law and in many countries.¹¹⁶ It is a form of enslavement¹¹⁷ and, in some circumstances, a crime against humanity or a war crime. Trafficking violates a range of women’s and girls’ rights: their rights to liberty and security of person, to be treated with humanity and respect for their inherent human dignity, their right not to be held in slavery, and sometimes their right to life. Child trafficking violates the right of a child to be free from all forms of abuse and exploitation.¹¹⁸

The focus of international efforts to combat human trafficking, including those under the 2000 Palermo Trafficking Protocol, has been on prevention, prosecution, and protection. Equally important are measures to rescue, rehabilitate, and reintegrate victims of trafficking.¹¹⁹

Smuggling and abduction are also crimes that can result in serious violations of women’s and girls’ rights, including their right to life.¹²⁰ In addition, even though smuggling is initially a voluntary arrangement it may later become trafficking. Abduction is recognized by the Secretary-General as one of the six grave violations of the rights of children in armed conflict that require particular monitoring.¹²¹

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¹¹⁴ See UN Commission on Human Rights, resolution 2005/43, requesting OHCHR, relevant UN agencies, international organizations, and NGOs to undertake a comprehensive assessment of the situation of the abduction of children throughout Africa; World Vision International, “Abduction of Children in Africa”, January 2006.

¹¹⁵ UNICEF, *The State of the World’s Children 2005*, pp. 48–49.

¹¹⁶ See 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children.

¹¹⁷ See 1998 Rome Statute of the International Criminal Court, Article 7(2)(c).

¹¹⁸ See 1989 Convention on the Rights of the Child, Articles 19, 34, 35, and 36.

¹¹⁹ See 2005 Council of Europe Convention on Action against Trafficking in Human Beings. See also International Organization for Migration (IOM), *The IOM Handbook on Direct Assistance for Victims of Trafficking, 2007*, especially chapter 3 on referral and reintegration assistance.

¹²⁰ See, “Rights of the Child: Report of the UNHCHR on the Abduction of Children in Africa”, E/CN.4/2006/65, 8 February 2006, para. 52.

¹²¹ See “Report of the Secretary-General on Children and Armed Conflict”, A/59/695–S/2005/72, 9 February 2005, para. 68.

5.3.2 Smuggling, trafficking and abduction, continued

**Responsibility:
States**

States have a responsibility to prevent and combat trafficking in persons, including in particular women and children, to protect and assist victims of trafficking in full respect for their human rights, and to promote cooperation among other States to do so.¹²²

They must safeguard the rights of individuals who have been smuggled, including in relation to any possible return to the country of origin, and must “take into account the special needs of women and children”.¹²³

States are obliged to take measures to provide “special protection and assistance” to children, including girls, if they are deprived of their family environment and to protect them from economic exploitation, sexual exploitation and abuse, abduction and trafficking.¹²⁴

States party to the 1951 Refugee Convention also have a responsibility to provide international protection to victims of trafficking or individuals fearing being trafficked who have a well-founded fear of persecution within the meaning of the Convention if returned to their country of origin.¹²⁵

**Responsibility:
UNHCR**

UNHCR has a responsibility:

- to ensure women and girls of concern do not fall victim to trafficking;
- to advocate with asylum decision-making authorities to ensure that victims of trafficking or individuals fearing being trafficked who have a well-founded fear of persecution within the meaning of the Convention if returned to their country of origin are recognized as refugees and afforded international protection and, where the Office undertakes refugee status determination itself to be aware and take account of these issues;¹²⁶ and
- to work with partners to ensure that States assume their responsibilities to protect women and girls of concern who have been smuggled or abducted and to ensure States bring smugglers and abductors to justice.

How to respond

Suggestions for actions which UNHCR, together with local, national and international partners, should carry out in order to protect women and girls from smuggling, trafficking and abduction include:

Response	Actions
Coordinate	<ul style="list-style-type: none"> • Work with government partners, civil society and in multi-sectoral teams, including protection and community service staff, social workers and health care providers, to identify and provide health care, psycho-social support, legal advice, and other assistance to women and girls of concern to the Office who have been smuggled, trafficked or abducted.

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¹²² 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons supplementing the Convention against Transnational Organized Crime, Article 2. See also CEDAW, Articles 2, 6, 11; CRC, Article 35. The Human Rights Committee, in its review of States' implementation of Article 8 of the 1966 International Covenant on Civil and Political Rights, has interpreted the prohibition of slavery and the slave trade as encompassing trafficking.

¹²³ 2000 Protocol against the Smuggling of Migrants by Land, Sea and Air supplementing the Convention against Transnational Organized Crime, Articles 9, 16 and 18.

¹²⁴ CRC, Articles 11, 16, 19–22, 32, 34, 35, 36, 37, 38, 39.

¹²⁵ See, UNHCR, “Guidelines on International Protection: The Application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees to Victims of Trafficking and Persons at Risk of being Trafficked”, HCR/GIP/06/07, April 2006; ExCom Conclusion No. 107 (LVIII), 2007, para. (g)(viii).

¹²⁶ UNHCR, “Guidelines on International Protection: The Application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees to Victims of Trafficking and Persons at Risk of being Trafficked”, HCR/GIP/06/07, April 2006, para. 5.

5.3.2 Smuggling, trafficking and abduction, Continued

How to respond (continued)

Response	Actions
Coordinate, contd.	<ul style="list-style-type: none"> • Coordinate with government partners and other agencies, including UNICEF and the International Organization for Migration (IOM) to raise awareness of the potential international protection needs of women and girls who have been trafficked to another country.¹²⁷ • Support the efforts of governments and of other UN agencies to provide legal assistance to victims of trafficking and to establish victim-support and witness-protection schemes so that perpetrators can be brought to justice. • Support these efforts by working with partners to promote education and vocational training for victims of trafficking to help reintegration and rehabilitation and thereby reduce the risk that they will be trafficked again.
Assess, analyse and design	<ul style="list-style-type: none"> • Ensure registration identifies displaced women and girls most at risk of trafficking and abduction and monitor their situation regularly. • Work with key partners, including UNICEF, the International Organization for Migration (IOM), the Organization for Security and Cooperation in Europe (OSCE) and governments and support programmes to <ul style="list-style-type: none"> – provide access to safe houses; – provide health care, psycho-social counselling, legal advice, and reintegration assistance to women and girls of concern who have been trafficked and/or abducted;¹²⁸ – help them deal with health problems, including post-traumatic stress disorder (PTSD), which they may face; – include support for longer-term solutions such as skills training and livelihood opportunities; and – to ensure access to asylum procedures for those who fear being persecuted if returned to their country of origin.
Intervene to protect	<ul style="list-style-type: none"> • If a victim of trafficking would enjoy protection in the country of origin and return is the desired outcome, promote cooperation among States to verify her or his identity and nationality status as a means to prevent <i>de facto</i> statelessness.¹²⁹ • If victims of trafficking express a fear of return, ensure that their claim can be assessed to determine whether they require international protection and that asylum procedures take into account the age, gender and specific needs of victims of trafficking. This includes providing legal counselling and, for girls, a best interests determination and appointment of a guardian to support her through the procedure.¹³⁰ • Work with the local authorities and local NGOs to ensure safe and secure accommodation for victims of trafficking who are persons of concern and are witnesses in prosecution cases.

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¹²⁷ UNHCR, "Guidelines on International Protection: The Application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees to Victims of Trafficking and Persons at Risk of Being Trafficked", HCR/GIP/06/07, April 2006, especially paras. 45–50.

¹²⁸ ExCom Conclusion No. 105 (LVII) of 2006, para. (n)(ii).

¹²⁹ See also, 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Article 8(3).

¹³⁰ UNHCR, "Guidelines on International Protection: The Application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees to Victims of Trafficking and Persons at Risk of Being Trafficked", HCR/GIP/06/07, April 2006, especially paras. 45–50.

5.3.2 Smuggling, trafficking and abduction, continued

How to respond (continued)

Response	Actions
Strengthen national capacity	<ul style="list-style-type: none"> • Support law enforcement measures that prevent, deter, and combat trafficking. Lobby government ministries and parliamentarians to ensure that measures to criminalize trafficking and bring perpetrators to justice also include explicit safeguards in anti-trafficking legislation to ensure victims of trafficking can be identified, assisted, counselled, allowed a reflection period, and have access to asylum procedures before any decision on return to the country of origin is taken.¹³¹ • Work with government authorities, agencies and other partners, to organize training for border guards, police, and immigration and camp officials to raise their awareness of protection concerns related to trafficking and enable them to identify and profile victims and potential victims of trafficking. • Ensure information is available at the border in relevant languages for victims of trafficking explaining how to seek support and approach UNHCR if they fear return to their country of origin. • Support national anti-trafficking initiatives and ensure that the authorities are aware that victims of trafficking may fear return to their country of origin and may have a claim for asylum. • Promote use of UNHCR's Guidelines on International Protection on trafficking¹³² by decision-makers in asylum procedures to raise awareness of the potential international protection needs of victims of trafficking and ensure that those falling within the refugee definition are accorded such protection. Where victims of trafficking are otherwise in need of international protection, promote the granting of complementary forms of protection.
Strengthen community capacity to support solutions	<ul style="list-style-type: none"> • Raise awareness among the displaced community, e.g. through radio programmes, leaflets, songs and drama, of the dangers of being smuggled, trafficked or abducted and the kinds of tactics used to deceive potential victims. • Launch information campaigns for women and girls through women's groups and schools to tell them about the dangers of trafficking and how false information may be given by foreigners or female friends, who have been abroad for a time and returned unusually wealthy, including offers of, and advertisements for, marriage or jobs. • Work with parents in the displaced or returnee community to change the belief that girls are inferior to boys and that girls' main purpose is marriage. • Establish centres where displaced children from urban or rural areas, who would otherwise risk abduction at night, can safely stay overnight.
Monitor, report and evaluate	<ul style="list-style-type: none"> • Establish reporting and monitoring mechanisms with partners to ensure <ul style="list-style-type: none"> – a coordinated and ongoing response to the needs of victims of trafficking; – those expressing fear of return are channelled into asylum procedures; and – measures, such as allocation of guardians and strengthened coordination between relevant authorities, are in place to prevent those admitted to such procedures from disappearing while their claim is being assessed.

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¹³¹ See also, ExCom Conclusion No. 105 (LVII) of 2006, para. (j)(v).

¹³² UNHCR, "Guidelines on International Protection: The Application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees to Victims of Trafficking and Persons at Risk of being Trafficked", HCR/GIP/06/07, April 2006.

5.3.2 Smuggling, trafficking and abduction, continued

Field practice: Slovenia

As part of a programme aimed at preventing asylum-seekers from becoming recruited or deceived by traffickers, the UNHCR office in Slovenia developed a Project Against Trafficking and Sexual and gender-based violence (PATS).

Developed in cooperation with the Ministry of Interior in Slovenia and two Slovenian NGOs in 2003, its primary objective was to introduce formalized mechanisms to

- provide information to asylum-seekers most at risk of falling prey to human traffickers and
- assist and protect victims of human trafficking and sexual and gender-based violence identified within the asylum procedures in the Republic of Slovenia.

The key elements of PATS were:

- distribution to all women and unaccompanied child asylum-seekers of a brochure known as “The Dictionary” which, among other things, contained vital information to raise awareness and help potential victims of trafficking to self-identify, and advised victims of trafficking where they could get help in Slovenia and in other countries in Europe; and
- one-to-one information sessions with social workers which were provided to all women and unaccompanied or separated child asylum-seekers and focused on the risks of trafficking and awareness raising about the information contained in the Dictionary.

The project was later also extended to Bosnia and Herzegovina.

Field practice: Albania

The UNHCR Office in Albania worked with relevant government authorities and other organizations to establish a pre-screening system to distinguish victims of trafficking – the vast majority of whom were women or girls –, asylum-seekers and irregular migrants willing to return to their own country from other irregular migrants.¹³³ In a country which has had to tackle complex mixed migration movements, the system has

- helped prevent the unlawful expulsion of asylum-seekers;
- provided appropriate assistance to victims of trafficking and irregular migrants expressing a wish to return, and
- drawn upon the expertise of relevant organizations according to their mandates and capacities.

Beginning with a pilot project in 2001, the UNHCR Office worked with the Organization for Security and Cooperation in Europe (OSCE) and the International Organization for Migration (IOM) in close collaboration with the Government to establish the pre-screening system. This identified, at an early stage, irregular migrants who may be asylum-seekers, victims of trafficking or economic migrants, and channelled them into appropriate procedures.

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¹³³ See “Briefing Note: Pre-Screening of Asylum Seekers and Migrants in Albania (CARDS Project 2003)”, 25 April 2006.

5.3.2 Smuggling, trafficking and abduction, continued

Field practice:
Albania (continued)

Once the authorities identified an irregular migrant, a mobile Pre-Screening Team (PST) based in Tirana was contacted. The team comprised one person from UNHCR, IOM and the Directorate for Refugees of the Ministry of Interior. It arrived within 24 hours, if necessary with an interpreter, interviews the person, and assessed whether she or he was an asylum-seeker, a victim of trafficking, or an economic migrant ready to return to her or his country of origin. If so, she or he was referred to the authorities responsible and taken by the PST to the appropriate reception facilities. Irregular migrants who did not fall in any of the above categories remained in police custody.

Between February 2001 and March 2006, 836 people were pre-screened. Of these, 216 were found to be asylum-seekers, 150 victims of trafficking and 470 economic migrants. In April 2006, responsibility for the pre-screening system was handed over to the Albanian authorities, in particular the Border and Migration Directorate of the Ministry of Interior. UNHCR has retained a monitoring and support role in the framework of its mandate.

The scheme formed part of wider initiatives in Albania to tackle trafficking, which have amongst other things resulted in trafficking victims no longer being charged with the crimes of prostitution and illegal border crossing.

External funding, including that of the European Commission through its Community Assistance for Reconstruction and Development and Stabilization (CARDS) project, has been critical.

Challenges have included ensuring the full functioning of the anti-trafficking centre, established in 2005 to facilitate communication between government and international organizations in cases of trafficking, and establishing effective witness protection in cases where traffickers are prosecuted.

Note: For field practice example relating to the rehabilitation in Sierra Leone of Liberian refugee girls abducted by rebel groups, see section 3.4 of this chapter below under “Military recruitment, disarmament and reintegration”.

5.3.3 Restrictions on freedom of movement

“My desires were over when I found myself in the middle of the desert, at a place with wire fences all around. We all came with hopes for a life of peace, freedom, and dignity but we were disappointed. Asylum-seekers flee their country because of persecution and danger; they shouldn’t be kept in a locked detention centre. We were coming to get protection and freedom, not detention. We were locked in detention centres, treated like criminals for no reason. People in the detention centre were really depressed, especially the children. People attempted suicide and were anguished. Children were also getting mental illnesses.”

Najeeba, a 17-year-old refugee girl in Australia, 2004¹³⁴

Introduction

Many forcibly displaced women and girls are subject to detention or other restrictions on their freedom of movement in different parts of the world. Women and girls who are seeking asylum and/or are stateless can be particularly affected, as can mandate refugees in States that have not acceded to the 1951 Refugee Convention.

Summary of challenges

Women’s and girls’ freedom of movement can be restricted because:

- they are detained as asylum-seekers;
- they are confined in camps;
- the security situation prevents movement;
- of prevailing cultural or religious norms; and/or
- they lack documentation.

Note: Each of these issues is discussed further below.

“Jules [an asylum-seeker in the UK] was asleep the night they came for her children. The first she heard was four, five, six men standing at the foot of her bed telling her not to scream. She could hear her daughters – the eight-year-old and the 17-year-old – shriek and sob and shake in the next room down, but she was not allowed to hold them. She had to pack a tiny bag, and quick. All three of them were going to be taken and locked away together indefinitely. Five months later, they are still festering in a jail cell, the end-point for this swift shift from a bang on the glass door to a life behind iron doors and barbed wire. The eight-year-old has lost a stone in weight; her clothes are hanging off her like rags. The 17-year-old has retreated to a sullen silence, rarely speaking. Nobody has ever accused these women of committing a crime. All Jules and her children did was run for their lives, run for safety to London, a place they thought would offer them asylum.”

Newspaper report about asylum-seeking mother in Yarl’s Wood detention centre, United Kingdom¹³⁵

Challenge: Detention

In a number of countries, asylum-seeking women and girls, like men and boys, are detained, because of their mode of arrival (perhaps without visas or other documentation), because their claim is being decided in accelerated procedures, or they are awaiting removal. Procedures can be lengthy; there may be difficulties in removals to third countries of asylum or, if their claim has been rejected, to the country of origin. Thus detention can last a long time. Stateless women and girls sometimes remain in indefinite detention, if attempts to remove them to another country fail.

Detention facilities for individuals charged with immigration-related offences are often ill-equipped to host women and girls. There may, for example, be only limited privacy, restricted access to natural light and fresh air, public phones, or washing facilities. In remote locations, including custody facilities

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¹³⁴ UNNCR, “Refugees: Telling Their Stories”, UNHCR High School Writing Competition, 2004.

¹³⁵ Johann Hari, “We’ve been Taught to Hate the Innocent”, *The Independent*, UK, 20 April 2006.

5.3.3 Restrictions on freedom of movement, continued

Detention
(continued)

at the border, there may not be enough female police or immigration staff. These conditions can result in sexual exploitation and abuse by border officials, police, detention centre staff, medical officers, or inmates.

In most cases, husbands and wives and other family members in detention are not permitted to stay together. Alternatively, detention facilities may not allow women and/or children to be held separately from men who are not family members. Unaccompanied children may be kept with other adults they do not know, thus increasing the risk of abuse or violence. When men are detained but the rest of the family is not, women have to take sole care of the family, which may expose them to the risk of abuse and violence.

Asylum-seeking women and girls in detention often have no access to adequate health services. Women and girls may not be given sanitary materials and/or they may have to barter food in exchange for sanitary napkins. There is often limited access to showers for menstruating women and girls. The special dietary needs of pregnant and lactating mothers are often not met. Asylum-seeking and refugee children who are detained often suffer psychological and even physical harm like their adult counterparts. They may also have limited or no access to education or recreation.¹³⁶

"Our situation here is like a prison. We are not free. I wish to be a bird, free from this condition."

A 35-year-old woman in Nayapara refugee camp in Bangladesh

Challenge:
Camp confinement

In many countries, refugees and internally displaced persons are confined to camps or settlements which may be located in isolated and insecure areas, such as border regions. This makes it difficult to seek employment and other income-generating activities outside the camp or settlement. Displaced women and girls who do manage to do so to support themselves or their families are at higher risk of exploitation, non-payment of wages, and SGBV, as employers know they are working illegally.

In other situations, displaced women and girls may be allowed to move freely only within a few kilometres of the camp. While this allows them to look outside the camp for basic natural resources for their households – particularly firewood and water – resources in these areas are soon depleted. There are often tensions with the host community, even resulting in attacks and beatings. Women and girls may be forced to go further away, thus exposing themselves to even greater risks.

Challenge:
Security situation

The security situation often restricts the freedom of movement of displaced and returnee women and girls. Some restrictions may not violate international law, but may be a serious barrier to collecting firewood and water, accessing agricultural land, education, psycho-social and health care, and other civil, economic, and social rights. In internal displacement and returnee situations, women and children are often disproportionately affected by landmines and unexploded ordnance.¹³⁷

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¹³⁶ Similar problems may also arise where asylum-seekers are accommodated in inadequate reception facilities even if they are not as such detained. See chapter 1, section 1 "more restrictive asylum systems".

¹³⁷ See also chapter 4, section 3.2 on voluntary return and reintegration.

5.3.3 Restrictions on freedom of movement, continued

“One woman was not allowed out of her house for any reason, not even to fetch water for cooking or drinking. This task was usually performed by her son or other male relatives. One day when her son was sick and no other male relatives were around she decided to sneak out to fetch water. Unfortunately she ran into her husband on the way back from the water point and he said “Now I have seen you, so other men must have seen and tomorrow my name will be dust.” He beat her with a stick. One of the women from the consultation saw this and quickly ran to the scene with a blanket. She covered the women to stop her husband beating her and dressed the woman’s wounds because she knew she would not be able to leave the house to receive medical assistance.”

Peshawar, Pakistan, 10 May 2001

**Challenge:
Cultural and
religious norms**

Prevailing cultural and religious norms may mean that male family members restrict the freedom of movement of female family members outside the home. As a result, girls may be prevented from going to school, access to health care is likely to be severely restricted, and in certain contexts, widows may be unable to access assistance and services, if they are not allowed out without an accompanying male protector. Any protection concerns, particularly domestic violence, are likely to go unreported and unnoticed.

**Challenge:
Lack of certifying
documentation**

Women and girls of concern who do not have individual documentation certifying their status may also find their freedom of movement curtailed. They may, for instance, be at risk of arbitrary arrest, including at military or police checkpoints, and/or subject to extortion, harassment and SGBV before being allowed to pass or may be deported. Each of these factors has the effect of restricting their freedom of movement.

**International legal
standards and
guidelines**

Freedom of movement consists of the right and the ability to move and choose one’s residence, freely and in safety, within the territory of a State. It includes the right to leave any country as well as the right to return to one’s own country.¹³⁸

Closely related are the right to liberty and security of person and the prohibition against arbitrary arrest or detention.¹³⁹ Children shall only be detained “as a measure of last resort and for the shortest appropriate period of time” (Article 37(b) of the CRC). The psychological effects of detention and prolonged or indefinite detention may also violate the prohibition of torture, inhuman or degrading treatment or punishment.

Detainees have a right to be treated according to internationally accepted norms and standards, many of which are reflected in the national legislation of several countries. Among international norms and standards are the

- UN Body of Principles for the Protection of all Persons under Any Form of Detention or Imprisonment,¹⁴⁰
- UN Rules for the Protection of Juveniles Deprived of their Liberty,¹⁴¹ and
- UN Standard Minimum Rules for the Treatment of Prisoners.¹⁴²

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¹³⁸ See Universal Declaration of Human Rights, Article 13; ICCPR, Article 12; CEDAW, Article 15(4); Guiding Principles on Internal Displacement, Principles 14 and 15.

¹³⁹ UDHR, Article 3; ICCPR, Article 9; ICERD, Article 5(b); CRC Articles 9(4) and 37(b); Guiding Principles on Internal Displacement, Principle 12.

¹⁴⁰ UNGA res. 43/173 of 9 December 1988.

¹⁴¹ UNGA res. 45/113 of 14 December 1990.

¹⁴² Adopted by the First UN Congress on the Prevention of Crime and the Treatment of Offenders, Geneva, 1955, and approved by the Economic and Social Council in resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.

5.3.3 Restrictions on freedom of movement, continued

International legal standards and guidelines
(continued)

UNHCR's ExCom Conclusion No. 44 of 1986 on the detention of refugees and asylum-seekers refers in particular to Article 31 of the 1951 Refugee Convention (see also below) and affirms that detention of asylum-seekers and refugees should normally be avoided. If found to be necessary, detention may be resorted to only on grounds prescribed by law and only for specific and limited purposes. The Executive Committee has also stressed the need to ensure that refugees and asylum-seekers are not detained with individuals incarcerated as common criminals.¹⁴³

When refugees are lawfully within the territory of the host State, restricting their movement outside refugee camps could violate the right to freedom of movement set out in Article 26 of the 1951 Convention and Article 12 of the ICCPR. Keeping refugees in camps often has the effect of barring access to basic social and economic rights, particularly the right of everyone to have an opportunity to earn their living by work enshrined in Article 6 of the ICESCR, Articles 17–19 of the 1951 Refugee Convention, and Article 11 of CEDAW.

Responsibility

States are obliged under Article 31 of the 1951 Refugee Convention not to impose penalties on refugees who have come directly from a territory where their life or freedom was threatened solely because of illegal entry or presence. Any restriction imposed on their movements may only be such as is necessary and only until their situation is regularized.

The Human Rights Committee stipulates that States Parties to the ICCPR “must ensure that the rights guaranteed in article 12 [of the ICCPR] are protected not only from public but also from private interference. In the case of women, this obligation to protect is particularly pertinent. For example, it is incompatible with article 12, paragraph 1, that the right of a woman to move freely and to choose her residence be made subject, by law or practice, to the decision of another person, including a relative.”¹⁴⁴

ExCom Conclusion No. 44 on detention of refugees and asylum-seekers identifies the need for national legislation and administrative practices to distinguish between refugees/asylum-seekers and other aliens. It notes that detention of the former should be subject to judicial or administrative review.

How to respond

Suggestions for actions which UNHCR, together with local, national and international partners, should carry out in order to tackle protection problems arising for women and girls as a result of detention and restrictions on freedom of movement include:

Response	Actions
Coordinate	<ul style="list-style-type: none"> • Coordinate with partners, including the human rights treaty bodies (e.g., the Committee on the Elimination of Discrimination against Women, the Committee on the Rights of the Child, the Committee against Torture, and the Human Rights Committee), to highlight and address protection gaps arising when refugees and asylum-seekers are detained and when conditions of detention do not respect detainees' rights.

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¹⁴³ See ExCom Conclusions Nos. 44 (XXXVII) of 1986, para. (f) and 85 (XLIX) of 1998, para. (ee).

¹⁴⁴ Human Rights Committee, “General Comment No. 27, Article 12: Freedom of Movement”, 1999, paras. 6 and 18; “General Comment No. 28, Article 3: the Equality of Rights Between Men and Women”, 2000, para. 16.

5.3.3 Restrictions on freedom of movement, Continued

How to respond (continued)

Response	Actions
Coordinate, contd.	<ul style="list-style-type: none"> • Work with national and local authorities and other partners to maximize freedom of movement and ensure camps are appropriately located so as to avoid restrictions on the freedom of movement of displaced and returnee populations whenever possible, including by addressing security, documentation and other concerns affecting women and girls. Where restrictions are in place, ensure they conform to international legal standards.
Assess, analyse and design	<ul style="list-style-type: none"> • Where asylum-seekers may be detained, survey the facilities to ensure that women and girls are not put at risk and are able to access the services to which they are entitled. • Hold focus group discussions with asylum-seeking women and girls who are detained to obtain insights into the protection risks they face. • Where asylum-seekers are detained, coordinate with immigration and prison authorities to design adequate facilities and ensure privacy and security, including for women and girls, and improve detention conditions and ensure access to legal, health and education services.
Intervene to protect	<ul style="list-style-type: none"> • In cooperation with partners, establish mechanisms to help individuals of concern who are detained gain access to legal remedies, education, health care, and psycho-social support. • Make interventions to secure the immediate release of, and alternative accommodation and care arrangements for, detained women and children who are at heightened risk, including pregnant women, unaccompanied and separated girls, and survivors of SGBV.
Strengthen national capacity	<ul style="list-style-type: none"> • Work with national authorities to ensure that legislation on “illegal” entrants distinguishes between asylum-seekers/refugees and other aliens and where detention or other restrictions on freedom of movement are imposed advocate that <ul style="list-style-type: none"> – they are not imposed unlawfully or arbitrarily; – they are related to a recognized purpose; – there is a reasonable relationship of proportionality between the end and the means; – they are only imposed where necessary for the reasons outlined in ExCom Conclusion No. 44 and are subject to judicial or administrative review; – families and children, in particular, are treated in accordance with international standards and children under 18 years of age are never detained; – families are in principle not detained, but if this is the case, they are not separated.¹⁴⁵ • Advocate that asylum-seeking and refugee children should never be detained and where this practice persists, promote the use of alternatives to detention, particularly for asylum-seeking women and girls. For girls, this may, for instance, be through improved guardianship arrangements, measures to strengthen integration in foster families, or the use of monitoring mechanisms to establish the exact nature of their relationship to any accompanying or receiving adults, so as to reduce the risk of abduction by traffickers.¹⁴⁶

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¹⁴⁵ For further details, see ExCom Conclusion No. 44, 1986, “Summary Conclusions: Article 31 of the 1951 Convention”, expert roundtable in the context of UNHCR’s Global Consultations on International Protection, November 2001.

¹⁴⁶ For further suggestions, see Ophelia Field and Alice Edwards, “Alternative to Detention of Asylum-Seekers and Refugees”, UNHCR Legal and Protection Policy Research Series, April 2006, at <http://www.unhcr.org/protect/PROTECTION/4474140a2.pdf>.

5.3.3 Restrictions on freedom of movement, continued

How to respond (continued)

Response	Actions
Strengthen community capacity to support solutions	<ul style="list-style-type: none"> • Work with women and men to raise awareness of women's and girls' right to freedom of movement and the dangers and risks that restrictions of that right may impose. Analyse the problems and work together to find solutions. • Work with the community to tackle security concerns that may restrict women's and girl's safety outside the home. (See also actions suggested to prevent and respond to SGBV in section 3.1 of this chapter above.) • Ensure separate facilities in detention centres, where these are used, and in reception centres for women, men, and children, except for family members wishing to stay together. • Ensure also that such centres and indeed other accommodation for asylum-seekers have doors that can be locked by those living there and that there is access e.g. to health services, counselling and education in a language they can understand.
Monitor, report and evaluate	<ul style="list-style-type: none"> • Ensure that systems are in place to monitor detention facilities regularly and effectively, including those at the border and at airports, and focus on the specific protection risks faced by women and girls.

Field practice: Hungary	In Hungary, separated girls seeking asylum are not detained for unlawful entry or stay, but are hosted either in a special home for separated children seeking asylum or in open refugee reception centres following a best interest determination/assessment.
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Field practice: Bangladesh	<p>Participatory consultations held in refugee camps in Bangladesh in March 2006 during a joint mission undertaken by UNHCR, the University of New South Wales Centre for Refugee Research and the Victorian Foundation for Survivors of Torture, drew attention to the particular protection risks faced by the wives and daughters of men who were imprisoned. The consultations highlighted not only how men were often subjected to arbitrary arrest and detention, but also how this placed their wives at risk of rape and their adolescent daughters at risk of both abduction and rape.¹⁴⁷</p> <p>The consultations further revealed that men with wives and adolescent daughters were also potential victims of false accusations by powerful locals, as their detention then left the family vulnerable to harassment and sexual violence. This placed the men in a very complex situation and exposed them to exploitation, as it increased their fear of being detained.</p> <p>The consultations enabled the Office to target whom it should interview to further assess and identify who might be most at risk in the refugee community. Follow-up interviews confirmed the accuracy of the community's assessment.</p>
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¹⁴⁷ See UNHCR, *Refugee Consultations Bangladesh*, March 2007, pp. 20–24, at <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain/opendocpdf.pdf?docid=46f0ec002>.

5.3.3 Restrictions on freedom of movement, continued

**Field practice:
Australia**

All unauthorised arrivals to Australia, including asylum-seekers and refugees, are subject to mandatory detention. The Office has been one of many actors – along with human rights oversight bodies, refugee advocates and non-governmental organizations – affirming that detention of asylum-seekers should be exceptional and only resorted to where there are no viable alternatives.¹⁴⁸ The Office has also worked to promote alternatives to detention, including notably for women and children. In addition to emphasizing international law and policy concerns, it has sought wherever possible to let refugees speak for themselves, including through publishing the stories of individual refugees who have come to Australia.¹⁴⁹

The introduction in November 2003 of Immigration Residential Housing (IRH) as one of several types of alternative immigration detention available was welcomed by the Office. Participation in such housing is voluntary and subject to people in detention meeting the eligibility criteria. Families and low-risk single persons are eligible for IRH accommodation subject to places being available; health and character checks, an assessment on whether or not the person in detention is likely to abscond; and any operational issues particular to the person in detention or the effective management of the immigration residential housing.

In June 2005, legislation was introduced which vests the Minister with an absolutely discretionary public interest power to specify alternative detention arrangements for a person's detention. Although initially designed for families with children, this programme also extends to other people in immigration detention. Unaccompanied children are referred to the Minister for consideration for placement in foster care arrangements in community detention. The Office welcomed these changes and especially Parliament's expressed intention that children should only be detained as a measure of last resort.

The Office periodically monitors detention centres, interviewing detainees and submitting reports to the Department of Immigration and Citizenship (DIAC). It reports on its findings and makes recommendations on the situation in detention facilities. It advocates for IRH to be expanded to accommodate all asylum-seekers at risk, including pregnant women and individuals suffering from mental illness. It further advocates that family unity be preserved by accommodating families, including the male head of the family, in alternative detention arrangements.

In 2006, the Australian Human Rights and Equal Opportunity Commission (HREOC) also conducted monitoring visits to immigration detention facilities and alternative detention locations. Its report states: "HREOC welcomes the recent changes in government policy regarding immigration detention. In particular, we welcome the introduction of residence determinations as an alternative to detention. We also welcome the legislative principle that children should only be detained in detention centres as a measure of last resort."¹⁵⁰

During the first half of 2007, no children were in immigration detention in Australia, representing substantial progress in recent Australian practice.

¹⁴⁸ See ExCom Conclusion No. 44 (XXXVII), 1986.

¹⁴⁹ See field practice example in chapter 2, section 5, strengthening participation and empowerment of girls.

¹⁵⁰ See Australian Human Rights and Equal Opportunity Commission's (HREOC), "Summary of Observations following the Inspection of Mainland Immigration Detention Facilities", January 2007, at www.humanrights.gov.au/human_rights/idc/.

5.3.4 Military recruitment and DDR

"I was defiled by some older boys [could not remember how many] when we were being marched to the rebel camp. After returning from Sudan, I was a wife to one rebel commander, then another junior commander and then two 'older' rebel soldiers. I had one child who died when he was a few days old. I was a slave to the rebels for 19 months. I do not think I will marry again."

Girl abducted by the Lord's Resistance Army (Machel Report)¹⁵¹

"One boy tried to escape [from the rebels], but he was caught... His hands were tied, and then they made the other new captives, kill him with a stick. I felt sick. I knew this boy from before. We were from the same village. I refused to kill him and they told me they would shoot me. They pointed a gun at me, so I had to do it. The boy was asking me, "Why are you doing this?" I said I had no choice. After we killed him, they made us smear his blood on our arms. They said we had to do this so we would not fear death and so we would not try to escape... I still dream about the boy from my village who I killed. I see him in my dreams, and he is talking to me and saying I killed him for nothing, and I am crying."

Susan, 16, girl soldier abducted by the Lord's Resistance Army¹⁵²

Introduction

Girls and boys under the age of 18 – some as young as seven – are actively participating in hostilities in over 20 countries worldwide. Some have been abducted at gunpoint and forced to serve. Others enlist as their only means of survival in the face of extreme poverty, abuse and/or exploitation.¹⁵³

Estimates suggest that, of the approximately 300,000 children¹⁵⁴ involved in conflicts around the world, up to 40 per cent (120,000) are girls.¹⁵⁵

Risk of recruitment resulting from displacement

The risk of recruitment by armed forces or armed groups may be a factor initially prompting flight or provoking onward flight. Once displaced, this risk can increase, including as a result of

- separation of children from their families and their usual social support networks;¹⁵⁶
- proximity to conflict, to which IDPs in particular may be exposed;
- lack of economic, educational or other opportunities because of displacement;
- marginalization or discrimination, for instance, on ethnic grounds or because they have fled into an area where they are in a minority; and
- a perception that they are in allegiance with a belligerent in the conflict.

All these factors can lead to the displaced being targeted for recruitment. Sometimes refugee and IDP camps can become recruiting grounds for armed forces or armed groups.

Summary of challenges

Women and girls associated with armed forces and armed groups play various roles during conflict. They may act as porters, cooks, and "sex slaves", in addition to fighting and acting as "mine sweepers". They may be routinely subject to rape and sexual assault, as are some boys, and to child

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¹⁵¹ For the voices of other girl soldiers, see Yvonne E. Keairns, *The Voices of Girl Child Soldiers: Summary*, Quaker UN Office, Geneva, 2002.

¹⁵² From website of the Office of the Special Representative of the Secretary-General for Children and Armed Conflict at <http://www.un.org/children/conflict/english/home6.html>.

¹⁵³ Coalition to Stop the Use of Child Soldiers, *Child Soldiers Global Report 2004*, London, 2004, p. 15, quoted in Save the Children, *Protecting Children in Emergencies*, policy brief, Vol. I, No. 1, 2005. See also generally, UN Department of Public Information, "Facts and Figures on Women, Peace and Security, November 2005, at http://www.un.org/womenwatch/ianwge/taskforces/wps/WPS_Facts.pdf.

¹⁵⁴ In 1998, it was estimated that up to 300,000 children were actively involved in armed conflict in government armed forces, government militias, and in a range of armed opposition groups. This number is believed to have remained relatively constant, although there are no exact figures.

¹⁵⁵ Save the Children, *Forgotten Casualties of War: Girls in Armed Conflict*, 2005; "The Elimination of All Forms of Discrimination and Violence against the Girl Child: Report of the Secretary-General", E/CN.6/2007/2, 12 December 2006, para. 30.

¹⁵⁶ ExCom Conclusion No. 94 (LIII), 2002, on the civilian and humanitarian character of asylum, para. (g), notes, for instance, that unaccompanied and separated children are even more vulnerable to recruitment than other children.

5.3.4 Military recruitment and DDR, continued

Summary of challenges
(continued)

and/or forced marriage. They may become infected with HIV/AIDS and/or disabled as a result of injury. Many women and girls become pregnant and lack the means to support or care for their children, who in turn risk abandonment and other protection problems.

Challenges: DDR

UNHCR's involvement in disarmament, demobilization and reintegration (DDR)¹⁵⁷ relates primarily to its reintegration element. As also discussed in greater detail below, particular challenges in this context concern:

- women's and girls' access to DDR programmes, since without such access reintegration and rehabilitation is extremely difficult, and
 - stigmatization and ostracism by their communities.
-

"I remember that when the information about disarmament reached our base and the girl-soldiers asked the commander about it, he said that this disarmament had nothing to do with them; that it was only for men."
Former child soldier, Liberia¹⁵⁸

Challenge: Access to DDR

Disarmament, demobilization and reintegration (DDR) programmes frequently discriminate against women and girls and do not take their particular concerns adequately into account.

In many conflict situations — such as in Liberia, Sierra Leone and the Democratic Republic of the Congo (DRC) — commanders and adult fighters do not feel obliged to release girls to transit care facilities, holding them captive as "wives." Sometimes government DDR officials uncritically regard such girls as "dependants", rather than as children who are entitled to entry into the child DDR programme.¹⁵⁹

Despite the establishment of separate facilities for boys and girls and gender-specific programmes in certain countries, such as the DRC, in the majority of DDR situations girls remain at a disadvantage in access to demobilization programmes and in reintegration into their communities.¹⁶⁰

Challenge: Stigmatization

Many women and girl soldiers are unwilling to come forward for DDR, because of their association with rebel groups and the "taint" of having been raped. They fear being identified as "bush wives" and/or having their children labelled as "rebel babies".

Even when they can access DDR programmes, they may find that their needs and the needs of any children they have had are not addressed. Stigmatization, psychological and physical trauma, and responsibility for dependants – all common for women and children in post-conflict settings – are rarely discussed during DDR programmes. The stigma facing girls lasts longer than for boys, is more difficult to reduce and is more severe, since

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¹⁵⁷ For a more detailed explanation, see "Note by the Secretary-General on Administrative and Budgetary Aspects of the Financing of UN Peacekeeping Operations", A/C.5/59/31, 24 May 2005, and the information at <http://www.unddr.org>.

¹⁵⁸ Krijin Peters with Sophie Laws, *When Children Affected by War Go Home: Lessons learned from Liberia*, Save the Children UK, 2003, quoted in Save the Children, *Reaching All: Core Principles for Working with Children Associated with Armed Groups and Forces*, 2005.

¹⁵⁹ Amnesty International, "DRC: Children at War, Creating Hope for the Future", 11 October 2006, at <http://web.amnesty.org/library/Index/ENGAFR620172006>

¹⁶⁰ UN Department of Public Information, "Facts and Figures on Women, Peace and Security", November 2005, at http://www.un.org/womenwatch/ianwge/taskforces/wps/WPS_Facts.pdf

5.3.4 Military recruitment and DDR, continued

**Challenge:
Stigmatization**
(continued)

girls will have lost their “value” as perceived by the community, including in relation to marriage.¹⁶¹

Many women and girls formerly associated with armed forces and armed groups are ostracized by their families and communities, leaving them isolated and vulnerable to exploitation and abuse. Without viable alternatives, they may have to survive by hazardous and exploitative means, including prostitution and theft, and may risk re-recruitment. The rejection of any children born to them may be even more severe.

**International legal
standards**

International humanitarian law applicable to non-international armed conflict prohibits the recruitment of children under the age of 15 or their participation in hostilities. Article 37 of the Convention on the Rights of the Child (CRC) also establishes 15 as the minimum permissible age for military recruitment.

By contrast, the 2000 Optional Protocol to the CRC prohibits the compulsory military recruitment of children under the age of 18 and the recruitment or use in hostilities by armed groups of anyone under the age of 18. This is the standard which UNHCR should follow in its planning and interventions. It is also reflected in the 1990 African Charter on the Rights and Welfare of the Child, as it prohibits the recruitment and use of children under 18 in both international and internal armed conflicts.

More generally, as set out in the Paris Principles (see below), unlawful recruitment refers to the recruitment or use of children under the age stipulated in the international treaties applicable to the armed forces or armed group in question or under national law.

International Labour Organization Convention No. 182 on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour defines forced and compulsory recruitment of children in armed conflict as one of the worst forms of child labour. It obliges States parties to provide and apply appropriate sanctions, including penal sanctions.

The Rome Statute of the International Criminal Court (ICC) and customary international law recognize that the recruitment and use in hostilities of children under the age of 15 is a war crime. This was reaffirmed in a decision by the Special Court of Sierra Leone in May 2004. In 2006, Thomas Lubanga Dyilo, a former militia leader in the Democratic Republic of the Congo, was charged with enlisting and conscripting boys and girls under the age of 15 and using them to participate actively in hostilities.¹⁶²

The Committee on the Rights of the Child has affirmed that under-age recruitment or use of children in armed conflict constitutes a child-specific form and manifestation of persecution. Children exposed to such treatment and who flee and claim asylum may therefore come within the refugee definition contained in the 1951 Refugee Convention if their treatment is linked to one of the five grounds set out in the definition.¹⁶³

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¹⁶¹ The Paris Principles: Principles and Guidelines on Children Associated with Armed Forces or Armed Groups”, February 2007, para.7.59.

¹⁶² International Criminal Court, “Child Soldier Charges in the First International Criminal Court Case”, press release, 28 August 2006, <http://www.icc-cpi.int/press/pressreleases/174.html>.

¹⁶³ Committee on the Rights of the Child, General Comment No. 6 (2005) Treatment of unaccompanied and separated children outside their country of origin, CRC/GC/2005/6, para. 74. See also, UNHCR *Advisory Opinion Regarding the International Standards for Exclusion from Refugee Status as Applied to Child Soldiers*, letter to J. Wells Dixon Esq., 12 Sept. 2005.

5.3.4 Military recruitment and DDR, continued

Paris Principles

The 2007 “Paris Principles”¹⁶⁴ set out detailed “principles and guidelines on children associated with armed forces or armed groups”. Core elements of the Principles are the prevention of the unlawful military recruitment or use of children and of their release and reintegration.

The Principles also set out the applicable legal standards and give guidance on a wide range of issues, including prevention of unlawful recruitment or use of girls, treatment of children born to girls who have been associated with armed forces or armed groups, the importance of making the release process explicitly inclusive of the specific needs of girls, family tracing, reunification and family-based care arrangements, and the reintegration of girls.

Other guidelines

Other guidance can be found in

- UNHCR’s *Operational Guidelines on Maintaining the Civilian and Humanitarian Character of Asylum*,¹⁶⁵ which set out the legal framework underpinning this principle and provide operational guidance, including in relation to girl refugees associated with armed forces and measures to prevent the recruitment of refugees;
 - the “checklist” for gender-aware DDR produced by UNIFEM in 2007;¹⁶⁶ and
 - the UN Disarmament, Demobilization and Reintegration Resource Centre at <http://www.unddr.org/> launched by the Inter-Agency Disarmament, Demobilization and Reintegration Working Group (IDRRWG) in December 2006. This provides valuable information and guidance on integrated standards to improve DDR, including on the cross-cutting issues of women, gender and DDR; youth and DDR; children and DDR; and cross-border population movements.
-

Responsibility

States party to the 2000 Protocol are obliged to take all feasible measures to ensure members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities and to take all feasible measures to prevent armed groups recruiting children or using them in hostilities.¹⁶⁷

Since 1999, the UN Security Council has issued six resolutions on children and armed conflict.¹⁶⁸ They call on governments, parties to a conflict, and other organizations, including UN bodies, amongst other things to take wide-ranging action to prohibit the recruitment and use of child soldiers in hostilities.

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¹⁶⁴ “The Paris Principles: Principles and Guidelines on Children Associated with Armed Forces or Armed Groups”, February 2007, at http://www.diplomatie.gouv.fr/en/france-priorities_1/democracy-human-rights_1101/children-rights_3265/international-conference-on-children-involved-in-armed-forces-and-armed-groups-paris-5-6-02-07_8638.html. The Paris Principles build on the 1997 Cape Town Principles and Best Practices on the Prevention of Recruitment of Children into the Armed Forces and on Demobilization and Social Reintegration of Child Soldiers in Africa. In addition, 66 governments had by October 2007 signed a set of “Paris Commitments to protect children from unlawful recruitment or use by armed forces or armed groups”.

¹⁶⁵ UNHCR, *Operational Guidelines on Maintaining the Civilian and Humanitarian Character of Asylum*, September 2006, at <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain/opendocpdf.pdf?docid=452b9bca2>.

¹⁶⁶ UNIFEM, “Gender-aware Disarmament, Demobilization and Reintegration (DDR): A Checklist”, February 2007, at <http://www.womenwarpeace.org/issues/ddr/ddrenghish.pdf>. See also, UNIFEM, *Getting it Right, Doing it Right: Gender and Disarmament, Demobilization and Reintegration*, October 2004, at http://www.unifem.org/attachments/products/Getting_it_Right_Doing_it_Right.pdf.

¹⁶⁷ 2000 Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, Articles 1 and 4. See also generally, the Cape Town Principles and Best Practices on the Prevention of Recruitment of Children into the Armed Forces and on Demobilization and Social Reintegration of Child Soldiers in Africa, at [http://www.unicef.org/emerg/files/Cape_Town_Principles\(1\).pdf](http://www.unicef.org/emerg/files/Cape_Town_Principles(1).pdf).

¹⁶⁸ For more on the responsibilities of States and UN agencies, including UNHCR, under these resolutions see chapter 6, section 2.5.

5.3.4 Military recruitment and DDR, continued

Responsibility (continued)

Responsibility for follow-up is assigned to UN peacekeeping missions and UN country teams. Recommendations related to child soldiers include action to protect the rights of girls, including refugee and internally displaced girls. Resolution 1379 (2001) also recommends the Secretary-General establish a “naming and shaming” list of groups accused of using child soldiers. This practice has continued in subsequent special reports.

Primary responsibility for ensuring the civilian and humanitarian character of asylum lies with States, as indicted in ExCom Conclusion No. 94 (LIII) of 2002. This includes a responsibility to ensure measures are taken to prevent the recruitment of refugees, in particular children, by government armed forces or organized armed groups. UNHCR and relevant UN bodies have a responsibility to support and assist States to do this.

Responsibility: UN and DDR

UN agencies are responsible for ensuring an integrated approach to DDR. While other UN bodies such as the UN Department of Peacekeeping Operations (DPKO) are likely to have a primary role in this process, it is important that UNHCR coordinate with other UN agencies, for instance, through an integrated DDR unit or team within the UN Country Team. This enables us to ensure that issues particularly relevant to displaced and returnee persons of concern, including women and girls, are integrated into the planning of DDR programmes.

UNHCR's involvement in DDR programmes has thus far primarily related to its reintegration element of DDR. As the organization becomes more involved in situations of internal displacement and the UN seeks to ensure a more integrated response to the issue, our involvement in accordance with our mandate is all the more important.

How to respond

Suggestions for actions which UNHCR, together with local, national and international partners, should carry out in order to prevent forced military recruitment of women and girls of concern,¹⁶⁹ enable their access to DDR programmes in post-conflict situations, and promote rehabilitation include:

Response	Actions
Coordinate	<ul style="list-style-type: none"> • Coordinate with UN partners, such as UNICEF and DPKO, to support initiatives to protect girls and boys from military recruitment as well as the active inclusion of girls in DDR programmes. • Coordinate, especially in IDP and refugee camp settings, among key actors, including education and health partners and youth groups, to monitor population changes, analyse causes and coordinate responses to prevent military recruitment of persons of concern, including women and girls.

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¹⁶⁹ For further suggestions, see Save the Children, *Fighting Back: Child and Community-led Strategies to Avoid Children's Recruitment into Armed Forces and Groups in West Africa*, 2005, at http://www.savethechildren.org.uk/en/docs/fighting_back.pdf. The report identifies seven types of approaches involving: identifying and moving to a place of greater safety; avoiding separation or providing alternative care; changing attitudes to stop children wanting to join the fighters; reducing poverty through improving household livelihoods; providing alternatives for children through school and skills training; welcoming back children formerly associated with the fighting forces; and creating peace and reducing the demand for child soldiers.

5.3.4 Military recruitment and DDR, continued

How to respond (continued)

Response	Actions
Coordinate, contd.	<ul style="list-style-type: none"> • Acknowledging other actors' lead role in DDR programmes, including especially that of peacekeeping forces, and that UNHCR's role primarily relates to the reintegration element of DDR, advocate with inter-agency and other partners to promote an inclusive, community-based approach to DDR. This is so as to ensure that <ul style="list-style-type: none"> – the programme is well-integrated in displaced and returnee communities, – all members of the community affected by the conflict participate, – emotional and psycho-social support networks are established, – women and girls are supported to return to the community and are not ostracized, and – the community is empowered to protect its children.
Assess, analyse and design	<ul style="list-style-type: none"> • Promote the participation of women and girls of concern formerly associated with armed forces and armed groups in planning DDR programmes to ensure their experiences and recommendations are taken into account without affecting their security. • Work with partners to ensure that programmes for child soldiers pay special attention to girl victims of sexual exploitation and girl heads of household and that they address the particular concerns of young mothers and their children.
Intervene to protect	<ul style="list-style-type: none"> • Where girls and boys of concern have been or are being recruited, advocate to secure their release from the control of armed forces and groups. Such efforts do not need to form part of a formal DDR process but should be pursued at all times. • Support the prompt tracing and reunification of unaccompanied and separated girls and boys with their families to reduce their vulnerability to recruitment, ensuring that suitable care arrangements, including with relatives or foster families, are in place in the interim. • In situations of displacement and return, ensure women and girls of concern identified as combatants are not interned together with men and boys.¹⁷⁰ • Promote programmes to assure greater autonomy for girl soldiers and their children, including by supporting temporary reception centres for displaced, pregnant former girl soldiers and girl mothers, where they can receive medical and psychosocial support and take part in educational and livelihood programmes. • Ensure former child soldiers of concern receive medical assistance, especially related to sexual and reproductive health and sexually transmitted infections (STIs), including HIV/AIDS, and psycho-social follow-up.¹⁷¹
Strengthen national capacity	<ul style="list-style-type: none"> • Work immediately with the national authorities to denounce the military recruitment of children, including girls. • Promote the release of girls and boys from armed forces and armed groups at the first available opportunity, independently of a formal DDR process. • Work with partners to promote the enrolment of former child soldiers in schools and training centres, so that they can catch up on lost schooling and increase their self-reliance, and to ensure that such sites are protected from attack and recruitment.

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¹⁷⁰ UNHCR, "Operational Guidelines on Maintaining the Civilian and Humanitarian Character of Asylum, September 2006, p. 38.

¹⁷¹ Save the Children, *Forgotten Casualties of War: Girls in Armed Conflict*, 2005.

5.3.4 Military recruitment and DDR, continued

How to respond (continued)

Response	Actions
Strengthen national capacity, contd.	<ul style="list-style-type: none"> • Work with the asylum authorities in countries of asylum to raise their awareness of the fact that the recruitment of children by armed forces or armed groups and their participation in armed conflict are child-specific forms and manifestations of persecution which may justify the granting of refugee status if such acts are related to one of the 1951 Refugee Convention grounds.¹⁷²
Strengthen community capacity to support solutions	<ul style="list-style-type: none"> • Involve members of displaced and returnee communities of all ages in dialogue to raise their awareness of the dangers of forced recruitment of girls and boys into armed groups and forces, as well as of the legal standards on the age of recruitment, and penalties for violating them. • Raise awareness among girls of the negative consequences of being associated with armed groups in the short and longer term. • Work with teachers to incorporate information on children's rights and the prevention of military recruitment into school curricula. • Reinforce educational opportunities and recreational activities for girls and boys, especially adolescents, and encourage the formation of youth groups to keep adolescents productively occupied and reduce the risk of recruitment by armed groups. • In displaced and returnee situations, support solutions which focus on family and community reintegration through awareness-raising sessions about the situation of child soldiers and the importance of accepting former child soldiers back into their communities so that they can be rehabilitated and establish normal lives again. • Support peacebuilding and consolidation activities in communities which include demobilized former child/women combatants and include local residents in these activities. • Help establish and maintain livelihoods and access to education, particularly for displaced or returnee former female soldiers who are single and/or girl mothers who are most at risk of abuse, exploitation, and rejection. • Promote other measures, including family reunification and recreational activities, both as preventive measures and to help rehabilitate girls and boys who have been demobilized. • Support cultural and traditional activities to promote forgiveness, healing and reconciliation in displaced and returnee communities, as these can be especially useful in enabling former girl and boy soldiers to be reunited with and accepted once again by their families and communities. Where this has been achieved, encourage such children to provide support to their peers. • In the post conflict and reintegration phase, recognising the impact of armed conflict and displacement and the risks of increased domestic violence, especially in families of former combatants, promote counselling and other mechanisms to enable women and girls in displaced or returnee communities to report incidents, seek and receive assistance and secure redress.¹⁷³

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¹⁷² Committee on the Rights of the Child, General Comment No. 6 (2005) Treatment of unaccompanied and separated children outside their country of origin, CRC/GC/2005/6, para. 74.

¹⁷³ UNHCR, "Operational Guidelines on Maintaining the Civilian and Humanitarian Character of Asylum, September 2006, p. 38.

5.3.4 Military recruitment and DDR, continued

How to respond (continued)

Response	Actions
Monitor, report and evaluate	<ul style="list-style-type: none">• Monitor school attendance to ensure that there is no military recruitment of pupils.• Promote the inclusion of age and gender disaggregated assessment in monitoring of DDR initiatives to ensure women and girls are not excluded from the process and promote reform of such processes to strengthen their inclusion if they are.• Evaluate the impact of DDR programme with girls of concern.• Monitor the situation of displaced or returnee women and girls formerly associated with armed groups through family and community-based initiatives to ensure their continued acceptance by their families and communities, their access to education and livelihood initiatives and to identify and respond to any risks arising so that protection problems including that of re-recruitment are minimized.• Contribute to the work of the monitoring and reporting mechanism established under Security Council resolution 1612 (see chapter 6, section 2.4).

Field practice: Sierra Leone DDR initiatives

Introduction The UNHCR office in Sierra Leone has been involved in a range of initiatives concerning DDR in relation both to the Sierra Leone and Liberian civil wars as outlined below.¹⁷⁴

Rights promoted Among the rights promoted by these initiatives were the right to

- life, liberty and security of the person;
- personal integrity;
- freedom from torture, cruel, inhuman or degrading treatment or punishment;
- freedom of children from military recruitment and from participation in hostilities;
- respect for the child's best interests;
- freedom from child labour; and
- family unity.

Sierra Leone civil war: cross-border combatants With regard to cross-border combatants, UNHCR lobbied during 2002–02 for the inclusion in the DDR programme of:

- male and female Liberians in Sierra Leone who had fought in the war and were approaching UNHCR to seek refugee status; and
- male and female Sierra Leonean returnees with an ex-combatant background who wished to go through DDR before returning to their communities as part of reconciliation initiatives.

DDR criteria were, however, already finalized and did not include a cross border dimension. This highlights the importance of early UNHCR advocacy on behalf of persons of concern in the planning of DDR. Since Liberian asylum-seekers lacked DDR options, some ended up being re-recruited into the next Liberian war, while others continued to seek refugee status.

Sierra Leonean returnees with an ex-combatant background were included in UNHCR's returnee monitoring. UNHCR worked with UNICEF and ICRC at inter-agency level to support communities in reconciliation ceremonies for the return of Sierra Leonean children associated with fighting forces, including girls who had been sexually exploited.

Sierra Leone civil war: Guinean cross-border abductees During missions in 2001–02 to areas controlled by Revolutionary United Front rebels, UNHCR identified Guinean civilians who had been abducted by the rebels during cross border attacks and were being held captive for slave labour and sexual exploitation. On humanitarian grounds, UNHCR negotiated the release of 120 abductees (men, women, boys and girls), relocated them to government-controlled areas, and helped them with voluntary repatriation. Young girls who had been sexually exploited and their families received counselling as part of the voluntary repatriation process.

About 20 girls who had been taken as forced wives and had become pregnant or had babies decided not to repatriate at that time. Those who wished were helped to re-establish links with their families in Guinea.

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¹⁷⁴ See also generally, Office of the Special Rapporteur for Children and Armed Conflict, "Incorporation of best practices in disarmament, demobilization and reintegration programmes for children", at <http://www.un.org/children/conflict/english/ddrforchildren86.html>.

Field practice: Sierra Leone DDR initiatives, continued

Sierra Leone civil war: Guinean cross-border abductees (continued)

UNHCR advocated for the release of both national and cross border abductees, including forced wives, for them to be included in initiatives to sensitize combatants as part of DDR programmes, and for such households to benefit from reintegration activities so that the girls could be empowered and better able to make decisions on their future.

Adult combatants from Liberian civil war

Liberian combatants plus some nationals of other West African countries (including recruited refugees), who had been fighting in the Liberian war, crossed into Sierra Leone in 2001–03. With UNHCR's active support (through advice, advocacy, some funding until European Union funds were received, non-food items, participation in an Internment Taskforce), the government set up a system to separate combatants from refugee influxes. The former were then held in Mapeh and Mafanta internment camps away from the border and repatriated at the end of the war. Three female combatants were among the 435 internees. They benefited from:

- basic humanitarian assistance and separate accommodation appropriate for females (in female prison officers' quarters in Mapeh internment camp), with freedom to mix with the male internee population;
- vocational skills training as a preliminary step towards DDR, designed to give internees options for a civilian future;
- family visits from civilian family members living in refugee camps; and
- voluntary repatriation in coordination with that of refugee family members and DDR benefits upon return to Liberia. (Learning its lessons from the DDR programme for the Sierra Leone civil war, UNHCR successfully advocated for the Liberian DDR programme to have a cross border dimension.)

Two women with long-term partners among the male internees had babies and received medical care at a local clinic. They were given the option of relocating to refugee camps, but they regarded themselves as professional soldiers and preferred to remain within the command structure at the internment camp until they could be repatriated a few months later. (If their children had been older, UNHCR would not have considered it appropriate to accommodate them in the internment camp.)

Liberian civil war: children associated with fighting forces

In the context of the Liberian civil war, 168 Liberian children associated with fighting forces, including a handful of girls who had been either active combatants or had served in support roles, were treated as *prima facie* refugees and accommodated in refugee camps. This was because their recruitment was regarded as a serious violation of child rights amounting to persecution.

They benefited from:

- identification and separation from adult combatants immediately upon entry to the country of asylum;
 - accommodation in refugee camps in a civilian environment conducive to their rehabilitation and reintegration in their communities and to the prevention of re-recruitment;
 - sensitization of refugee communities through awareness raising programmes;
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Field practice: Sierra Leone DDR initiatives, continued

Liberian civil war: children associated with fighting forces (continued)

- integration within the population of separated children to avoid being stigmatized, with provision of community-based interim care, tracing and family reunification; education and vocational skills training programmes; counselling and psychosocial activities; and
 - voluntary repatriation in safety and dignity.
-

Liberian civil war: dependants of interned combatants

Civilian family members of interned combatants were recognized as *prima facie* refugees, like the rest of the refugee population, and were accommodated in refugee camps. This meant some families were split and female-headed households created. UNHCR therefore monitored the situation of combatants' family members closely to ensure they did not suffer retaliation by other refugees. ICRC in collaboration with UNHCR organized family visits of refugee family members to the internment camps to support the maintenance of family unity. UNHCR organized their voluntary repatriation in coordination with the return of internees.

Among the girls who had been abducted by combatants, 44 young female dependants (some of whom were accommodated in internment camps) were cared for as separated children. Education, vocational skills training, family tracing and counselling, were used to empower them to make their own decisions about their future. Some of the girls severed relations with their former abductors; others maintained their emotional attachment. Girl mothers received special care to help them bring up their babies.

Other measures

Among other measures, UNHCR and the UN Mission collaborated in UNHCR-led workshops to raise awareness on issues such as conscription of children and rights of children, in particular girls. Refugee legislation was also passed in 2007, containing measures including the provision of refugee status for children entering Sierra Leone from a conflict situation.

5.4 Administration of justice

Overview

“Regarding the abashingantya [the traditional justice mechanism in Burundi], it’s a good thing; but even if it’s a good thing, it has its flaws. Those flaws in Burundian culture mean that the man in the family, he is supposed to be the head. And so if a domestic situation arises when a woman has domestic issues and then they go to the traditional court, the woman is supposed to oppose the man. But we know this is just not realistic. The woman is not supposed to have any word on anything. So half of the fight is already lost.”

Beatrice, Burundian refugee woman in Tanzania¹⁷⁵

Introduction

In some societies, the concept of justice is symbolized by a woman, blindfolded, with a sword and scales, representing the fair and equal administration of the law. Ironically, in almost all societies, and at the international level, women are vastly under-represented in the bodies that make or apply laws.



The principles of equality before the law and equal access to courts are firmly embedded in international law. Yet women and men are often treated differently under national and traditional laws and women may not be accorded the same rights as men. Women and girls may be less informed about their rights, because they lack education and/or literacy skills, or because of cultural biases against women and girls being involved in legal matters or other aspects of public life.

Women and girls of concern face numerous obstacles accessing justice whether through national or sometimes traditional judicial processes / Displaced Dafur women in Sudan sit listening and waiting / © Norwegian Refugee Council / R. Høvring / June 2006

Purpose

The purpose of this section is to

- illustrate some of the challenges women and girls face in obtaining access to the formal national judicial systems;
- illustrate some of the challenges they face in obtaining justice under traditional systems;
- illustrate some of the challenges faced in ensuring accountability for human rights violations in post-conflict and return situations;
- identify the laws and mechanisms for the administration of justice that apply in situations of displacement; and
- suggest actions UNHCR and partners should carry out to promote adherence to the principle of equality before the law and equal access to judicial systems.

In this section

This section covers the following topics.

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¹⁷⁵ “Within the Limit: Refugees in Tanzania”, UNHCR film.

5.4.1 Administration of justice during displacement

“For example, the girl says she was raped, but how do we know for sure? If there are no scratches, it is difficult to decide if it is a rape. If she really struggled, there should be a scratch. If there is no scratch or injury, then there was no completed rape.”

Traditional court judge in refugee camp, Thailand¹⁷⁶

“Opinion on how to deal with gender bias in non-formal justice systems varies. There are some who view gender bias as an incorrigible trait and call for disengagement with informal justice systems, and those who take the pragmatic view that the option of reform must be kept open because these systems will not go away.”

Dr Celestine Nyamu-Musembi, “Review of Experience in Engaging with ‘Non-State’ Justice Systems in East Africa”¹⁷⁷

Introduction

Women and girls of concern face numerous challenges and obstacles in accessing national and, in some cases, traditional judicial procedures. They often face bias and discrimination against them by police and adjudicators.

Not only does displacement place women and girls at greater risk of violations of their rights. At the same time, it often exacerbates the inequalities and discrimination that they face in relation to the administration of justice.

As a result they often have little or no redress for the violations they have suffered. The impunity that is so often part of displacement leaves women and girls at increased risk of violence and rights violations.

Challenges during asylum

In many asylum situations, particularly in camp settings, refugee life is governed by a complex system of justice consisting of multiple sources of law and other rules, and a variety of mechanisms, both formal and informal, to enforce those laws and rules.

Understanding the content of these laws and mechanisms and working with both informal and formal legal systems to promote respect for the rights of women and girls, is an important aspect of our protection work. These laws and mechanisms include, but are not limited to those listed in the table below:

Laws and mechanisms	Including	Enforced by
Host-country domestic laws and regulations	Formal State law, including: <ul style="list-style-type: none"> • civil and criminal law; • specific laws regarding refugees and non-nationals; and • government directives, rules, and regulations specific to refugees and refugee camps.¹⁷⁸ 	Formal State legal system of the host country, which includes: <ul style="list-style-type: none"> • the police, the judiciary, including courts of law, administrative authorities; and • in some cases, quasi-judicial structures, such as chief district officers and government camp managers.

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¹⁷⁶ “The Silence that is Everyone’s Secret”, Film produced by UNHCR Thailand and refugee women’s groups in Thailand.

¹⁷⁷ Dr Celestine Nyamu-Musembi, “Review of Experience in Engaging with “Non-State” Justice Systems in East Africa”, Institute of Development Studies, Sussex University, UK, February 2003, at <http://www.ids.ac.uk/ids/law/pdfs/eanyamu.pdf>.

¹⁷⁸ Host countries also often have customary traditional rules, which may be applied to refugees.

5.4.1 Administration of justice during displacement, continued

Laws and mechanisms	Including	Enforced by
Refugees' customary or traditional rules	Unwritten rules regulating behaviour and providing methods for resolving disputes within and among groups of refugees. These traditions and codes of behaviours can be governed by religious, cultural, ethnic, national, and tribal practices or other values and customs.	Traditional or customary justice mechanisms consisting of: <ul style="list-style-type: none"> • persons from elected refugee bodies or religious structures; and/or • elders or tribal, clan, village, zone or camp leaders.
Refugee camp rules and by-laws	Written rules developed by, or written in conjunction with, the refugee population to preserve harmony and law and order in the camp. They may reflect, to some extent, traditional beliefs and customs, but they may also contain aspects introduced by UNHCR, government or law enforcement counterparts or other actors.	Refugee camp management systems that may include: <ul style="list-style-type: none"> • government camp managers; • male and female leaders in the refugee communities; and • sometimes UNHCR.

Challenges during internal displacement

In internal displacement situations, both formal and informal laws and mechanisms may also apply. Conflict and violence may, however, mean that the laws of the country and the formal State law enforcement and judicial systems may not be functioning. In such cases, customary or traditional rules and mechanisms may be the only sources of justice.

National laws and/or customary and traditional rules may discriminate against women and girls. Women are often under-represented as lawyers, law enforcement and judicial officers in formal justice systems. Their access to such systems is often hampered by insensitivity and gender bias on the part of such officers. Women may not be permitted to sit on decision-making bodies of traditional justice mechanisms. Consequently, ensuring respect for women's and girls' entitlement to equal treatment before the law is a complex and challenging task in situations of displacement.

International legal standards and guidelines

Under international law, everyone is equal before the courts and tribunals, is entitled to a fair and public hearing by a competent, independent and impartial tribunal, and has the right to recognition everywhere as a person before the law.¹⁷⁹ Everyone also has the right to an effective remedy, including adequate reparation for violations of human rights. The right to liberty and security guarantees protection against arbitrary arrest and detention.¹⁸⁰

The Human Rights Committee has specifically recognized that "the right of access to courts and tribunals and equality before them is not limited to citizens of States parties, but must also be available to all individuals, regardless of nationality or statelessness, or whatever their status, whether asylum seekers, refugees, migrant workers, unaccompanied children or other persons".¹⁸¹

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¹⁷⁹ ICCPR, Articles 14 and 16.

¹⁸⁰ This right is implicit in the obligation to respect, protect and fulfil human rights and is a recognized general principle of law.

¹⁸¹ Human Rights Committee, "General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial", 23 August 2007, para. 9.

5.4.1 Administration of justice during displacement, continued

International legal standards and guidelines (continued)

Women are equal to men before the law and should be treated equally in all stages of procedures in courts and tribunals.¹⁸² Every child capable of forming his or her own views has the right to express them, including in judicial and administrative proceedings affecting him or her.¹⁸³ These rights are to be guaranteed to everyone under the jurisdiction of the State regardless of nationality.

Note: For more detail, regarding developments in international criminal law including as regards rape, sexual slavery, enforced prostitution, forced pregnancy, and enforced sterilization as war crimes and crimes against humanity, see Chapter 6, section 1.5.

Responsibility: States

The administration of justice is a State responsibility. States are obliged to

- accord women equality with men before the law;
- treat women equally in all stages of procedures in courts and tribunals;¹⁸⁴
- provide the child with an opportunity to be heard in any judicial and administrative proceedings affecting him or her;¹⁸⁵
- provide refugees and stateless persons with free access to courts on the same basis as nationals.¹⁸⁶

UN Security Council Resolution 1325 “emphasizes the responsibility of all States to put an end to impunity and to prosecute those responsible for genocide, crimes against humanity, and war crimes, including those relating to sexual and other violence against women and girls, and in this regard stresses the need to exclude these crimes, where feasible, from amnesty provisions.”

It also calls on all actors involved, when negotiating and implementing peace agreements, to adopt a gender perspective, including “measures that ensure the protection of and respect for human rights of women and girls, particularly as they relate to the constitution, the electoral system, the police, and the judiciary.”

Responsibility: UNHCR

If UNHCR is to be able to ensure that women and girls can secure justice and redress for violations of their rights, staff have a responsibility:

- to work to understand the formal and informal justice systems that apply;
 - to work with States to support them so they can comply with their obligations under international law to access to justice for women and girls;
 - to promote the equal rights of women and girls, non-discrimination against women and girls, and the best interests of children before both formal and informal justice systems; and
 - not to endorse decisions of information justice systems that violate international legal principles.
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¹⁸² CEDAW, Article 15.

¹⁸³ CRC, Article 12. See also Committee on the Rights of the Child, General Comment, No. 10 (2007), 2007, children’s rights in juvenile justice.

¹⁸⁴ CEDAW, Article 15.

¹⁸⁵ CRC, Article 12(2). For further details concerning children’s rights in juvenile justice, see CRC Committee, General Comment No. 10 (2007) on this issue, 2 February 2007.

¹⁸⁶ 1951 Refugee Convention, Article 16; 1954 Convention relating to the Status of Stateless Persons, Article 16.

5.4.1 Administration of justice during displacement, continued

**Responsibility:
Refugees and
stateless persons**

Refugees are obliged under the 1951 Refugee Convention to comply with the laws and regulations of the host country, as are stateless persons under the 1954 Convention relating to the Status of Stateless Persons.

How to respond

For suggested actions on how to respond to ensure women's and girls' equal access to formal and informal justice systems and in transitional justice situations, see this chapter, sections 4.2 and 4.3 and 4.4 respectively which follow.

5.4.2 Formal national judicial systems

“On 14 March 2005, a woman was raped in Western Darfur and lodged a complaint with the police. Other women had witnessed the incident. As the woman was married and the mother of six children, the police said that the results of the medical evidence did not support the allegation of rape and the case would be dismissed for insufficient evidence. No further steps were taken by the police to investigate the case. ...

In February 2005, in Southern Darfur, two female minors, aged 12 and 13, were raped by pro-government militia. They reported the incident to their families, who reported to the sheikh. The sheikh went to lodge a complaint at the police station and he was arrested for spreading false information. Human rights officers intervened and he was released on bail after spending two weeks in detention. Following his arrest the two minors refused to file a complaint for fear of further reprisals from the police, despite having a medical report which corroborated their testimony.”

OHCHR, “Access to Justice for Victims of Sexual Violence, Report of the United Nations High Commissioner for Human Rights”¹⁸⁷

Introduction

The complexities involved in ensuring that women and girls have access to equality before the law and legal remedies are clearly illustrated in relation to our efforts to address sexual and gender-based violence (SGBV) – arguably the most widespread protection problem faced by women during displacement.¹⁸⁸ Despite the general prohibition against SGBV under national criminal laws, perpetrators are usually not penalized where such crimes are committed against refugee and internally displaced women and girls (assuming, in situations of internal displacement, that formal judicial systems are still functioning.)

Summary of challenges

There are many reasons why women are not able to access formal national judicial systems, including:

- lack of support from police, camp and judicial officials;
- women’s lack of knowledge about, or lack of representation before, legal systems;
- community pressure; and
- general attitudes to SGBV.

Each of these challenges is discussed further below.

Challenge: Police, camp and judicial officials

Police, camp and judicial officials often do not take SGBV, particularly domestic violence, seriously or may, for instance, seek to prosecute a victim/survivor of rape for adultery.

Police and government security forces may also, in some cases, be the perpetrators of the violence. Judicial officials may also hold discriminatory views about women and girls and may, for instance, instruct them to return home in cases of domestic violence.

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¹⁸⁷ OHCHR, “Access to Justice for Victims of Sexual Violence, Report of the United Nations High Commissioner for Human Rights”, 29 July 2005.

¹⁸⁸ See Rosa da Costa, “The Administration of Justice in Refugee Camps: A Study of Practice”, UNHCR Legal and Protection Policy Research Series, PPLA/2006/01, March 2006. This study indicates that the greatest percentage of crimes and disputes fell under the category of SGBV crimes. Domestic violence was specifically reported as a widespread problem in all the countries surveyed and as the most common form of SGBV reported.

5.4.2 Formal national judicial systems, continued

**Challenge:
Lack of knowledge
and representation**

Women and girls may lack knowledge of, or familiarity with, the legal system, particularly in countries of asylum. They may lack legal representation and may not have the means to travel the distance to the courts or the money to pay for court-related costs. They may not be able to take time off from work or to leave their families. They may be intimidated or disillusioned by the justice system.

Gender bias within the judicial process – the very process that regulates how equality is achieved in society – prevents women from receiving fair treatment as witnesses, as complainants and in investigations. Women are often blamed for the crimes against them and risk retribution for seeking justice.¹⁸⁹ Complicated procedural and evidentiary laws may also discourage women from starting proceedings for which there is little chance of success. In some countries, woman’s “word” is not considered “equal” to that of a man in terms of evidence.

In addition, in refugee situations, national prosecutors are often unwilling to prosecute crimes against refugees, particularly those in remote camps, as the judicial system is already overloaded. Often justice delayed means justice denied.

**Challenge:
Community
pressure**

One of the greatest barriers facing women in accessing formal judicial systems is community pressure, combined with fear of social ostracism and/or physical reprisal. Women and girls often do not want to disclose the violations they suffer because of feelings of shame, helplessness, shock, lack of confidence in the system and/or out of fear that, by doing so, they may be ostracized by their communities.

Communities may also put extreme pressure on women and parents of children who have been subject to SGBV to settle cases “the family way” under traditional justice mechanisms and may threaten them if they proceed under national legal systems. In particular, husbands, fathers and the families of perpetrators may threaten them. Women and girls may be at risk of ostracism and violence by members of their communities even when perpetrators are convicted under national legal systems.

**Challenge:
Attitudes to SGBV**

General attitudes to SGBV, whether within the community, among law enforcements, officials, some staff and partners, can also hinder women’s and girls’ access to national judicial systems. They may view SGBV as a private matter which should not be investigated through judicial channels. This is especially so, when domestic violence, including marital rape, exploitation and abuse of children, is involved.

**International legal
standards,
guidelines and
responsibilities**

For further information on international legal standards and guidelines, on the responsibilities of States, UNHCR, refugees and stateless persons, see section 4.1 of this chapter above.

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¹⁸⁹ E. Johnson-Sirleaf and E. Rehn, *Women, War and Peace: The Independent Experts’ Assessment on the Impact of Armed Conflict on Women and Women’s Role in Peace-building*, Progress of the World’s Women, 2002, p. 94.

5.4.2 Formal national judicial systems, continued

How to respond

Suggestions for actions which UNHCR, together with local, national and international partners, should carry out in order to promote the principle of equality before the law and equal access to judicial systems include:

Response	Actions
Coordinate	<ul style="list-style-type: none"> • Work with lawyers' and judges' associations, human rights groups, and women's groups to analyse the extent to which national legislation complies with the country's international commitments in relation to women's and girls' equality with men and boys before the law and equal access to judicial systems.¹⁹⁰ • Agree on gaps and a team approach addressing them with a view to promoting gender equality and ensuring women and girls of concern are better able to access national judicial systems to secure their rights.
Assess, analyse and design	<ul style="list-style-type: none"> • Assess and analyse with women and girls the challenges they face in accessing justice. • Discuss these with national and local authorities and community leaders and agree on areas for action. • Design and implement initiatives to help ensure that women and girls have access to justice, including for example mobile courts, and to legal assistance, when possible provided by female lawyers. • Use the CRC Committee's General Comment No. 10 (2007) on children's rights in juvenile justice to identify applicable standards, the responsibilities of states with regard e.g. to the minimum age for criminal responsibility, and applicable guarantees to a fair trial and other rights.¹⁹¹
Intervene to protect	<ul style="list-style-type: none"> • Advise, accompany, and support women and girls who wish to bring their cases before judicial systems, whether formal or informal, and promote initiatives to assist them, including by and through women's legal clinics, local women's associations and universities.¹⁹² • Ensure legal aid support for all SGBV cases.
Strengthen national capacity	<ul style="list-style-type: none"> • Support efforts by national and local groups, including lawyers' and judges' associations, human rights groups, and women's groups, to strengthen the legal and judicial system so that it can protect the rights of women and girls of concern. • Work with the authorities to ensure that relevant national laws adhere to international standards as regards women's and girls' equal access to justice and a fair trial, providing technical advice where needed. • Support government authorities in their efforts to carry out best interests determinations for displaced children whose rights have been violated, in line with international legal principles, particularly those set out in the CRC. • Provide materials and training to personnel in the formal legal system (police, prosecutors, judges, district officials, police officers) about the rights of women and girls regarding the administration of justice. Work with these individuals to provide training on women's and girls' rights to various groups within the displaced population, including those who are in decision-making positions in traditional justice mechanisms. • Provide training to these individuals on how to work with children and ensure that courts are adapted to be more child-friendly and respect their rights.

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¹⁹⁰ In this respect, the Human Rights Committee's "General Comment No. 32 (2007) on the right to equality before courts and tribunal and to a fair trial", 23 August 2007, sets out relevant standards. UNDP, "Access to Justice: Practice Note", 2004, at http://www.undp.org/governance/docs/Justice_PN_English.pdf provides a checklist of issues for assessment.

¹⁹¹ CRC Committee, General Comment No. 10 (2007) on children's rights in juvenile justice, 2 February 2007.

¹⁹² See ExCom Conclusion No. 105 (LVII) of 2006, para. (o)(ii).

5.4.2 Formal national judicial systems, continued

How to respond (continued)

Response	Actions
Strengthen national capacity, contd.	<ul style="list-style-type: none"> • Promote equal numbers of male and female police officers and judges, or at least the presence of some female police officers and judges, in refugee and internal displacement settings. • In situations where national and local authorities in a country of asylum are not involved in the administration of justice for refugees, work with them to encourage the application of national laws to refugees, and facilitate refugee access to courts. • Promote the establishment of mobile courts with male and female judges in remote refugee camps, where access to national courts in towns is impracticable to reduce impunity, including for attacks against women and girls, and to secure justice, including by establishing witness-protection schemes;¹⁹³ • Encourage gender balance in the staffing of the country's rule of law institutions. • Support female-to-female police services and privacy to facilitate opportunities for women and girls to prosecute perpetrators.
Strengthen community capacity to support solutions	<ul style="list-style-type: none"> • Provide legal literacy and rights-awareness training to all members of displaced and returnee communities, including training on the rights of women and children. • In asylum situations, this training should also include information about the duties and responsibilities, as well as the rights, of refugees under the laws of the host country. • Work with the community and local authorities to remove obstacles women and girls face in talking their cases to court and encourage the use of the national judicial system to safeguard the rights of women and girls. • Work with men and boys to improve support for women and girls who take cases to court and to ensure their protection in the court.
Monitor, report and evaluate	<ul style="list-style-type: none"> • Monitor court proceedings involving refugee and internally displaced women to see the extent to which the rights of women and girls, and the country's obligations under international law, are respected, both substantively and procedurally. • Work with lawyers, prosecutors, and members of the judiciary to address any problems, such as lack of confidentiality and procedures that are not age- and gender-sensitive, which are crucial for cases involving children.

Field practice: Kenya

In Dadaab, Kenya, which is located in a remote part of the country, a mobile court was established to provide refugees in the camps with access to Kenya's judicial system and to provide an alternative to the traditional justice system. The court, the proceedings of which are monitored by UNHCR, is open to the public, unless there are cases involving issues of confidentiality or children. It serves as a venue for public education on the laws and procedures of the host country and on women's and children's rights. The presence of the mobile court has resulted in a reduction in crime, including SGBV, since perpetrators are punished and people are aware that there is no longer impunity.¹⁹⁴

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¹⁹³ See ExCom Conclusion No. 105 (LVII) of 2006, para. (o)(ii).

¹⁹⁴ For further information, see UNHCR, *Operational Protection in Camps and Settlements: A Reference Guide of Good Practices in the Protection of Refugees and Other Persons of Concern*, Solutions and Operations Support Section, Division of International Protection Services, 2006, section A11, at <http://www.unhcr.org/pub/PUBL/448d6c122.pdf>.

5.4.2 Formal national judicial systems, continued

Field practice: Ecuador	In Sucumbios province, Ecuador, UNHCR provides logistical and technical support to a UNIFEM/UNDP project that seeks to guarantee access to justice for victims of domestic violence, including refugee women. The project carries out awareness raising and training for administrators of justice and civil society. It helps ensure that refugee women can enjoy the benefits of national laws which are already in place by adequately informing administrators of justice of the women's rights and combating the frequent misconception that certain laws only apply to nationals. This is especially important in remote areas where judicial administrators lack adequate training on how to implement legislation protecting women in Ecuador, much less refugee women.
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5.4.3 Traditional justice mechanisms

"My husband drinks a lot. He promises he won't drink but it only lasts two days. He starts drinking, quarreling, fighting with me... I have the support of my children and the neighbours support me. That becomes another reason for me to get beaten... I've been reporting these problems for the last five months, even though it's been a problem for six years.

I have given application to the Refugee Coordination Unit ¹⁹⁵ because I can't tolerate it anymore. I asked for separation, to get my own rations, I've been tortured too much. In that case the RCU said, 'Okay, fine, let's see if he will improve. Let him come here and sign. Let's experiment' ... three times they gave him the chance to improve – the first time they gave him one month, the second time fifteen days, the third time seven days. Afterwards they passed the case on to the camp secretary... The sub-sector head encourages me to wait and see. He says I should cook food and give it to my husband..."

Nar Maya P. 37-year-old refugee woman in Nepal¹⁹⁶

Introduction

Given the inaccessibility of formal justice systems, cases such as Nar Maya's (see box above) often end up being decided under traditional justice mechanisms. While such mechanisms have the advantage of accessibility, efficacy, and cultural acceptance, their decisions often maintain unequal gender power relations and result in further violations of women's and girls' rights. To use the words of Beatrice, the Burundian refugee woman in Tanzania quoted in the introduction to this section, in many cultures "the woman is not supposed to have any word on anything. So half of the fight is already lost."

Summary of challenges

In recent years, UNHCR staff have become increasingly involved in the activities of traditional justice mechanisms. Often, UNHCR, the government of the host country, and the refugee community will agree that serious crimes, including rape, will go through the formal national legal system, while they may agree that "minor offences" can be decided by the traditional justice mechanism. While this type of arrangement may be the only viable option, it can still result in violations of the rights of women and girls.

Some of the major challenges women and girls face in obtaining justice through traditional justice mechanisms include:

- decisions in SGBV cases can result in further violence;
- other decisions may also result in SGBV and other rights violations;
- women and girls may be charged with, and sentenced for, "offences" that are not crimes under national or international law;
- domestic violence is viewed as a private matter or characterized as a minor crime;¹⁹⁷
- traditional justice systems are largely run by male leaders;
- women's and girl's rights are unlikely to be upheld; and
- they will not have access to a fair trial.

Note: The first three of these challenges are discussed further below.

Continued on next page

¹⁹⁵ The Refugee Coordination Unit is the Nepalese government authority that implements government policy in the camp.

¹⁹⁶ Human Rights Watch, "Trapped by Inequality: Bhutanese Refugee Women in Nepal", September 2003.

¹⁹⁷ For more on attitudes to domestic violence see under section 3.1.1 above.

5.4.3 Traditional justice mechanisms, continued

**Challenge:
SGBV decisions
can result in further
violence**

Decisions by traditional justice mechanisms in SGBV cases, including cases of domestic violence, often result in further violence against women and girls and violate international legal principles, including those of the equality of women and men and the best interests of the child. Since domestic violence is often not taken seriously, women can be forced to remain in abusive marriages for years on end.

Some traditional justice mechanisms “solve” rape cases by forcing the survivor to marry the perpetrator. The rapist will be absolved of all wrongdoing upon marriage, but if the woman refuses to marry she may be found guilty of adultery and sanctioned accordingly. In other cases, the survivor may not be required to marry the perpetrator, but the only sanction is a small fine paid to the survivor’s family and the perpetrator is free to roam the camps, leaving the survivor feeling insecure and at risk of further attack. This is frequently the solution proposed by traditional justice mechanisms to rape and other forms of SGBV against girls.

**Challenge:
Other decisions
can result in rights
violations**

Decisions made by traditional justice mechanisms in relation to non-SGBV disputes can result in SGBV against women and girls and a violation of their rights. In some cases, for example, young girls are forced into marriage in order to “pay back” another family for a debt or commitment made by the girl’s family or following an abduction.

In addition, traditional justice mechanisms often decide on cases involving family relations, such as separation, divorce, and custody, may deny women their right to equality in family relations, and rule against the best interests of the child.

**Challenge:
Women wrongly
accused**

Under traditional justice mechanisms, women and girls may be accused of “offences” that are not, in fact, offences under national or international law, such as witchcraft,¹⁹⁸ eloping, non-performance of marital and family duties, and opposing other social norms, and customs, which violate their rights.

**International legal
standards,
guidelines and
responsibilities**

For further information on international legal standards and guidelines, on the responsibilities of States, UNHCR, refugees and stateless persons, see section 4.1 of this chapter above.

**Principles for
response**

UNHCR can help to improve fairness, accountability, gender balance, and adherence to international legal principles in these systems. We also have an important role to play in linking these systems with formal justice structures so that women and girls can choose the system they wish to use. In working with traditional justice systems, we should be guided by two fundamental principles:

- The administration of justice is a State responsibility and UNHCR must advocate and support countries to meet their international commitments in this respect, and to comply with their obligations under international law, in regard to women and girls.
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¹⁹⁸ In some societies, men and boys may be accused of witchcraft as well.

5.4.3 Traditional justice mechanisms, continued

Principles for response (continued)

- UNHCR should work to ensure that traditional justice mechanisms comply with international legal standards, including equality of men and women and boys and girls, non-discrimination against women and girls, and the best interests of the child. UNHCR should not endorse decisions of such mechanisms that violate international legal principles and should, where necessary and possible, intervene to protect women and girls.

How to respond

Suggestions for actions which UNHCR, together with local, national and international partners, should carry out in order to work with dispute resolution systems in camps and traditional justice systems and ensure that they comply with international legal standards include:

Response	Actions
Coordinate	<ul style="list-style-type: none"> • Work with the community, national authorities and security officers (including police) to create a coordination mechanism for discussing and analysing justice systems, planning and coordinating action to be taken. Make sure that it has a gender balance.
Assess, analyse and design	<ul style="list-style-type: none"> • Work with the community to understand traditional justice mechanisms. More particularly, identify: <ul style="list-style-type: none"> – the values at the core of the system; – who is using the system and for what types of disputes; – the authority that controls the system and the accountability framework; – the rules and standards that apply; – the extent to which the norms and practices comply with international legal principles, particularly the principle of equality between women and men and the best interests of the child; and – how decisions are enforced and whether they are respected. • Work with the community, including adjudicators in traditional justice mechanisms and women's groups, to identify those practices that discriminate against women and girls and that conflict with either the obligations of the asylum country or the country-of-origin's obligations under international human rights law, and identify ways to change such practices. Work with these mechanisms to encourage respect for such laws and international legal principles in their decisions. • Identify who among the population of women and girls may already have a conflict-resolution and decision-making role in the community and discuss ways to support these people. One possibility is to establish community-based mediation teams involving women and men of different ages and backgrounds. • Examine any rules and by-laws in the camps to see the extent to which they promote international legal principles, including the equality of women and men and boys and girls and the best interests of the child, and design strategies to work with the community to bring rules and by-laws that do not into line. • Be transparent and clear about UNHCR's role in upholding human rights.
Intervene to protect	<ul style="list-style-type: none"> • Take measures to assure confidentiality, so as to enable women and girls at risk to remain safely in their community.¹⁹⁹ • Intervene to protect women and girls exposed to further violations of their rights, including by giving consideration to options such as resettlement for refugee women and girls.

Continued on next page

¹⁹⁹ ExCom Conclusion No. 205 (LVII) of 2006, para. (j)(iv).

5.4.3 Traditional justice mechanisms, continued

How to respond (continued)

Response	Actions
Intervene to protect, contd.	<ul style="list-style-type: none"> • In some cases involving children of concern, including girls whose rights have been violated by the decisions of traditional justice mechanisms, ensure their best interests are upheld through best interests assessments and/or best interests determination regarding actions taken to protect them.²⁰⁰
Strengthen national capacity	<ul style="list-style-type: none"> • Strengthen the interplay between formal judicial structures and traditional justice mechanisms to ensure that they: <ul style="list-style-type: none"> – provide clear channels of referrals; – ensure that serious crimes are referred to national judicial systems; – find ways to ensure that women and girls can choose which system they would like to adjudicate matters that affect them; – provide judicial review for women or others who feel that traditional justice mechanisms have discriminated against them; and – provide judicial review for those decisions made by traditional justice mechanisms that may not be in the best interests of the child.
Strengthen community capacity to support solutions	<ul style="list-style-type: none"> • Strengthen women's leadership, including by enhancing their representation and meaningful participation in dispute resolution systems;²⁰¹ • Introduce a peace education programme to improve gender awareness and conflict resolution skills.²⁰² • Build relations between host and displaced communities to create a safe and non-exploitative environment;²⁰³ • Cooperate with national and local authorities and women's and/or lawyers' groups, as appropriate, in providing training to different groups within the displaced population, including elders and leaders involved in traditional justice mechanisms, on the laws of the host country and international legal principles related to the rights of women and children. • Advocate in favour of meaningful women's participation as decision-makers in traditional justice mechanisms and in community-based policing programmes. • Adopt a "bottom-up" approach, especially if communities are in remote areas, starting with the community members themselves, to increase understanding that SGBV should not be minimized in traditional dispute resolution mechanisms and ensuring that initiatives are in accordance with international rights standards.
Monitor, report and evaluate	<ul style="list-style-type: none"> • Monitor the proceedings of traditional justice mechanisms. To the extent possible, obtain and record statistics on these mechanisms, disaggregated by age and sex, covering the types of cases, the number of cases, and, for criminal cases, sentences. Note any statements that indicate gender-based discrimination or lack of gender sensitivity. • Document and promote good practices and do not only focus on negative examples. • Evaluate with the decision makers the impact of their decisions on women and girls over a three-month period so they can reflect on how they work.

Continued on next page

²⁰⁰ See chapter 4, section 2.5 on best interests assessments and best interests determinations and see UNHCR, "UNHCR Guidelines on Formal Determination of the Best Interests of the Child", provisional release, May 2006.

²⁰¹ ExCom Conclusion No. 105 (LVII), 2006, para. (k)(i).

²⁰² See UNESCO, UNHCR and Interagency Network for Education in Emergencies (INEE), *Inter-Agency Peace Education Programme: Skills for Constructive Living*, November 2005, at http://portal.unesco.org/education/en/ev.php-URL_ID=47164&URL_DO=DO_TOPIC&URL_SECTION=201.html.

²⁰³ ExCom Conclusion No. 205 (LVII), 2006, para. (j)(iv).

5.4.3 Traditional justice mechanisms, continued

Field practice: Rwanda	<p>In Rwanda, ProFemmes/Twese Hamwe, a collective of 40 women’s organizations throughout the country, conducts a variety of measures to maximize women’s participation in <i>gacaca</i>, the traditional justice mechanism in Rwanda.</p> <p>These include advocacy for the integration of a gender perspective in implementation of <i>gacaca</i> law and awareness-raising sessions for 100,000 women leaders, local government representatives, and persons in detention centres.</p>
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Field practice: Strengthening administration of justice in Thai refugee camps

Introduction

When UNHCR's office in Thailand discovered that crimes, including SGBV and rape and murder of children, committed in nine remote refugee camps along the border with Myanmar were not being investigated or prosecuted by the Thai authorities, it worked systematically and comprehensively to strengthen the administration of justice in the camps, particularly in relation to violations of the rights of women and children.

The goal is to make the formal Thai justice system more accessible to refugees and ensure traditional justice mechanisms in the camps adhere to Thai law and international legal principles.²⁰⁴

Rights promoted

Rights promoted by this initiative include:

- the right to life, personal integrity and freedom from torture, cruel, inhuman and degrading treatment;
 - the right to equality before courts and tribunals;
 - the right to be presumed innocent until proved guilty according to law;
 - the right not to be subject to arbitrary or unlawful interference with one's privacy, family or home or to unlawful attached on one's honour and reputation; and
 - the right to the protection of the law against such interference or attacks.
-

AGDM and empowerment

A UNHCR study on protection incidents in the refugee camps between 2003 and 2006 found that 350 serious protection incidents in the camps had been reported to UNHCR in three years. The most common type of incident was domestic violence. A special focus of the initiative has been on victim/survivors of SGBV crimes, including child murder, rape and abuse, and recruitment of child soldiers and on bringing perpetrators to justice in a manner that adheres to Thai and international judicial standards. Another focus has been on juvenile justice and on community justice systems to ensure that they better protect the rights of women and children.

The four-pronged approach outlined below has been complemented by a variety of measures aimed at supporting victims of crimes, particularly SGBV crimes, including:

- providing legal counsel and establishing Legal Aid Centres (LACs) in the camps, the first such centre being opened in November 2006;
 - agreeing and implementing Standard Operating Procedures (SOPs) for SGBV in each camp; and
 - strengthening child-protection networks in the camps.
-

Community involvement in implementation

Refugees were consulted in a survey conducted by UNHCR's implementing partner, the International Rescue Committee (IRC) which found that 63 per cent of residents in three Thai camps had serious concerns for their safety in the camps, while they overwhelmingly preferred using traditional justice procedures to resolve even crimes as serious as murder.

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²⁰⁴ See generally, UNHCR, "In Thai Camps, Legal Centres Hold out Hope for Greater Justice", 22 November 2006, at <http://www.unhcr.org/news/NEWS/45646fed4.html>.

Field practice: Strengthening administration of justice in Thai refugee camps, continued

Community involvement in implementation (continued)

UNHCR worked with refugee women's groups to produce a film to raise awareness about SGBV and provide information on the options available for survivors of SGBV. It also worked with women's committees to increase awareness of women's and girls' rights and options available to them.

Partners and their involvement

Partners included:

- the Thai Ministries of Interior and Justice, involved to raise awareness of the extent of law and order problems in the camps and persuade them to assume their responsibilities to establish a justice system in the camps;
 - International Rescue Committee as UNHCR's implementing partner in the camps, involved e.g. in surveying justice systems operating in the camps and drawing up SOPs for the Legal Advice Centres; and
 - human rights academics, involved in conducting an independent study on the extent of the problem and supporting workshops held.
-

Steps to implementation

In order to strengthen the administration in the camps, UNHCR launched a four-pronged approach involving:

- training in Thai law and international legal standards for refugee camp committees and other organizations, including women's committees, to increase their awareness of their rights under Thai law and the options open to them, particularly for cases involving SGBV;
 - convening a workshop with government officials involved in the administration of justice at the provincial and central levels to clarify roles and responsibilities in an effort to ensure that justice is consistently administered in the various camps and that serious crimes are prosecuted by the Thai authorities;
 - organizing a workshop for government officials and refugee leaders to discuss their different roles and responsibilities in the administration of justice, resulting in agreement on a basic framework for the administration of justice whereby serious crimes would be referred to the Thai justice system and minor offences would be referred to traditional justice systems; and
 - supporting the Thai government in its efforts to build the capacity of traditional justice systems to comply with international norms, particularly regarding juvenile justice.
-

Constraints

One challenge was the initial reluctance of the Thai government to become involved in the administration of justice in the camps. It initially agreed to set up a justice system in the camps at a first workshop in 2004 and it is now the Ministry of Justice which is providing most active involvement.

Another has been the desire of refugee leaders to maintain control of justice issues in the camps. In particular, women and young people are under-represented in the refugee leadership and judicial committees and lack influence in decision-making. Greater efforts to conduct more democratic and representative camp elections are still needed.

Ongoing funding is also needed, e.g. of the Legal Advice Centres which are resource intensive both in terms of financial and human resources.

Continued on next page

Field practice: Strengthening administration of justice in Thai refugee camps, continued

Impact

UNHCR's initiatives have raised awareness among government ministries, camp leadership and the refugee community more generally of the challenges faced, and responsibilities for, administering justice in refugee camps.

The documentation and analysis of protection incidents in the camps has raised awareness of the extent of the problem, helping pave the way for the eventual introduction of a comprehensive monitoring and reporting system.

The Legal Advice Centres in the refugee camps are the first of their kind and will hopefully provide a model for similar initiatives in other camps.

Lessons learned

A comprehensive and systematic approach is essential to addressing the administration of justice, which presents challenges at government, refugee leadership and community level. The active personal involvement of high level ministry officials has provided strong support for UNHCR's initiatives.

UNHCR will need to continue to provide active support, including financial support, to this initiative e.g. to address the practical problems of accessing remote locations, raise awareness of the problems involved and applicable standards and ensure the long-term functioning of the Legal Advice Centres.

5.4.4 Transitional justice and justice in return situations

“Ensuring accountability for women’s experience in the area of international justice remains a critical challenge... While it is true that some gains have been made as international institutions formally recognize sexual violence as a crime, and even nominally include sexual violence charges within the indictments, institutional efforts remain fraught with problems that prevent these mechanisms from comprehensively and sensitively rendering justice to female victims.”

Binaifer Noworjee, “Making the Invisible Crime Visible: Post-Conflict Justice for Sierra Leone’s Rape Victims”²⁰⁵

Introduction

An important element of international efforts to strengthen the rule of law in post-conflict situations and in reconciling divided communities has involved ensuring accountability for gross violations of human rights and international humanitarian law.

Despite the recent greater focus on gender-based crimes in the context of transitional justice, women’s experience of other forms of violence and rights violations is often neglected. As the *Women, War and Peace* report notes: “Rarely have women been consulted about the form, scope, and modalities for seeking justice. Women’s stake in these processes has been minimalized and, in most cases, crimes against them go unreported.”²⁰⁶

The period of transition after a conflict does, however, offer an opportunity to create a more equitable and sustainable society. Working to ensure that women participate fully and equally in efforts to strengthen the rule of law, and that legal and judicial reform promote and respect women’s and girls rights, is essential to achieving this end.

Definition

Transitional justice encompasses the full range of processes and mechanisms associated with a society’s attempts to come to terms with the legacy of large-scale past abuses with the aims of ensuring accountability, serving justice, and achieving reconciliation.²⁰⁷ Justice mechanisms and processes include international tribunals, “mixed” international and national mechanisms, national courts, national truth commissions, and traditional justice mechanisms.

Summary of challenges

While there has been some improvement in recent years, gender-based crimes remain under-represented in cases considered by international tribunals. This is partly because

- women are under-represented as judges in such tribunals;²⁰⁸
- they are rarely involved when the tribunals are being established;
- even though rape, gang rape, forced prostitution, forced pregnancy and other forms of sexual violence can legally constitute torture, genocide mutilation and enslavement, they have, with rare exceptions, not been treated with the same seriousness as other war crimes;
- women testifying before truth commissions may focus on their husbands, children and loved ones, and avoid their own experiences and/or exposure to sexual violence due to fear or feelings of shame;

Continued on next page

²⁰⁵ Binaifer Noworjee, “Making the Invisible Crime Visible: Post-Conflict Justice for Sierra Leone’s Rape Victims”, *Harvard Human Rights Journal*, Vol. 18, 2005.

²⁰⁶ Johnson-Sirleaf, E. and Rehn, E., *Women, War and Peace: The Independent Experts’ Assessment*, Progress of the World’s Women, 2002.

²⁰⁷ Study by the Office of the United Nations High Commissioner for Human Rights on human rights and transitional justice activities undertaken by the human rights components on the United Nations Systems, E/CN.4/2006/93, 7 February 2006, para. 5.

²⁰⁸ Of the 14 permanent judges at the International Criminal Tribunals for the former Yugoslavia and Rwanda, no more than three have been women at any one time. On a more positive note, in February 2003, seven of the 18 judges elected to the International Criminal Court were women.

5.4.4 Transitional justice and justice in return situations, continued

Summary of challenges (continued)

- amnesties granted, including for crimes of SGBV, and gender-blind reparations policies can result in the denial of justice to women and impede their healing, rehabilitation, and reintegration into their society; and
- the problems women face gaining access to national courts, as discussed above, or before traditional justice mechanisms also apply in the context of transitional justice.

International legal standards, guidelines and responsibilities

For further information on international legal standards and guidelines, on the responsibilities of States, UNHCR, refugees and stateless persons, see section 4.1 of this chapter above.

In addition to the UNHCR responsibilities outlined in that section above, in return situations, UNHCR has a responsibility to work to promote initiatives where women can make a significant contribution in the area of transitional justice. This is also part of our role as cluster leader for protection of internally displaced persons.

How to respond

Suggestions for actions which UNHCR, together with local, national and international partners, should carry out in order to promote transitional justice mechanisms and the administration of justice in return situations include:

Response	Actions
Coordinate	<ul style="list-style-type: none"> • Recognizing that “no rule of law reform, justice reconstruction, or transitional justice initiative imposed from the outside can hope to be successful or sustainable”, coordinate with UN agencies and other partners to ensure that international efforts are “based upon meaningful public participation involving national legal professionals, government, women, minorities, affected groups and civil society”.²⁰⁹ • Partners of particular relevance include OHCHR, the ministry of justice, the ombudsperson, parliament, and local women’s groups and NGOs. In addition, the International Centre for Transitional Justice assists countries pursuing accountability for past mass atrocity or human rights abuse and is working on how to introduce a gender dimension into reparations programmes.²¹⁰
Assess, analyse and design	<ul style="list-style-type: none"> • Work to ensure that women are directly involved in the design and establishment of the transitional justice mechanisms, and that there is gender balance among adjudicators in them.

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²⁰⁹ See “Report of the Secretary-General: The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies”, S/2004/616, 23 August 2004, at <http://daccessdds.un.org/doc/UNDOC/GEN/N04/395/29/PDF/N0439529.pdf?OpenElement>, especially para. 17.

²¹⁰ See generally <http://www.ictj.org>, and Ruth Rubio-Marín (ed.), *What Happened to the Women? Gender and Reparations for Human Rights Violations*, Social Science Research Council, New York, 2006, at <http://www.ssrc.org/blog/2006/12/29/what-happened-to-the-women/>.

5.4.4 Transitional justice and justice in return situations, continued

How to respond (continued)

Response	Actions
Assess, analyse and design, contd.	<ul style="list-style-type: none"> • Work with partners to mainstream a rights-based approach and gender analysis into transitional justice processes, including by working to <ul style="list-style-type: none"> – include women and girls in peace negotiations and agreements; – ensure accountability mechanisms in such agreements are not gender blind and that gendered patterns of abuse do not entrench impunity; – include references to justice for victims and the specific needs of women and girls in peace agreements; – include civil society, particularly women, in peace negotiations; – emphasize gender inclusion and accountability for gender-based violations; – provide support to grassroots peacebuilding and reconciliation efforts involving and led by women and girls, so that women and girls are able to give their testimony; – promote respect for the national context; – remember that one size does not fit all; – remember that reconciliation is not at the expense of justice; and – link transitional justice to democracy.²¹¹
Intervene to protect	<ul style="list-style-type: none"> • Provide support for women and girls' testimonies to be heard. • Work with the community and partners to ensure adequate protection of these women and girls.
Strengthen national capacity	<ul style="list-style-type: none"> • Encourage the appointment of male and female judges and advisers who have expertise in considering violations of the rights of women and girls. • Ensure that a gender perspective and women's concerns are reflected in the mandate of such mechanisms, and work with local women's groups to determine how women's needs can best be addressed. • In our work with both formal and informal justice mechanisms in situations of displacement advocate and work to <ul style="list-style-type: none"> – ensure gender balance in tribunal judges and truth commissioners, – support the provision of gender training for them, – promote the inclusion of thematic hearings, e.g. on women and conflict and forced displacement, in truth commissions, so that these issues can be specifically addressed, and – ensure that these bodies acquire expertise in specific issues, such as violence against women, new jurisprudence on international crimes relating to gender.
Strengthen community capacity to support solutions	<ul style="list-style-type: none"> • Organize preparatory workshops to ensure that formerly displaced women and girls can participate in truth commissions. In particular, convene sessions with rural women and special women-only sessions. • Work to promote awareness of the gender-sensitive reparations policies that have been implemented in truth commissions and in the Statute of the International Criminal Court (ICC), as well as awareness of the witness protection, support, and counselling guaranteed by the ICC through its Victims and Witnesses Unit.
Monitor, report and evaluate	<ul style="list-style-type: none"> • Consider how to link transitional justice mechanisms with other longer-term forms of reconciliation and rehabilitation, such as counselling and community healing.

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²¹¹ This listing draws on Yasmin Sooka, "Dealing with the Past and Transitional Justice: Building Peace through Accountability", *International Review of the Red Cross*, vol. 88, No. 862, June 2006, pp. 311–325, at <http://www.icrc.org/web/eng/siteeng0.nsf/htmlall/review-862-p311?opendocument>.

5.4.4 Transitional justice and justice in return situations, continued

**Field practice:
Sierra Leone**

The process of dealing with the past and establishing transitional justice has been enhanced in many countries emerging from conflict through the establishment of truth and reconciliation commissions.

In Sierra Leone, for instance, the Truth and Reconciliation Commission helped amongst other things to deal with the denial with the lies and myths surrounding the conflict and violations committed, as well as to respond to the needs of victims and survivors.

Contrary to the belief that amputations had been the main violation carried out during the war, the Commission was able to establish that, in fact, rape and sexual violence were the most prevalent crimes. Rape had been the silent crime that most women and girls in Sierra Leone had suffered during the conflict.

Many victims were shunned and suffered great stigma in their communities during the conflict, while community members were afraid of associating with the victims. Revealing the truth of their experiences assisted their reintegration into their communities. The public affirmation and acknowledgement of wrongdoing done to the victim in the midst of the community is a powerful tool in effecting healing.²¹²

²¹² Adapted from Yasmin Sooka, "Dealing with the Past and Transitional Justice: Building Peace through Accountability", *International Review of the Red Cross*, vol. 88, No. 862, June 2006, pp. 311–325, at <http://www.icrc.org/web/eng/siteeng0.nsf/htmlall/review-862-p311?opendocument>.

5.5 Health

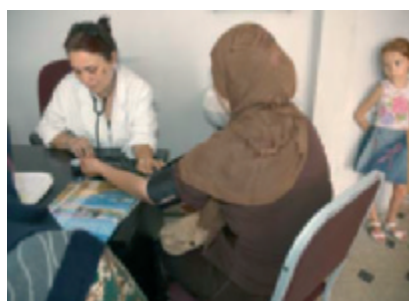
Overview

“In the border town of Tine, Chad, the assessment team met a 36-year-old refugee woman, Kadija, from Karnoi, Sudan, who had fled attacks from the Janjaweed and the Sudanese military when she was nine months pregnant. Three days into her journey, she gave birth under trees on the side of the road without any supplies to make her delivery safe: no soap, clean razor, cord or plastic sheet to keep her and her newborn clean. Luckily Kadija had no complications and her eighth baby was born healthy. Afraid to be caught by the Janjaweed and the Sudanese military, she continued to walk – for eight more days. During the flight her 14-year-old son was injured in a bombing. Kadija is less worried about her son’s physical injuries than about the long-term psychological effects of the attack. At night, she has to tie his arms or give him medicines to make sure he doesn’t hurt himself and is able to sleep.”

from Lifesaving Reproductive Health Care: Ignored and Neglected, Assessment of the Minimum Initial Health Service Package (MISP) of Reproductive Health for Sudanese Refugees in Chad²¹³

Introduction

Health is defined by the World Health Organization (WHO) as a state of complete physical, mental and social well-being and not merely the absence of disease and infirmity. It is intrinsically linked to protection and respect for human rights. This makes the health of all persons of concern a priority for UNHCR.



Azerbaijan / Internally displaced woman receives medical treatment from a female doctor at a health clinic / I. Zimová / 2007

Purpose

The purpose of this section is to identify some of the major health risks and challenges faced by women and girls of concern, as well as possible approaches to ensure women and girls can enjoy their right to the highest attainable standard of physical and mental health.

In this section

This section does not seek to approach all health problems that women and girls would face nor to duplicate the wealth of information on this core protection concern. Rather, it focuses on issues of particular concern to women and girls due to their biological and sociological differences.

It does not therefore cover, public health, emergency health case or epidemics, but focuses on the following topics:

Topic	See Page
5.5.1 Accessing and enjoying the highest attainable standard of health	268
5.5.2 Reproductive health	271
5.5.3 HIV/AIDS	282
5.5.4 Mental health and psychosocial support	288

²¹³ Women’s Commission for Refugee Women and Children and United Nations Population Fund, Lifesaving Reproductive Health Care: Ignored and Neglected, Assessment of the Minimum Initial Health Service Package (MISP) of Reproductive Health for Sudanese Refugees in Chad, ²¹³ August 2004, p. 21.

5.5.1 Accessing and enjoying the highest attainable standard of health

Introduction

Some of the main challenges to ensuring women and girls are able to access and enjoy the highest attainable standard of health include those resulting from:

- conflict and displacement;
- gender roles and inequalities; and
- being unaccompanied and separated.

Note: Each of these issues is discussed further below.

Conflict and displacement

The impact of conflict and displacement on health is profound. Health and sanitation systems are often destroyed and health services unavailable or overwhelmed. Quality health services, including reproductive health services, are often not available. When they are, women and girls may not be able to access to them.

Diseases such as measles, meningitis and cholera may become epidemics, causing high rates of illness and death among displaced populations. Mass population movements can also result in extremely high rates of malnutrition. Communicable diseases brought on in part by malnutrition are responsible for millions of preventable deaths each year. Shortage of food also makes people more vulnerable to sexual abuse and exploitation, which also has serious public health implications.

The conditions characteristic of displacement also favour the transmission of infectious diseases, such as HIV and other sexually transmitted infections. Exposure to chemical warfare or the environmental effects of conflict can also harm health, and could result in miscarriages and stillbirths. Mental health and stress-related disorders are also common.²¹⁴

Gender roles and inequalities

Women and girls face particular health risks because of their sex and because of gender inequalities. Since women are usually the family's caregivers, they are often responsible for tending sick family members. They may suffer from feelings of guilt and helplessness because they are not able to protect and help those they love to the extent they wish. Their efforts to care for others in particular children and their capacity to care for themselves and take timely decisions is often hampered by their reduced mobility and possibility to sick care due to cultural or religious reasons.

Unaccompanied and separated girls

The particular situation of unaccompanied and separated children outside their country of origin has been highlighted by Committee on the Rights of the Child. Such children "have undergone separation from family members and have also, to varying degrees, experienced loss, trauma, disruption and violence". It specifically mentions refugee children, many of whom "have further experienced pervasive violence and the stress associated with a country afflicted by war".

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²¹⁴ This section draws on E. Johnson-Sirleaf and E. Rehn, *Women, War, and Peace: The Independent Experts Assessment*, Progress of the World's Women, 2002, vol. 1, pp. 35–43.

5.5.1 Accessing and enjoying the highest attainable standard of health, continued

Unaccompanied and separated girls (continued)

As the Committee reports: “[G]irls are particularly susceptible to marginalization, poverty and suffering during armed conflict, and many may have experienced gender-based violence in the context of armed conflict. The profound trauma experienced by many affected children calls for special sensitivity and attention in their care and rehabilitation.”²¹⁵

International legal standards and guidelines

Everyone has the right to the enjoyment of the highest attainable standard of physical and mental health and to non-discriminatory access to health care services.²¹⁶ As the Committee on Economic, Social and Cultural Rights has indicated, “the right to health embraces a wide range of socio-economic factors that promote conditions in which people can lead a healthy life, and extends to the underlying determinants of health, such as food and nutrition, housing, access to safe and potable water and adequate sanitation, safe and healthy working conditions, and a healthy environment”.²¹⁷

Clear policy and practical guidance on implementing public health activities is provided in the following UNHCR, WHO and IASC documents:

- *UNHCR Operations Manual*, Chapter 4 (Health, Nutrition and HIV), 2004
 - WHO, *Clinical Management of Rape Survivors: Developing Protocols for Use with Refugees and Internally Displaced Persons*, 2004²¹⁸
 - WHO, *Communicable Disease Control in Emergencies: A Field Manual*, 2005
 - UNHCR Handbook for Emergencies, third edition, 2006
 - UNHCR, “Note on HIV/AIDS and the Protection of Refugees, IDPs and Other Persons of Concern”, 2006
 - IASC, *IASC Guidelines on Mental Health and Psychosocial Support in Emergency Settings*, 2007
-

Responsibility: States

States have a responsibility to “take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning”.²¹⁹

The right to the highest attainable standard of health entails a corresponding obligation of States to “respect, protect and fulfil” this right.²²⁰ This obligation requires, amongst other things, that States should:

- “not restrict women’s access to health services ... on the ground that women do not have the authorization of husbands, partners, parents or health authorities”;
-

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²¹⁵ CRC Committee, General Comment No. 6, 2005, treatment of unaccompanied and separated children outside their country of origin, paras. 46–49.

²¹⁶ See ICESCR, Article 12; CRC, Articles 23, 24 and 39; CEDAW, Article 12; Convention on the Rights of Persons with Disabilities, Article 25.

²¹⁷ Committee on Economic, Social and Cultural Rights, Committee, General Comment No. 14, 2000, the right to the highest attainable standard of health, para. 4.

²¹⁸ Available at http://www.who.int/reproductive-health/publications/clinical_mngt_rapesurvivors/clinical_mngt_rapesurvivors.pdf.

²¹⁹ CEDAW, Article 12.

²²⁰ For further details, see Committee on Economic, Social and Cultural Rights, General Comment No. 14, 2000, right to the highest attainable standard of health, paras. 34–37; Committee on the Elimination of Discrimination against Women, General Comment No. 24, 1999, Article 12 of the Convention (women and health), especially paras. 7, 11–25.

5.5.1 Accessing and enjoying the highest attainable standard of health, continued

States (continued)

- “enact and effectively implement laws that prohibit female genital mutilation and marriage of girl children”;
- “ensure adequate protection and health services, including trauma treatment and counselling, are provided for women in especially difficult circumstances, such as those trapped in situations of armed conflict and women refugees”;
- “ensure, without prejudice or discrimination, the right to sexual health information, education and services for all women and girls, including those who have been trafficked, even if they are not legally resident in the country”; and
- “ensure women’s right to safe motherhood and emergency obstetric services”.²²¹

The Committee on Economic, Social and Cultural Rights recommends that States “integrate a gender perspective in their health-related policies, planning, programme, and research”. This recognizes that “biological and socio cultural factors play a significant role in influencing the health of men and women”. It also affirms that States should intervene to prevent and treat diseases affecting women and develop policies to provide access to a full range of high quality and affordable health care, including sexual and reproductive services.²²²

The Committee on the Rights of the Child affirms that States must assess and address the particular plight and vulnerabilities of unaccompanied and separated children outside their country of origin.²²³

Responsibility: UNHCR

UNHCR has a responsibility to support States in fulfilling their responsibilities to ensure persons of concern can enjoy the highest attainable standard of physical, mental health and adequate nutrition.

Our activities should aim to minimize mortality and morbidity and to increase respect for the human rights and dignity of all persons of concern, including women and girls. This includes working to improve access to, and utilization of, health services, in particular primary health care, malaria control, and children’s and reproductive health services. Our work to secure women’s and girls’ access to health care services and improve health-seeking behaviour involves ensuring quality, privacy and adequacy of health service provision and ensuring family and community awareness and support.

²²¹ These examples are taken from Committee on the Elimination of Discrimination against Women, General Comment No. 24, 1999, Article 12 of the Convention (women and health), paras. 13–27.

²²² For further details, see Committee on Economic, Social and Cultural Rights, General Comment No. 14, *ibid.*, paras. 20–27.

²²³ CRC Committee, General Comment No. 6, 2005, treatment of unaccompanied and separated children outside their country of origin, paras. 46–49.

5.5.2 Reproductive health

“Reproductive health conditions are the leading cause of death and illness in women worldwide.”
UNFPA, Reproductive Health Fact Sheet²²⁴

“Reproductive health care should be available in all situations and be based on the needs and expressed demands of refugees, particularly women, with full respect for the various religious and ethical values and cultural backgrounds of the refugees, while also conforming to universally recognized international human rights standards.”
from *Reproductive Health in Refugee Situations: An Inter-Agency Field Manual*²²⁵

Introduction

Many women and adolescent girls, not only those who are displaced, have no access to reproductive health care. As noted in the Beijing Platform of Action, lack of access to reproductive health includes “inadequate levels of knowledge about human sexuality, inappropriate or poor quality reproductive health information services, the prevalence of high risk sexual behaviour, discriminatory social practices, negative attitudes towards women and girls, and the limited power that women and girls have over their sexual lives.” Each of these issues reflects women’s and girls’ generally unequal situation in society.

These challenges are further exacerbated by displacement. Though the situation has improved greatly in recent years, numerous gaps still need to be filled. These relate in particular to:

- implementation of the Minimum Initial Standard of Services (MISP) at the onset of emergencies;²²⁶
- ensuring capacity of health facilities to address basic reproductive health services in an accessible, friendly, quality and comprehensive manner; and
- empowering women and adolescents to take control over key moments and events of their sexual and reproductive life.

Definition: Reproductive health

Reproductive health is a state of complete physical, mental, and social well-being, and not merely the absence of disease and infirmity, in all matters relating to the reproductive system and to its functions and processes.

Reproductive health therefore implies that people are able to have a satisfying and safe sex life, the capacity to reproduce, and the freedom to decide if, when, and how often to do so. Implicit in this last condition are the rights of men and women to have access to safe, effective, affordable, and acceptable methods of family planning of their choice, as well as other methods of their choice for the regulation of fertility that are not against the law, and the right to access to appropriate health-care services that will enable women to go safely through pregnancy and childbirth and provide couples with the best chance of having a healthy infant.²²⁷

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²²⁴ See http://www.unfpa.org/swp/2005/presskit/factsheets/facts_rh.htm.

²²⁵ UNHCR, WHO, UNFPA, *Reproductive Health in Refugee Situations: An Inter-Agency Field Manual*, 1999.

²²⁶ The MISP can be implemented without any needs-assessment since documented evidence already justifies its use. The MISP aims to identify an organization(s) and individual(s) to facilitate and coordinate the implementation of the MISP, prevent and manage the consequences of SGBV, reduce HIV/AIDS transmission, prevent excess neonatal and maternal morbidity, and plan to provide comprehensive reproductive-health services that are integrated into primary health care. See UNHCR, WHO, UNFPA, *Reproductive Health in Refugee Situations: An Inter-Agency Field Manual*, 1999, chapter 2 and Women’s Commission for Refugee Women and Children, “Minimum Initial Service Package (MISP): Fact Sheet”, September 2006, at <http://www.unhcr.org/protect/PROTECTION/456ac1362.pdf>.

²²⁷ International Conference on Population and Development – Cairo 1994, Programme of Action, para. 7.2. This is the definition adopted in the Inter-Agency field manual, *Reproductive Health in Refugee Situations*.

5.5.2 Reproductive health, continued

Summary of challenges

The reproductive health of women and girls is at great risk during displacement. This is because:

- reproductive health needs continue and in fact increase during crisis;
- lack of access to emergency obstetric care increases the risk of maternal and newborn death and disability;
- malnutrition, stress and epidemics increase the risk of complications;
- babies may be born by the wayside during flight;
- the danger of SGBV increases when there is insecurity and social instability; and
- harmful practices such as genital mutilation continue to be perpetrated.

The following challenges are outlined briefly below:

- lack of access to quality maternal and newborn health care;
 - fistula;
 - lack of access to family planning;
 - exposure to SGBV during and after conflict and/or flight; and
 - lack of sanitary materials.
-

Challenge: Access to maternal health care

Women and adolescent girls fleeing violence and conflict often do not have access to quality maternal health care and emergency obstetric care. Pre-existing malnourishment and anaemia, poor health status and infectious diseases, which are often prevalent during displacement, can compromise reproductive health even further.

Three major delays have a high impact on maternal and newborn mortality and morbidity. These are: the delay in deciding to seek care, the delay in reaching the health facility, and the delay in receiving appropriate care after arrival in the facility.

Lack of safe-motherhood appropriate services can lead to maternal mortality, miscarriages, still births and infant mortality. It can also lead to low birth weight, disabilities and ill health for the newborn child. Lack of access to quality reproductive health services during pregnancy and delivery can further result in serious health and protection consequences, such as permanent injuries, infertility and disabilities for the woman or girl.

Challenge: Fistula

In particular, unattended deliveries and childbirth at an early age can result in obstetric fistula.²²⁸

Women and girls with fistula often live an isolated existence, abandoned by their husbands and shunned by society. They risk death through neglect, medical complications, and suicide. Although fistula can normally be treated with reconstructive surgery, many health personnel do not know about fistula nor that surgical repair is possible. As a result, cases go unidentified or are considered to be “normal”.

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²²⁸ Fistula is a health problem that occurs when the wall between the vagina and the bladder or bowel is ruptured due to obstructed labour. Women then lose control of their bladder or bowel functions. See also, section 2.2 of this chapter on child or early marriage and forced marriage and Arletty Pinel and Lydiah Kemunto Bosire, “Traumatic Fistula the Case for Reparations”, *Force Migration Review*, issue 27, January 2007, pp. 18–19

5.5.2 Reproductive health, continued

**Challenge:
Access to family
planning**

High fertility rates and low contraceptive use contribute to women's and young children's ill health. Yet family planning can prevent 25–30 per cent of all maternal deaths. Mistimed, unwanted pregnancies, including those from rape, are causes of serious protection risks in particular among adolescents and unmarried women. These include: school drop out; domestic violence; unsafe abortion which can lead to death or permanent disabilities, abandonment of the baby and infanticide; and reduced possibilities for girls and women to achieve personal development, empowerment and full potential. Spacing pregnancies more than two years apart significantly increases the child's chances of survival.

**Challenge:
SGBV**

SGBV during and after conflict, including domestic violence, can result in:

- sexual exploitation and unwanted pregnancies;
- complications from unsafe abortions;
- severe risks to their health and that of their children; and
- an increase in sexually transmitted diseases, including HIV/AIDS.

Displaced adolescent girls are particularly at risk of SGBV, including forced and early marriage, sexual exploitation, unwanted pregnancies, and pregnancies at a young age. This poses severe risks to their health and that of their children and increases the risk of becoming infected with HIV/AIDS. These challenges are compounded by lack of knowledge about reproductive health and lack of access to basic and fundamental necessities, such as sanitary materials, condoms, and HIV-testing.

Note: For more on SGBV, see section 3.1 of this chapter above.

"I won't go to school during 'that time'. The boys laugh and make fun of me. Sometimes I have an accident and it is not possible for me to clean myself. We never have enough materials and when we do they are itchy and uncomfortable. Some girls I know have 'boyfriends' who give them money and they use that to buy sanitary pads so that they can go to school."

Rebecca, a 15-year-old refugee girl in Uganda

"The provision of sanitary materials to all women and girls of concern will become standard practice in all UNHCR assistance programmes."

Fifth of UNHCR's Five Commitments to Refugee Women

**Challenge:
Access to sanitary
materials**

The lack of sanitary materials has critical implications for the health, safety, and well-being of women and girls. Yet strains on UNHCR's overall budget have meant that UNHCR efforts to achieve its Fifth Commitment have been reached in less than 20 per cent of all camps (where data is available).²²⁹

Lack of sanitary material undermines their opportunity to participate in community activities, registration, food distribution, training programmes, and employment opportunities. When menstruating, they may be forced to remain in their homes all day and only creep out at night to wash their clothes so as not to be seen. In order to obtain money to buy sanitary materials, some women and girls resort to survival sex, putting them at risk of HIV, pregnancy, and exclusion from their communities.

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²²⁹ See UNHCR, *Measuring Protection by Numbers*, November 2006, p. 22.

5.5.2 Reproductive health, continued

Access to sanitary materials (continued)

The lack of sanitary materials severely compromises girls' right to education. Many girls do not attend school when they are menstruating for fear of harassment and ridicule from boys and male teachers. As a result, their academic performance suffers and many eventually drop out.

Challenge: Other reasons for lack of access

Additional reasons for lack of access to reproductive health care during displacement include:

- loss of income reducing the ability of the displaced to make choices;
- the focus on life-saving measures coupled with failure to consider reproductive health as a priority;
- limited access, e.g. because women are not able to get health care without their husband's permission;
- limited or no access to female doctors and nurses;
- lack of privacy and/or confidentiality in health care facilities;
- poor or no roads, insufficient transport, great distance to health facilities;
- lack of security en route to health facilities;
- perceived low quality of health services and inconvenient hours of operation;
- humanitarian workers who do not think that reproductive health care generally and family planning in particular are a priority; and
- humanitarian workers who do not want to offer family planning services because it is against their own religious beliefs or because they believe it is against the culture of the communities concerned.

These reasons for lack of access often apply after return, as well, since reproductive health care is often not seen as a priority activity in reconstruction and rehabilitation programmes.

International legal standards and guidelines

Women's and girls' right to the highest attainable standard of physical and mental health includes the right to reproductive health,²³⁰ including to safe motherhood and emergency obstetric services.²³¹ "All couples and individuals have the basic right to decide freely and responsibly the number and spacing of their children and to have the information, education and means to do so."²³²

Refugee women and girls are entitled to the same treatment as nationals as regards public relief and assistance.²³³ Reproductive health care and psychosocial support must be available from the beginning of an emergency.²³⁴

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²³⁰ Reproductive rights are based on a number of separate rights contained in various international instruments. Read together, the ICESCR (Article 12), CEDAW (Article 12), and the CRC (Article 39) oblige States to take measures to ensure that women have access to family-planning services and information about planning services, have the right to decide freely and responsibly on the number and spacing of their children and to have access to the information, education, and means by which to exercise these rights, are provided with appropriate health services for pre-natal and post-natal care, and take measures to diminish infant and child mortality. The Committee on Economic, Social and Cultural Rights has interpreted the right to the highest attainable standard of health to include "the right to control one's body, including sexual and reproductive freedom." International recognition of the importance of reproductive rights is reflected in the International Conference on Population and Development (ICPD) Programme of Action, the Beijing Plan of Action, the Millennium Development Goals and the World Summit Outcome Document.

²³¹ Committee on the Elimination of Discrimination against Women, General Recommendation No. 24, Article 12 of the Convention (women and health), 1999. para. 27.

²³² International Conference on Population and Development, Programme of Action A/CONF.171/13, 18 October 1994, Principle 8. At the regional level, see 2003 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, Article 14.

²³³ 1951 Refugee Convention, Article 23.

²³⁴ See UNHCR, WHO, UNFPA, *Reproductive Health in Refugee Situations: An Inter-Agency Field Manual*, 1999.

5.5.2 Reproductive health, continued

International legal standards and guidelines (continued)

The Guiding Principles on Internal Displacement provide that special attention shall be paid to the health needs of women, including through provision of access to female health-care providers and services, such as reproductive health care, and that appropriate counselling for victims of sexual and other abuses should be provided.

The Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Discrimination Against Women, and the Committee on the Rights of the Child have all emphasized the particular health care needs of displaced and/or refugee women and children. ExCom recommends that States, UNHCR and other relevant agencies and partners “make all efforts to ensure access ... for adolescents ... to age-sensitive reproductive healthcare as well as health and HIV information and education”.²³⁵

Responsibility: States

As part of States’ obligation to ensure women and girls are able to enjoy the highest attainable standard of health on an equal basis to men and boys, governments have a responsibility to ensure their access to health care services, including those related to family planning. They also have a responsibility to ensure women and adolescent girls have access to appropriate services in connection with pregnancy, confinement and the post-natal period, through free services where necessary, as well as adequate nutrition during pregnancy and lactation.²³⁶

States are obliged to respect the right to health including by, inter alia, refraining from denying or limiting equal access for all persons, including asylum-seekers and refugees, to preventive, curative and palliative health services and by abstaining from imposing discriminatory practices relating to women’s health status and needs.²³⁷

States have a responsibility to take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.²³⁸ These include the practices of female genital mutilation and early child or forced marriage, which not only harm girls, but may also adversely affect their future offspring.

Responsibility: UNHCR

Reproductive health care is a human right and a requirement for psychological and health. UNHCR’s protection responsibilities include the promotion of the rights of all persons of concern, including women and girls, to the highest attainable standard of physical and mental health.

The cornerstone of UNHCR’s interventions on this issue should be that “reproductive health care should be available in all situations and be based on the needs and expressed demands of refugees, particularly women, with full respect for the various religious and ethical values and cultural backgrounds of the refugees while also conforming with universally recognized international human rights”.²³⁹

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²³⁵ ExCom Conclusion No. 107 (LVIII), 2007, para. (h)(x).

²³⁶ CEDAW, Article 12.

²³⁷ Committee on Economic, Social and Cultural Rights, General Comment No., 14, The right to the highest attainable standard of health (Article 12, ICESCR), 2000, para. 34.

²³⁸ CRC, Article 24(3).

²³⁹ UNHCR, WHO, UNFPA, *Reproductive Health in Refugee Situations: An Inter-Agency Field Manual*, 1999, p. 1.

5.5.2 Reproductive health, continued

How to respond

Suggestions for actions which UNHCR, together with local, national and international partners, should carry out in order to ensure that women and girls are able to enjoy their right to the highest attainable standard of physical and mental health include:

Response	Actions
Coordinate	<ul style="list-style-type: none"> • Ensure coordination among sectors (health, community services, protection), implementing agencies (government, NGOs, UN agencies), and different levels of service providers (doctors, midwives, traditional birth attendants, community health, social, water and sanitation workers). • Coordinate with other UN agencies and programmes, especially those of UNFPA and UNICEF, to cooperate with States, building on their respective expertise, to enable implementation of the right to health at the national level with due respect for individual organization mandates.²⁴⁰ • Coordinate, for instance, with UNFPA and partners to support its global Campaign to End Fistula²⁴¹ launched in 2003 and to ensure that the women and girls of concern are included in programmes (as, for example, in the field practice example for Chad below).
Assess, analyse and design	<ul style="list-style-type: none"> • Analyse with women and young adolescent girls the challenges they face in exercising their rights to reproductive health and accessing the services they consider important. • Work with men and boys to analyse their perspectives on these issues. • Work with government and NGO partners, as well as the displaced community, to raise awareness of sexual and reproductive health rights and how they can be incorporated into protection and programme strategies. • Design health programmes based on a full analysis with partners, especially women and men, and agree on an implementation strategy. • Examine where necessary the possibility of engaging alternative counterparts, when partners' do not feel able to support the implementation of certain aspects of sexual and reproductive health care from a rights-based perspective and highlight UNHCR's role in upholding women's and girls' rights to health and reproductive health. • Establish a reproductive-health focal point at the beginning of an emergency in order to ensure that reproductive health issues are addressed and that the Minimum Initial Service Package (MISP) can be implemented.
Intervene to protect	<ul style="list-style-type: none"> • Ensure reproductive health interventions are guided by the following principles: <ul style="list-style-type: none"> – women's and girls rights and needs, – community participation, – quality of care, – skilled personnel – integration of services, – access to services, – information, education, and communication activities, – advocacy for reproductive health, and – coordination among relief agencies. • Offer reproductive health care in the early emergency phase of a displacement situation by implementing the MISP and increase this to provide comprehensive services as soon as the situation allows.

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²⁴⁰ Committee on Economic, Social and Cultural Rights, General Comment No. 14, the right to the highest attainable standard of health (Article 12, ICESCR), 2000, para. 64.

²⁴¹ See <http://www.endfistula.org/> and Report of the Secretary-General, "The Girl Child", 24 August 2007, A/62/297, paras. 45–55 for report on implementation.

5.5.2 Reproductive health, continued

How to respond (continued)

Response	Actions
Intervene to protect, contd.	<ul style="list-style-type: none"> • Ensure women and girls at risk can access support, such as medical and psycho-social care, to facilitate their recovery and integration, whether this be in the context of local integration, return, resettlement or other humanitarian programmes.²⁴² • Provide culturally appropriate sanitary packs to all women and girls from at least 13 to 49 years of age, based on discussions with them. • Make sanitary materials and separate washroom facilities available for girls in schools.
Strengthen national capacity	<ul style="list-style-type: none"> • Support the strengthening of basic health structures used by both the local community and the population of concern of UNHCR. • Support capacity building, including in particular the formal training and certification of skilled birth attendants following a national or international training curriculum. • Support health worker refresher training sessions. • Support the establishment of a reproductive health care referral system. • Ensure systems are in place and used for registering use of services. • Lobby governments to persuade them ensure refugees have access to reproductive health services and receive care on the same basis as nationals and in accordance to international standards. • Lobby to integrate people of concern in national plans and services.
Strengthen community capacity to support solutions	<ul style="list-style-type: none"> • Identify capacities and skills already present among the displaced/returnee population, including midwives, nurses, doctors etc. • Wherever possible hire refugee staff, while ensuring that this will not diminish women's and girls' access to services because of traditional views. • Raise awareness and involve men as well as women in reproductive health programmes. Men may be poorly informed about reproductive health matters, although they are often the decision-makers. Health providers need to be aware of the roles and decision-making processes within the family so that they can provide services effectively and in the best interests of the women and girls concerned and of the family as a whole. • Respect the rights of women and girls of concern to give informed consent by providing adequate information and counselling. • Raise women's and girls' awareness of sexuality, sexual and reproductive health, rights and services, and their life skills. • Work with teachers and young people to provide awareness raising about reproductive health in schools. • Ensure that community outreach services contact women and girls with disabilities as part of their initiatives on reproductive health.
Monitor, report and evaluate	<ul style="list-style-type: none"> • Put in place Health Information System (HIS)²⁴³ to monitor essential and internationally accepted health indicators. • Conduct regular surveys on participatory basis to evaluate the population's perceived needs, demand and level of satisfaction. Surveys should also "triangulate" information on issues such as services coverage, mortality. Triangulation involves comparing results from individuals and groups representing the diversity of the community. It is a way of checking the reliability of the information gathered and validating the team's understanding of the issues. Such surveys will highlight problems and give the population affected an opportunity to be involved in defining solutions.

²⁴² See ExCom Conclusion No. 105 (LVI) of 2006, para. (p)(v).

²⁴³ HIS refers to a data management application supported by data collection tools, guidelines and training materials that have been successfully implemented in refugee operations in Ethiopia, Kenya and the United Republic of Tanzania. See UNHCR, "Health, Nutrition and HIV/AIDS: New Strategies", EC/58/SC/CRP.15, 4 June 2007, para. 6.

5.5.2 Reproductive health, continued

**Field practice:
Chad**

In Abeche, Chad, a medical team funded by the UNHCR and UNFPA is treating 60 women and girls, 20 of them Sudanese refugees, at the Abeche Regional Hospital.

The women and girls are suffering from fistula, a health problem that occurs when the wall between the vagina and the bladder or bowel is ruptured due to obstructed labour. As a result, women/girls affected lose control of their bladder or bowel functions. It is found in rural areas where women do not always have access to proper facilities during delivery. It is also common among girls who marry at a very young age – 14 or 15 – and experience early childbirth. Rape victims are also prone to fistula. Two-thirds of the Sudanese refugee women undergoing fistula treatment at Abeche Regional Hospital in eastern Chad, including a 10-year-old girl, have been raped by Janjaweed militiamen in Darfur. Two surgeons from N'Djamena perform reconstructive surgery on six patients a day, six days a week.

“When the women first arrive at the hospital, they all tell the sad story of being abandoned by their husbands and shunned by society”, said Fatimé Mahamat Makoum, a midwife caring for the refugees at the Abeche hospital. “They are not allowed to sit with other women, attend wedding ceremonies and funerals in the camps. They are not even allowed to talk and give their opinion. They are second-class citizens.” Many of the women who have benefited from the surgery do not want to return to the refugee camps, but would like to stay at the hospital to help other women.²⁴⁴

**Field practice:
Kenya**

During the annual participatory assessment in Nairobi, Kenya, refugee women said that they were not able to access reproductive health care. The public clinic in their neighbourhood was crammed into a tiny facility, and none of the staff spoke the refugees' languages.

UNHCR and its partner the German governmental Gesellschaft für Technische Zusammenarbeit (GTZ, a German governmental humanitarian organization) decided to build partnerships between the local health authorities and the refugee communities so that refugee women could access reproductive health care. After consultations with the health authorities, UNHCR and GTZ assisted with some physical improvements to the clinic. Interpreters were posted to the clinic during the busy morning hours.

Then UNHCR and GTZ mobilized the refugee community to access the facility. Meetings were held with community groups; community outreach workers went into homes to invite women to access reproductive health care; and GTZ began training refugee women to be peer counsellors in the areas of reproductive health and SGBV.

This outreach through multiple channels has been effective. Now refugee women are bringing their sisters to the clinic for ante-natal care, and more deliveries are taking place in maternity facilities.

²⁴⁴ See UNHCR, “UNHCR, UNFPA fund surgery for refugee and local women in Chad”, 17 March 2005, at <http://www.unhcr.org/cgi-bin/texis/vtx/news/opendoc.htm?tbl=NEWS&page=home&id=4239519f4>.

Field practice: Adolescent sexual and reproductive health, Tanzania

Overview Multi-purpose health centres in three refugee camps in Tanzania provide accessible youth-friendly and culturally-acceptable advice and treatment on adolescent sexual and reproductive health (ASRH) issues. The centres are run by youth-led committees. They provide training, including vocational skills training, as well as a space for recreation.²⁴⁵

Rights promoted Among the rights promoted by this initiative are:

- the right to the highest attainable standard of health, especially sexual and reproductive health;
 - the right to information;
 - the right to work and to an adequate standard of living; and
 - the right to education.²⁴⁶
-

Steps to implementation In 2000, a World Health Organization (WHO) study revealed the poor quality of sexual and reproductive health services for adolescents in refugee camps in western Tanzania. Girls and boys complained about lack of confidentiality, long waiting times, and the judgmental attitudes of health workers.

In response, UNHCR set up youth centres in three refugee camps to inform, train, and provide healthcare to girls and boys. Adolescent refugees are trained in ASRH issues, encouraged to talk about their concerns. Girls and boys receive counselling and treatment for sexually transmitted diseases, HIV prevention, life skills building and HIV peer education training and have the opportunity to watch videos, dance, do drama and play ball games.

UNHCR has gained the support of parents, community and religious leaders by familiarizing them with the activities of the centres. Local leaders are now supportive of the centres, which increases trust and convinces more parents to allow the girls to go there.

AGDM and empowerment

The youth centres are working with girls to solve problems linked to early marriages, unwanted pregnancies, and abortions. The centre gives hygiene advice and treats sexually transmitted infections. Through prevention information and post-infection treatment, the centre helps ensure girls can stay healthy and enjoy a better life.

Girls learn vocational skills such as gardening, tailoring and cooking. They study other languages, including English, French, Kiswahili, and Kirundi. With new skills, girls improve their income-generating opportunities.

Girls and their parents train to become peer educators. Once trained, they are able to go out to girls who are not usually able to come to the centre and tell them about health risks and available solutions. Information-sharing among parents ensures a proper response within the family to the health problems of adolescents.

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²⁴⁵ For more information, see Naomi Nyitambe, Marian Schilperoord and Roselidah Ondeko, "Lessons from a Sexual and Reproductive Health Initiative for Tanzanian Adolescents", *Forced Migration Review*, issue 19, January 2004, p. 9, at <http://www.fmreview.org/FMRpdfs/FMR19/FMR1903.pdf>.

²⁴⁶ See also, CRC committee, General Comment No. 4, 2003, Adolescent health and Development in the context of the Convention on the Rights of the Child.

Field practice: Adolescent sexual and reproductive health, Tanzania, continued

AGDM and empowerment (continued)

In one centre training has also been provided for 35 young people – a third of whom were girls - who are mute or deaf to empower them by giving them a better understanding of sexual and reproductive health, including HIV prevention.

Community involvement

Initially, UNHCR did not consult parents, religious and community leaders about the project which led to anxieties, suspicions and misconceptions about the youth centres. Few girls came to them because of these concerns and an initial focus of activities was on boys.

In response, UNHCR consulted community leaders, parents, and religious leaders who allowed girls to visit the youth centres in the absence of boys. Because the girls can only visit the centres two half days a week, dialogue with parents and local leaders must continue to ensure that girls and boys can benefit equally from the centres.

Young people, service providers, parents and religious leaders help develop the training material used in the centres together and to revise it annually.

Partners involved

UNHCR, UNICEF, WHO, and the International Rescue Committee (IRC) funded Multi-Purpose Youth Friendly Centres in three refugee camps. Implementing partners provide the facilities and services necessary to run the centres.

Constraints

The following constraints affect this project:

- some parents and religious leaders still do not approve of discussing sexual and reproductive health risks with young people;
 - poor economic conditions in refugee camps mean people engage in risky sexual behaviour even if they are aware of the risk of HIV;
 - youth trainers can become demoralized due to a lack of incentives; and
 - training sessions are often short, involve few participants and lack training materials.
-

Impact

Trainers challenge traditional beliefs about HIV, sexual health, and the transmission of other diseases in health education sessions. To minimize health risks, they provide personal hygiene information to girls and their parents. Parents have called this an eye-opening exercise and have suggested increasing the number of participants in the training sessions.

Community leaders and most of the religious leaders approve the activities at the centres. Because of their leaders' authority, community members are inclined to trust the centres and participate in their activities and training sessions.

Continued on next page

Field practice: Adolescent sexual and reproductive health, Tanzania, continued

Lessons learned Lessons learned by programme organizers include the need to:

- respond to local needs and involve religious leaders, parents and young people in all aspects of project design and implementation;
 - produce a transparent plan of action that clearly sets out the roles of all stakeholders;
 - ensure that skills taught are marketable, as there is little point in teaching tailoring or basket-making if markets are saturated;
 - establish youth-friendly spaces with trained adolescent asexual and reproductive health specialists able to ensure privacy and confidentiality;
 - provide flexible drop-in counselling and treatment services instead of a fixed schedule;
 - provide course participants with incentives to attend and complete courses, e.g. by providing a certificate or a bar of soap;
 - offer financial incentives to peer counsellors to ensure they do not drop out of programmes, thus demotivating other young people;
 - realize the importance of data collection and ongoing monitoring and evaluation; and
 - listen to young people, realize they are highly adaptable, and involve them in all aspects of project design and implementation.
-

5.5.3 HIV/AIDS

“Adolescent boys participating in a focus group in Indiri refugee camp, Chad, reported (while laughing) that when someone dies of AIDS, their body must be burned because it could infect others in the village. They said that they are worried about getting HIV. To prevent HIV, they suggested not eating with someone who has HIV, not taking the infected person’s blood, not drinking the water or being near an infected person, nor using their blanket. They do not know what a condom is and don’t know if people in this setting would use condoms. Sex education consists of teachers advising them not to have sex.”

from Lifesaving Reproductive Health Care: Ignored and Neglected, Assessment of the Minimum Initial Health Service Package (MISP) of Reproductive Health for Sudanese Refugees in Chad²⁴⁷

Introduction

The global HIV pandemic is a serious problem for everyone. The conditions that characterize displacement – conflict, social instability, food insecurity, poverty, and powerlessness – are also conditions that favour the rapid transmission of HIV and other sexually transmitted infections. The long-term consequences of HIV/AIDS are often more devastating than the conflict itself, as the number of deaths from AIDS each year exceeds the number of those killed during conflicts. HIV and AIDS are not just health issues, but a problem that affects societies and cultures, human rights, and the long-term social and economic well-being of displaced persons and the local population with whom they interact.

HIV/AIDS is no longer striking primarily men. Today, more than 20 years into the epidemic, women account for nearly half the 40 million people living with HIV worldwide. In sub-Saharan Africa, 57 per cent of adults with HIV are women, and young women aged 15 to 24 are more than three times as likely to be infected as young men. Despite this alarming trend, women often know less than men about how HIV is transmitted and how to prevent infection, and what little they do know is often rendered useless by the discrimination and violence they face.²⁴⁸

“We have to speak more and more about violence. Because wherever you find violence – whether it’s physical, psychological or sexual – there will be AIDS. HIV entered my life through violence, as it has for so many, and we must actively commit to bring this to an end.”

Gracia Violeta Ross, National Chair of the Bolivian Network of People Living with HIV/AIDS (REDBOL)²⁴⁹

Summary of challenges

As further outlined below, women and girls face many challenges in relation to HIV/AIDS, including because:

- they are generally more susceptible to HIV infection than men and boys;
- they bear the burden of the pandemic in other ways;
- conflict and displacement are additional risk factors; and
- women and girls living with and affected by HIV are at particular risk of stigmatization and discrimination.

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²⁴⁷ Women’s Commission for Refugee Women and Children and UNFPA, Lifesaving Reproductive Health Care: Ignored and Neglected, Assessment of the Minimum Initial Health Service Package (MISP) of Reproductive Health for Sudanese Refugees in Chad, August 2004, p. 18.

²⁴⁸ UNAIDS, UNFPA, UNIFEM, Women and HIV/AIDS: Confronting the Crisis, 2004, Preface.

²⁴⁹ The Global Coalition on Women and AIDS, Stop Violence Against Women, Issue No. 2, at <http://womenandaids.unaids.org/themes/docs/UNAIDS%20VAW%20Brief.pdf>.

5.5.3 HIV/AIDS, continued

**Challenge:
Susceptibility to
HIV infection**

Women and girls are generally more susceptible to HIV infection than men and boys because of:

- gender discrimination and violence;
- biology;²⁵⁰
- insufficient access to HIV prevention information and services;
- inability to negotiate safer sex; and
- the lack of female-controlled HIV prevention methods.²⁵¹

**Challenge:
Additional burdens**

Women and girls bear the burden of the pandemic in many other ways. They are more likely to take care of children orphaned due to AIDS and to care for sick relatives and neighbours. Older women, whose own children have died of AIDS, often care for their grandchildren or take in orphans.

In such circumstances, in order to augment or compensate for loss of income, girls tend to be removed from school, or may themselves become child heads of household. This in turn, prevents them from obtaining information about HIV prevention and transmission, and increases the risk that they will be infected. Education is often referred to as the “social vaccine” for preventing transmission of HIV and mitigating the impact of AIDS. There is a growing body of evidence that links the lack education, particularly for women, with the spread of HIV.²⁵²

**Challenge:
Resulting from
displacement and
conflict**

These factors may present greater challenges for displaced women and girls because of:

- their vulnerability to exploitation and violence throughout displacement;
- food insecurity and lack of livelihoods may oblige women and girls to turn to survival sex to gain access to food and other fundamental needs; and
- the breakdown of communities and families can result in high-risk behaviour.

The correlation between the spread of HIV and sexual violence and exploitation of women and girls in conflict situations is complex. Yet, when rape is used as a weapon of war, the consequences for women and girls are often deadly and can include HIV infection.²⁵³

At the same time, while it is true that conflict-affected populations and refugees are at greater risk of HIV infection – because of sexual violence and disruption of health services – this does not necessarily translate into higher infection rates. Actual infection rates are highly context specific. Key factors include the HIV prevalence in the area of origin, infection rates in the

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²⁵⁰ Male-to-female transmission of HIV during sex is about twice as likely as female-to-male transmission. See WHO, “Number of women living with HIV increases in each region of the World”, 2004, at http://www.who.int/mediacentre/news/releases/2004/pr_unaids/en/print.html.

²⁵¹ The information in this paragraph and those that follow is adapted from: UNICEF, *The State of the World's Children*, 2005, pp. 70–71; IASC, “Guidelines for HIV/AIDS Interventions in Emergency Situations;” UNHCR, “Note on HIV/AIDS and the Protection of Refugees, IDPs and Other Persons of Concern”, April 2006.

²⁵² UNICEF, “Making Waves with Girls Education”, *Education Update*, vol. 1, issue 1, 2003, p. 5, at <http://www.unicef.org/girlseducation/files/Acceleration.pdf>; “Education Access for Children Affected by HIV and AIDS”, Background Paper for Global Partners’ Forum on Children Affected by HIV/AIDS, 9–10 February 2006, at http://www.unicef.org/aids/files/GPF_backgroundunder_education.pdf.

²⁵³ UNICEF and UNHCR, *HIV/AIDS, Conflict and Displacement*, Conference report on the XVI International AIDS Conference Affiliated Event, Toronto, Canada, August 2006, at <http://www.unhcr.org/protect/PROTECTION/45a4bf224.pdf>.

5.5.3 HIV/AIDS, continued

Resulting from displacement and conflict (continued)

population surrounding refugee camps and the time the refugees have spent in the camp. An increased risk of HIV infection in a time of conflict can also be offset by a decreased risk if refugees' mobility was reduced and if their level of HIV awareness has been raised through educational programmes in refugee camps.²⁵⁴

Challenge: Discrimination and stigmatization

Men, women and children who are living with and affected by HIV and AIDS may face protection risks, such as discrimination in relation to housing, property, and health care. They may face the risk of *refoulement*, denial of access to asylum procedures, lack of access to durable solutions, and restrictions on their freedom of movement due to their HIV status. Mandatory testing, which violates international human rights standards, and lack of confidentiality regarding health status also create protection risks.

Women are often the primary targets of stigmatization related to HIV and AIDS. They are often blamed for introducing the disease into the household or community, even though their male partners may be the true source of infection. Women who are HIV positive may be more susceptible to violence or the threat of violence by their partners and/or families. Fear of such violence causes some women and girls to avoid testing.

International legal standards and guidelines

Women and girls have the right to the highest attainable standard of physical and mental health, which includes the right to HIV and AIDS prevention, treatment, care and support.²⁵⁵ Women and girls, like men and boys, who are living with HIV and AIDS are entitled to live their life in dignity, free from discrimination and stigmatization and should not be subject to discriminatory measures.

Like other refugees, refugees living with HIV/AIDS are entitled as indicated in the 1951 Refugee Convention to the same treatment as nationals as regards public relief and assistance.²⁵⁶

The UN Declaration of Commitment on HIV/AIDS²⁵⁷ recognizes that gender equality and the empowerment of women are fundamental preconditions if women and girls are to be less vulnerable to HIV/AIDS infection.

Responsibility: States

Realization of women's and girls' right to the highest attainable standards of health requires States to take steps which are necessary for "the prevention, treatment and control of epidemic, endemic ... and other diseases" and for "the creation of conditions which would assure to all medical service and medical attention in the event of sickness" and to ensure that these rights are respected, protected and fulfilled without discrimination.²⁵⁸

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²⁵⁴ UN-OCHA Integration Regional Information Networks, "Sudan: Trying to Stem the Spread of HIV/AIDS", 6 September 2005, at <http://www.unhcr.org/cgi-bin/texis/vtx/print?tbl=PROTECTION&id=43293e0b2>.

²⁵⁵ See generally, UNHCR, "Note on HIV/AIDS and the Protection of Refugees, IDPs and Other Persons of Concern", April 2006, at <http://www.unhcr.org/publ/PUBL/444e20892.pdf>, especially paras. 51–54.

²⁵⁶ 1951 Refugee Convention, Article 23.

²⁵⁷ UN General Assembly, Declaration of Commitment on HIV/AIDS, A/RES/S-26/2, 2 August 2001, in particular paras. 14, 37, 58–62; 65–67.

²⁵⁸ ICESCR, Articles 2, 12(2)(c) and (d). See also Committee on Economic, Social and Cultural Rights, General Comment No. 14 (2000), para. 16.

5.5.3 HIV/AIDS, continued

**Responsibility:
States** (continued)

As indicated in the UN Declaration of Commitment on HIV/AIDS, States have a responsibility to address the gender and age-based dimensions of the HIV/AIDS epidemic. They must integrate a gender perspective into efforts to combat HIV and AIDS and ensure that women must participate in developing programmes to prevent the spread of HIV.

Central to this approach is the development of strategies that promote the advancement of women and women's full enjoyment of human rights, including their right to have control over their health and sexuality and to decide freely and responsibly on those matters so that they can protect themselves from HIV infection.

This approach involves providing health-care services, including for sexual and reproductive health, that promote gender equality within a culturally and gender-sensitive framework. The UN Declaration of Commitment on HIV/AIDS also states that HIV and AIDS awareness, prevention, care, and treatment must be incorporated into programmes and actions that respond to emergency situations.

**Responsibility:
UNHCR**

UNHCR has a responsibility to ensure that HIV gender-sensitive programmes are made available in concert with national programmes in situations of displacement, including emergencies, as well as upon return.

How to respond

In order to ensure that women and girls are able to enjoy their right to HIV and AIDS prevention, treatment, care and support, UNHCR and its local, national and international partners should carry out the following actions:

Response	Actions
Coordinate	<ul style="list-style-type: none"> • Work in concert with national HIV/AIDS programmes to promote the benefits of making these also available to displaced and returnee populations on a non-discriminatory basis. • Coordinate with international and national partners to ensure HIV gender-sensitive programming in situations of displacement as well as return.
Assess, analyse and design	<ul style="list-style-type: none"> • Use UNHCR's "Antiretroviral Medication Policy for Refugees"²⁵⁹ to work with governments, implementing and operational partners to assess the availability of short-term preventive anti-retroviral therapy (ART) to prevent mother-to-child transmission (PMTCT) and to reduce exposure through post-exposure prophylaxis (PEP), and of long-term ART, so as to identify gaps in provision and assess the need for capacity building and/or activities to promote the inclusion of refugees in national programmes.
Intervene to protect	<ul style="list-style-type: none"> • Focus on unaccompanied children, orphans, and other children affected by HIV and AIDS, provide necessary support, family tracing, and family reunification, and work towards durable solutions for them.²⁶⁰ • Ensure that everyone who has been raped has access to Post-Exposure Prophylaxis to prevent transmission of HIV. • Lobby for and support affected persons' access to treatment.

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²⁵⁹ Issued in January 2007 and available at <http://www.unhcr.org/pub/PUBL/45b479642.pdf>.

²⁶⁰ UNHCR, "Note on HIV/AIDS and the Protection of Refugees, IDPs and Other Persons of Concern", April 2006, para. 53.

5.5.3 HIV/AIDS, continued

How to respond (continued)

Response	Actions
Strengthen national capacity	<ul style="list-style-type: none"> • Advocate with governments for the integration of refugees and displaced persons in national strategic plans on HIV and AIDS, including national prevention, treatment and care programmes. • Include access to HIV and AIDS programmes, including prevention, support, care, and treatment of all individuals affected by HIV/AIDS. • Train health workers to recognize signs of gender-based violence and to provide medical care as well as counselling and referral services. • Ensure that women and children have access to antiretroviral treatment (ART) when it is available for the surrounding communities or for people who had started treatment before flight. • Where national authorities may implement mandatory HIV testing of women and girls of concern, or seek to do so, lobby strongly against this, explaining that <ul style="list-style-type: none"> – this is at variance with relevant human right standards; – WHO and UNAIDS have asserted that there is no public health justification for mandatory HIV screening as it does not prevent the introduction or spread of HIV, and – public health interests are best served by promoting voluntary counselling and testing in an environment where confidentiality and privacy are maintained.²⁶¹
Strengthen community capacity to support solutions	<ul style="list-style-type: none"> • Work with community leaders to eliminate stigma and myths about women and girls related to HIV/AIDS. • Ensure that women and young people are part of regular HIV coordination and planning meetings. • Ensure that women have access to programmes focusing on prevention of mother-to-child transmission when they are available for the surrounding communities. • Empower women and girls and, through basic rights-awareness training and life-skills training, reduce their vulnerability to HIV and AIDS. • Ensure that women and girls, especially have access to voluntary counselling and testing (VCT) that respects confidentiality and is administered by staff who are aware of the particular concerns of adolescent girls and women. • Ensure that young people, including those with disabilities, have sufficient understanding of HIV and are able to protect themselves against the infection, through schools programmes and youth groups. • Include support to caregivers of AIDS patients and children orphaned by AIDS. • Work to prevent and respond to protection risks faced by women and girls affected by HIV/AIDS, such as discrimination and violence. • Ensure that women and girls have access to education and literacy classes, including informal education such as vocational and life skills training.
Monitor, report and evaluate	<ul style="list-style-type: none"> • Monitor the protection needs of women and children who are HIV positive or otherwise made vulnerable by HIV and AIDS, including to determine a possible risk of domestic violence, barriers to women's access to care and treatment, stigma and discrimination, possible abandonment by their families or additional family care responsibilities, particularly for children or older women.²⁶²

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²⁶¹ See UNHCR, "Note on HIV/AIDS and the Protection of Refugees, IDPs and Other Persons of Concern", April 2006, p. 3.

²⁶² UNHCR, "Note on HIV/AIDS and the Protection of Refugees, IDPs and Other Persons of Concern", April 2006, para. 52.

5.5.3 HIV/AIDS, continued

Field practice: Tanzania	After six months on air, the story of a womanizing truck driver and his family, Twende na Wakati (Let's Go with the Times), was the most popular radio show in the United Republic of Tanzania. Eighty-two per cent of listeners said the serial had prompted them to reduce risky sexual behaviour. Independent data showed a 153 per cent rise in condom distribution during the first year of the show. Health-clinic data reported that 41 per cent of new users of contraceptives were influenced by the series. The cost of reaching each new client was less than a dollar: a cost effectiveness unmatched by any other known strategy. ²⁶³
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Field practice: Ecuador	<p>A "Gender and HIV" project was implemented in the province of Sucumbíos, Ecuador, in an interagency effort involving UNHCR, UNFPA, UNIFEM and a local NGO. The project:</p> <ul style="list-style-type: none">• trained community health promoters, including refugee women, on gender, sexual and reproductive health, and HIV/AIDS, who went on to share this information in their communities and neighbourhoods;• improved the communication skills of educators and adolescents on issues such as gender and HIV/AIDS;• supported local women's organizations in key celebrations such as the International Day for the Elimination of Violence Against Women on 25 November; and• led to an inter-agency programme supporting the Health Directorate in implementing a "provincial plan against HIV/AIDS" with the additional participation of UNICEF, UNDP, UNESCO, and the Pan-American Health Organization. <p>A relatively small inter-agency initiative with modest funding (three agencies with a budget under \$10,000) has led on to a much bigger initiative (seven agencies plus the International Organization for Migration with a budget of over \$100,000) to support and build the capacity of Sucumbíos province in the fight against HIV/AIDS. This prevents duplication of efforts and resources and strengthens a unified UN presence in the northern border of Ecuador. It has also helped ensure that gender concerns are mainstreamed throughout the programme.</p> <p>In addition, indigenous refugee women and men of the indigenous quechua ethnicity received training on gender, reproductive health and HIV/AIDS as part of a UNIFEM-funded project with the Sucumbíos Quechua Women's Association. The project helped promote <i>local</i> quechua women's agendas regarding domestic violence in their communities, their demands and suggestions for preventive measures and allowed quechua refugees to link themselves with the Ecuadorian Quechua community, thus contributing to their integration.</p>
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²⁶³ See UNFPA website, www.unfpa.org.

5.5.4 Mental health and psychosocial support

Panchita came to Australia as a refugee with her husband and four children after having fled from a vicious civil war. Panchita and her husband and two of her children had suffered brutal experiences, including torture and rape, that resulted in both physical and emotional trauma. Their first year as refugees in Australia was filled with hope, however, and they looked forward with excitement to their future in a new country.

Within a few years, Panchita and her family had lost their initial high hopes. Difficulties in finding work and integrating into the local society led to feelings of isolation and depression. Panchita's husband resorted to violence, something that had never happened before, according to Panchita. He frequently beat Panchita and used excessive physical punishment on the older children. Panchita reported that her husband also raped her and called her names, which brought back terrible memories of the time she was raped and tortured by soldiers in their homeland.²⁶⁴

Introduction

It is widely recognized that forced displacement, conflict, and human rights violations have a significant negative impact on the mental health of those affected.²⁶⁵ Displaced persons often suffer from anxiety, depression, and post-traumatic stress disorders after experiencing the traumas of seeing family members and neighbours die or seeing their homes and villages destroyed. Sexual violence, either when used as a strategy of war or in its aftermath, has severe psychological effects on women and girls. Left untreated, the psychological scars can destroy a woman's or girl's quality of life and even threaten the community as a whole.²⁶⁶

Definition: Mental health and psychosocial support

The Inter-Agency Standing Committee defines mental health and psychosocial support as a composite term to describe any type of local or outside support that aims to protect or promote psychosocial well-being and/or prevent or treat mental disorder. Although the terms *mental health* and *psychosocial support* are closely related and overlap, for many aid workers they reflect different, yet complementary, approaches. Aid agencies outside the health sector tend to speak of supporting psychosocial well-being. Health sector agencies tend to speak of mental health, yet historically have also used the terms psychosocial rehabilitation and psychosocial treatment to describe non-biological interventions for people with mental disorders.²⁶⁷

Action to enhance mental health and psychosocial support may involve interventions to provide support, counselling and healthcare to individual survivors. It can also include working with communities to discern their own coping mechanisms, help rebuild them and support them in practical ways, thereby strengthen the confidence and trust of community members.

Summary of challenges

While the physical hardships suffered by the displaced are often well-documented by aid agencies, their mental health and psychosocial needs may be less evident. These are rarely subject to the same rigorous

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²⁶⁴ Story adapted from Eileen Pittaway, "The Ultimate Betrayal: An Examination of the Experience of Domestic and Family Violence in Refugee Communities", Occasional Paper no. 5, Center for Refugee Research University of New South Wales, 2004, at <http://www.crr.unsw.edu.au/documents/The%20Ultimate%20Betrayal%20-%20An%20Occasional%20Paper%20Sept%202005.pdf>.

²⁶⁵ International Consultation on Mental Health of Refugees and Displaced Populations in Conflict and Post-conflict Situations, "Declaration of Cooperation: Mental Health of Refugees, Displaced, and other Populations affected by Conflict and Post-conflict Situations", Geneva, October 2000.

²⁶⁶ E. Johnson-Sirleaf and E. Rehn, *Women, War and Peace: The Independent Experts' Assessment*, Progress of the World's Women, 2002.

²⁶⁷ See IASC, *IASC Guidelines on Mental Health and Psychosocial Support in Emergency Settings*, June 2007, p. 1, at <http://www.humanitarianinfo.org/iasc/content/documents/weekly/20070620-1345/Guidelines%20IASC%20Mental%20Health%20Psychosocial.pdf>.

5.5.4 Mental health and psychosocial support, continued

Summary of challenges (continued)

assessments as those to determine the level of food, shelter, or physical health assistance.²⁶⁸

Some of the challenges faced are discussed below and include the difficulties women and girls may face seeking support and the dual burden they must bear of their own trauma and their responsibilities as caregivers.

Challenge: Seeking support

Women and girls subjected to SGBV and other trauma often do not come forward to ask for psychosocial support. They may not know it exists, may fear ostracism stigmatization, fear retaliation by perpetrators against them or other family members, feel helpless, be suspicious of authority, have experienced insensitivity and egoistic motives on the part of individuals persuading disclosure, and/or may not feel able to speak to a stranger when such issues have traditionally been resolved within the family.²⁶⁹

Such women and girls may refuse therapeutic treatment for trauma, even though they may seek medical help for physical ailments, including forced pregnancy. Their social and cultural background can thwart participation in psychosocial programmes. Where problems have always been solved within the extended family, the idea of expressing person distress to a stranger may well be anathema to many victims/survivors needing assistance.²⁷⁰

Challenge: Responsibilities as caregivers

Displaced women tend to carry a double burden, as the story of Panchita and her family at the start of this section shows. They must deal with their own traumatic experiences of displacement and violence. At the same time, in their role as caregivers, they must endure the consequences of the traumas suffered by their men folk and children.

It is recognized that women's role as caregivers is so embedded in many societies that, even in the most desperate circumstances, women will try to take care of the people around them and will put their own experience to one side as they focus on coping with the harsh realities of their new situation and protecting their families. Many women suffer from tremendous feelings of guilt and helplessness because they are unable to protect their children and relatives from violence and hardship.²⁷¹

International legal standards and guidelines

Women and girls have the right to psychosocial support as part of their right to the highest attainable standard of physical and mental health.

The IASC Guidelines on Mental Health and Psychosocial Support in Emergency Settings set out a number of core principles which should guide our interventions. These affirm that humanitarian actors should base their actions on human rights and equity; participation; "do no harm"; build on

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²⁶⁸ J. Jayawickrama and E. Brady, *Trauma and Psychosocial Assessment in Western Darfur, Sudan*, 2005, Trauma Risk Reduction Programme, Disaster and Development Centre, Northumbria University, Newcastle-upon-Tyne, UK, 2005. See also UNICEF/UNFPA, "The Effects of Conflict on Health and Well-being of Women and Girls in Darfur: Situational Analysis Report: Conversations with Women", (no date given but after mid-2005), p. 32, at http://www.unicef.org/infobycountry/files/sitan_unfpaunicef.pdf.

²⁶⁹ Geneva Centre for the Democratic Control of Armed Forces (DCAF), *Women in an Insecure World: Violence against Women, Facts, Figures and Analysis* (eds Marie Vlachová and Lea Biason), 2005, p. 163.

²⁷⁰ Josi Salem-Pickartz, "Psychosocial Interventions in Post-War Situations", *ibid.*, pp. 157–167 at p. 165.

²⁷¹ E. Johnson-Sirleaf and E. Rehn, *Women, War and Peace: The Independent Experts' Assessment*, Progress of the World's Women, 2002.

5.5.4 Mental health and psychosocial support, continued

International legal standards and guidelines (continued)

available resources and capacities; integrate support systems; and develop a layered system of complementary support so as to be able to meet the needs of different groups.²⁷²

The Guidelines also clarify that mental health and psychosocial support requires various levels of interventions, each of which is mutually reinforcing. These involve:

- broad programmes to provide basic services and security issues;
 - community and family support interventions;
 - increasingly focused non-specialized support; and
 - specialized mental health services.
-

Responsibility

States have a responsibility to ensure that adequate protection and health services, including trauma treatment and counselling, are provided for women in especially difficult circumstances, including those trapped in situations of armed conflict and women refugees.²⁷³

Psychosocial support must be made available from the beginning of an emergency. Early and adequate mental health responses during a humanitarian emergency limit the impact of these events, help those affected to cope, and speed their return to normal functioning.²⁷⁴

All humanitarian actors are expected to contribute to non-specialized responses and to ensure that coordinated referral and response mechanisms are put in place when a more specialized intervention is required. Coordination among actors is therefore crucial to ensure broad and effective prevention and response mechanisms.

UNHCR, like other agencies, thus has a responsibility to support the provision of adequate and culturally appropriate psychosocial care for women and girls. This includes provision of such care and services to survivors of violence and of different forms of exploitation and abuse,²⁷⁵ including by UN staff and peacekeepers.

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²⁷² IASC, *IASC Guidelines on Mental Health and Psychosocial Support in Emergency Settings*, June 2007, pp. 9–13, available in various languages at <http://www.humanitarianinfo.org/iasc/content/products/>.

²⁷³ Committee on the Elimination of Discrimination Against Women, General Recommendation No. 24, 1999, para. 16. See also, ExCom Conclusion No. 73 (XLIV), 1993, on refugee protection and sexual violence, para. (f).

²⁷⁴ World Health Organization, "Tool for Rapid Assessment of Mental Health Needs of Refugees, Displaced and Other Populations Affected by Conflict and Post-Conflict situations: A Community-Oriented Assessment", 2001, p. 1.

²⁷⁵ See ExCom Conclusion No. 73 (XLIV – 1993) on refugee protection and sexual violence, para. (f).

5.5.4 Mental health and psychosocial support, continued

How to respond

Suggestions for actions which UNHCR, together with local, national and international partners, should carry out in order to ensure that women and girls are able to enjoy their right to psychological health in situations of displacement and return include:²⁷⁶

Response	Actions
Coordinate	<ul style="list-style-type: none"> Coordinate with the primary health care providers, governments, and NGOs to ensure that access to mental healthcare services can be made available to the whole community and is not restricted to groups with specific needs, and to ensure sustainability of interventions.
Assess, analyse and design	<ul style="list-style-type: none"> Carry out a Rapid Assessment of Mental Health needs and available resources (RAMH) of the displaced population whenever a complex emergency strikes a community. This may be requested by the government concerned, by a UN agency, an NGO, a funding source or suggested by WHO and must involve the community itself.²⁷⁷ Spend time with the community identifying and analysing their responses to mental health challenges and working to understand community dynamics. Identify trusted traditional healers and learn about their practices. Advocate for and integrate appropriate community-based psychosocial support in programming, emergency preparedness, and contingency planning.
Intervene to protect	<ul style="list-style-type: none"> Provide appropriate psychological, social, economic, educational, and medical support to survivors of rights violations and encourage active participation of the survivor in family and community activities.²⁷⁸ Integrate such services as part of other education, social and health services so that it is easier for women and girls to access them without stigma being attached. Ensure women and girls at risk can access support, such as medical and psychosocial care, to facilitate their recovery and integration, whether this be in the context of local integration, return, resettlement or other humanitarian programmes.²⁷⁹ Respect women and girls who may be fearful of speaking out about their experiences and trauma. Therapy interventions which assume that rape must be acknowledged and discussed, for instance, may not necessarily apply in situations where women and girls have many other traumas to deal with and may isolate victims/survivors further from their community.²⁸⁰ Where women and girls refuse support groups and psychotherapy which focus, for instance, on rape, it may be helpful to encourage women and girls who have had similar traumatic experiences to form groups and tackle developmental projects. This would allow them to experience mutual support, to begin to rebuild their community (an essential element in returning to a semblance of normality), and have a greater sense of agency and control over their situation.²⁸¹

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²⁷⁶ For further suggestions see, *IASC Guidelines on Mental Health and Psychosocial Support in Emergency Settings*, referred to above; World Health Organization, Department of Mental Health and Substance Dependence, "Mental Health in Emergencies: Mental and Social Aspects of Health of Populations Exposed to Extreme Stressors", 2003, at <http://www.wpro.who.int/NR/rdonlyres/6312A18D-1B1C-4F03-928C-394E24D9A7E6/0/MentalHealthinEmergencies.pdf>.

²⁷⁷ World Health Organization, "Tool for Rapid Assessment of Mental Health Needs of Refugees, Displaced and Other Populations Affected by Conflict and Post-Conflict situations: A Community-Oriented Assessment", 2001.

²⁷⁸ See also ExCom Conclusion No. 105 (LVI) of 2006, para. (n)(ii).

²⁷⁹ See ExCom Conclusion No. 105 (LVI) of 2006, para. (p)(v).

²⁸⁰ Josi Salem-Pickartz, "Psychosocial Interventions in Post-War Situations", in Geneva Centre for the Democratic Control of Armed Forces (DCAF), *Women in an Insecure World: Violence against Women, Facts, Figures and Analysis* (eds Marie Vlachová and Lea Biason), 2005, pp. 165–6.

²⁸¹ *Ibid.*, p. 166.

5.5.4 Mental health and psychosocial support, continued

How to respond (continued)

Response	Actions
Strengthen national capacity	<ul style="list-style-type: none"> • Work with WHO to educate primary health care officials, humanitarian aid workers and community leaders in core psychological care skills and basic mental health knowledge and skills to raise awareness and community support and refer individuals to primary health care when necessary.
Strengthen community capacity to support solutions	<ul style="list-style-type: none"> • Work to ensure that interventions in mental health and psychosocial support empower women and girls and enable them to play an active role in organizing their lives, taking reconstruction and development of their community into their own hands, solving problems that affect them, attaining self-sufficiency, and reducing dependency. All are major avenues to reinstalling self-esteem, while the restoration of formal family life and every day routines helps increase families' and communities' resilience to stress.²⁸² • Most societies have their own forms of coping mechanisms for mental health conditions and their own interpretations of trauma. Often, societies see healing as a collective process that involves spiritual and religious practices. In this context, actions carried out should include:²⁸³ <ul style="list-style-type: none"> – establish good relations with the community in order to identify the support structures that exist in the community before and after displacement; – encourage the reestablishment of normal cultural and religious events and activities in order to support social networks, such as neighbourhood committees, youth and women's groups, and recreational activities for children; – help the community to rebuild support mechanisms (including for different religious communities which may be present in the same location) which ensure that the rights of the individual are respected; – understand the role of women in health processes and work with women such as midwives who are assigned such roles to help them recognize trauma symptoms and refer such women and girls for psychosocial support;²⁸⁴ – learn about how communities helped SGBV survivors to recover emotionally before displacement; and – ensure that women and girls participate in common-interest activities, such as family tracing, distributing food, and teaching children. • Provide training, supervision and ongoing support to teachers, social workers and nurses so that they can recognise trauma, provide counselling, and refer women and girls needing more professional psychosocial support.²⁸⁵

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²⁸² Geneva Centre for the Democratic Control of Armed Forces (DCAF), *Women in an Insecure World: Violence against Women, Facts, Figures and Analysis* (eds Marie Vlachová and Lea Biason), 2005, p. 159.

²⁸³ J. Jayawickrama and E. Brady, *Trauma and Psychosocial Assessment in Western Darfur, Sudan*, 2005, Trauma Risk Reduction Programme, Disaster and Development Centre, Northumbria University, Newcastle-upon-Tyne, UK, 2005.

²⁸⁴ For ICRC work with midwives in this way in the Great Lakes, see, Geneva Centre for the Democratic Control of Armed Forces (DCAF), *Women in an Insecure World: Violence against Women, Facts, Figures and Analysis* (eds Marie Vlachová and Lea Biason), 2005, p. 121.

²⁸⁵ *Ibid.*, p. 160.

5.5.4 Mental health and psychosocial support, continued

How to respond (continued)

Response	Actions
Strengthen community capacity to support solutions, contd	<ul style="list-style-type: none"> • Include as core elements of psychosocial interventions initiatives to:²⁸⁶ <ul style="list-style-type: none"> – help people understand that they are experiencing normal reactions to abnormal situations; – empower people through appropriate and scientific knowledge; – understand the consequences of stress and thus reduce its impact; – increase coping strategies and thus reduce trauma; – develop communication and problem solving skills to obtain concrete help; – ensure connections with other survivors and staff of agencies who are providing relief, healthcare, shelter, education, and economic assistance; and – strengthen community initiatives and link available resources and needs of survivors. • Where women and girls may have become separated from the community that usually provided support or this has disintegrated, work with them to create self-help groups to share experiences and provide mutual support and/or to find access to new networks e.g. through local NGOs and religious groups or communities.
Monitor, report and evaluate	<ul style="list-style-type: none"> • Monitor and evaluate activities with the community using indicators that have been determined, if possible, before starting the activity.

Field practice: Ecuador

In Ecuador, a project to provide psychological support set up and run by UNHCR's partner, the Hebrew Immigrant Aid Society (HIAS) has proved invaluable. It not only treats traumas in refugees and asylum-seekers, but also attends to integration and work market-related problems. The initiative also helps refugees tackle the challenges they face trying to establish a new life and new social networks, and integrate into a society that often meets them with prejudice, suspicion, and even fear.²⁸⁷

The project has in particular benefited victims/survivors of torture and SGBV, many of whom are rural women and girls from Colombia, people suffering from conflict-related traumas, unaccompanied or separated children, refugees facing serious integration difficulties and/or in need of resettlement. Women and children constitute 70 per cent of those assisted by the initiative.

In 2005, HIAS expanded its work to provide psychosocial assistance to children. Whether it be in the playroom, in the waiting area, with their parents or on their own, children are given priority, especially those in vulnerable situations. Children are given the opportunity to draw paintings and perform skits to help them process their experiences and help them with psychological problems. All separated children are referred to the HIAS psychologists, where they receive continuous psychological support on a weekly basis, if needed and wanted. Family tracing and reunification was coordinated with UNHCR Colombia.

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²⁸⁶ See Action Aid International, "Tsunami Response Psychosocial Care Report, 9 March 2006, at http://www.actionaid.org/wps/content/documents/Final%20Report_982006_12155.pdf.

²⁸⁷ See, UNHCR, Annual Protection Report, 2005.

5.5.4 Mental health and psychosocial support, continued

Ecuador (continued)

Especially close follow-up is given to children in precarious mental situations, for example, rape victims/survivors. They are given legal and psychological assistance, as are their siblings and parents. This is done on an individual basis, with a parent if requested and even at home. The work carried out by HIAS is not related to the RSD procedure. Confidentiality and the privacy of those involved are always respected.

A recreational “Children’s Corner” has been set up in the office of the Committee for Refugees (*Comité Pro-Refugiados*) in the capital, Quito, and is led by HIAS staff specialized in the day-care of children. Another “Children’s Corner” was created at the Field Office in Lago Agrio, next to the waiting room, for children to paint, draw and play. In the waiting room, the psychologists actively identify individuals suffering from anxiety attacks and prioritize those most at risk, while internal referrals are sometimes also made by different units working with victims of domestic violence, sexual abuse, and abuse at work. Psychologists carry out home visits, and conduct weekly visits to the shelter to assist the asylum-seekers accommodated there. The Children’s Corner provides day-care for the children of refugee parents who have no place to leave their children while they work or participate in literacy training.

5.6 Access to safe and quality education

We are teaching voluntarily our girls and women who dropped out of primary schools so that they can learn how to read, write, and count... For us, this is essential for women to know their rights, both as women and as refugees. Without education, women cannot access local administration to receive their papers nor be informed about humanitarian assistance. In this centre, we have also started a theatre performance in which adolescent girls and boys show in a comic manner how women should not be forced into polygamy.

Hawa, a 25-year-old refugee teacher, Senegal²⁸⁸

Introduction

Education is a basic human right for girls and women and is key to their empowerment. In the context of war, flight, and displacement, education is essential for the protection of women and girls and for the sustainability of durable solutions.

Well-designed education programmes can help girls and women exercise other rights, are an important part of protection strategies, and can indeed be “life-saving” and “life-supporting”.²⁸⁹

Education programmes can:

- protect women and girls from sexual abuse and forced military recruitment;
- help identify women and girls at risk;
- represent a channel for sharing information and for conveying messages e.g. on mine awareness, HIV/AIDS and/or reproductive health;
- help restore a sense of normality and self-esteem during displacement;
- make it possible for them to participate actively in peacebuilding and reconstruction efforts; and
- help facilitate the economic and social reintegration of women and girls in their country of origin.²⁹⁰



Syria / Iraqi refugee girls join Syrian girls at a school in Saida Zeinab, Damascus / UNHCR / J. Wreford / 2007

Summary of challenges

There are still significant differences between girls' and boys' access to formal and non-formal education. As a result, girls and women are often less educated than boys and men and lack knowledge about their rights. Poorly-designed programmes may sometimes endanger those rights.

Some of the challenges and obstacles women and girls face in securing their equal right to quality education include:

- poverty and gender bias in favour of boys;
- additional challenges posed by conflict and displacement;
- risks when education is neither safe nor gender-sensitive; and
- risks when education does not meet minimum standards.

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²⁸⁸ Marion Fresia, “L’humanitaire en contexte: pratiques, discours et vécus des Mauritaniens réfugiés au Sénégal”, Thèse de Doctorat en Anthropologie, Ecole des Hautes Etudes en Sciences Sociales, Paris, 2005.

²⁸⁹ INEE, *Minimum Standards on Education in Emergencies*, 2004.

²⁹⁰ See generally, UNHCR, *Education Field Guidelines*, Geneva, February 2003.

5.6 Access to safe and quality education, continued

**Challenge:
Poverty and gender
bias**

Poverty and gender bias towards boys often restrict girls' access to education. Primary education is, in principle, free of cost. Yet attending school still costs money – for school fees, materials, uniforms and/or in-school feeding programmes – and boys are often regarded as a better “investment” than girls. Parents rely on girls' help for domestic chores and may see education as a “burden” and early marriage as an “asset”.

For those girls who do go to school, some may have to pay related costs by resorting to survival sex or poorly paid work. Others fall behind in their studies and drop out before they have acquired sufficient literacy and numeracy skills due to conflicting priorities, including household duties or marriage.

**Challenge:
Conflict and
displacement**

Conflict and displacement generally exacerbate inequalities in access to education. Unaccompanied and separated girls, teenage mothers, and single mothers often have particular difficulties in gaining access to educational opportunities, due to child care responsibilities, lack of financial or other support, discrimination and stigma and/or the inability of schools to respond to their specific needs and perspectives on education.

Asylum-seeking girls and women, particularly those in urban areas, and women in detention are least likely to have access to educational opportunities, including language classes. They may be unable to provide certificates from their country of origin. Even if able to enrol, they may not be able to access the additional support they need to catch up. These women and girls are then more at risk of sexual harassment, abuse, trafficking, forced labour or domestic violence.

**Challenge:
Access to safe
learning
environments**

Schools may not always be safe places for girls. When they are far from children's homes or from camps, adolescent girls in particular may face verbal, physical and/or sexual violence on their way to or from school. School girls are particularly at risk when

- national education systems and the school infrastructure are weak,
- teachers are not adequately qualified and/or do not have acceptable working conditions,
- there is a lack of trained, paid and/or female teachers,
- school policies and codes of conduct are not in place, are not strong or are not adequately enforced, and/or
- corporal punishment is accepted as a way to enforce discipline in schools.

As a result, some teachers may harass and/or exploit children. They may, for instance, ask adolescent girls to farm their land, carry out domestic chores or sexually exploit them, if these girls cannot afford their school fees. Peer-to-peer violence and bullying can also be a problem.

The strongest message that corporal punishment and exploitation send to the mind of a child is that violence is acceptable behaviour, that it is alright for a stronger person to coerce a weaker one.²⁹¹ This helps to perpetuate a cycle of violence in the family and in society.

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²⁹¹ International Save the Children Alliance, “Corporal Punishment”, April 2003, p. 2.

5.6 Access to safe and quality education, continued

Challenge:
Access to safe learning environments
(continued)

Within the school environment, the absence of separated and lockable latrines, a lack of access to water, to sanitary materials and/or soap, may provoke physical and verbal harassment of girls by boys.²⁹² In camp settings, refugee and IDP schools that are meant to protect children from violence are sometimes viewed as easy targets for military recruitment. Schools, including specifically girls' schools, are sometimes attacked, despite the fact that such attacks represent one of the six grave violations against children in armed conflict identified by the Secretary-General.²⁹³

Challenge:
Access to quality education

Educational curricula often do not incorporate programmes to raise awareness of women's and girls' rights, empowerment, protection against sexually transmitted diseases, including HIV/AIDS, and/or to ensure the right of persons with disabilities to quality education.

Asylum-seeking, refugee and internally displaced children belonging to minority groups often do not have access to education in their own language. At the global level, girls' secondary education and non-formal education are still given a low priority.²⁹⁴

Where schools face problems recruiting female teachers, this can lead to curricula that favour boys' interests and perspectives and can deprive girls of a role model and someone they can confide in.

International legal standards and guidelines

Article 13 of ICESCR recognizes the right of every one to education, including to free primary education for all, to secondary and to higher education. Article 10 of CEDAW affirms that women have equal rights with men in the field of education. Relevant CRC provisions include those which:

- protect children from all forms of physical or mental violence (Article 19);²⁹⁵
- affirm the right of the child to education on the basis of equal opportunity and require school discipline to be "administered in a manner consistent with the child's human dignity and in conformity with" the CRC (Article 28); and
- define the purpose of the education of the child as including the development of the child's personality, talents and abilities to the fullest potential and the preparation of the child for responsible life in a spirit of equality of the sexes (Article 29).

The 2006 Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities recognizes their right to education without discrimination and on the basis of equal opportunity (Article 24).

Principle 23 of the Guiding Principles on Internal Displacement recognizes the right of IDPs to education and the right of women and girls to full and equal participation in educational programmes.

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²⁹² UNHCR, *SGBV Guidelines on Prevention and Response*; INEE, *Minimum Standards for Education in Emergencies*.

²⁹³ See chapter 6, section 2.4.

²⁹⁴ Jesuit Refugee Service, *Horizons of Learning: 25 Years of JRS Education*, 2005, p. 25.

²⁹⁵ See also CRC Committee, "General Comment No. 8 on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment", 2006.

5.6 Access to safe and quality education, continued

International legal standards for indigenous peoples

With regard to indigenous peoples, who may be displaced, as for instance in Colombia, and their right to education, ILO Convention No. 169 Concerning Indigenous and Tribal Peoples in Independent Countries of 1989 sets useful standards. It provides for the involvement of indigenous and tribal peoples in the development of educational programmes and services that address their special needs and incorporate their histories, knowledge, technologies and value systems (Article 27). It also states that indigenous children should be taught, wherever practicable, to read and write in their own language (Article 28), and for educational measures among the national population to eliminate prejudices against them (Article 31).

The 2007 UN Declaration on the Rights of Indigenous Peoples affirms the right of indigenous individuals, particularly children, to all levels and forms of education, including in their own languages, without discrimination.²⁹⁶ These standards can represent useful lobbying tools where UNHCR has to work with displaced indigenous peoples, as for instance in Colombia.

Responsibility of States

Article 10 of CEDAW commits States to taking all appropriate measures to eliminate discrimination against women in education, including in higher education, vocational training, continuing education, such as language and literacy courses, and participation in sports and physical education. This would include measures to reduce female student drop-out rates.

Under Article 28 of the CRC, States are required to make primary education compulsory and free for all, to encourage regular school attendance, and to reduce drop out-rates.

Under Article 22 of the 1951 Refugee Convention, States are obliged to provide elementary education to refugees on the same basis as they do to nationals. They must also make higher levels of education accessible to refugees on the same, or better, basis as that available to aliens.

The Guiding Principles on Internal Displacement affirm that national authorities concerned have a responsibility to make special efforts to ensure the full and equal participation of women and girls in educational programmes. Educational opportunities should be made available to internally displaced women and girls, particularly adolescents and women, whether or not living in camps, as soon as conditions permit.²⁹⁷

Responsibility of international community and UNHCR

The international community has committed itself, including through the “Education for All” strategy and the Millennium Development Goals, to eliminating gender disparities in primary and secondary education and to ensuring that the learning needs of adults, particularly women, are met.²⁹⁸ These initiatives focus on the need to achieve gender parity, promote access to quality education, and meet the learning needs of adults, especially women.

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²⁹⁶ UN Declaration on the Rights of Indigenous Peoples, adopted by the General Assembly, A/61/L.67, 7 September 2007, Article 14.

²⁹⁷ See Guiding Principle 23.

²⁹⁸ Education for All Strategy, The Millennium Development Goals, Goal 3; education and training of women is a critical area of concern in the Beijing Platform for Action. See generally, chapter 6, section 2.8.

5.6 Access to safe and quality education, continued

Responsibility of international community and UNHCR (continued)

UNHCR has a responsibility to ensure women and girls of concern have access to quality education as an integral part of its mandate under the Statute to protect them and secure durable solutions for them.

Summary of how to respond

UNHCR should ensure that women and girls always participate in the planning of education programmes, in line with the rights- and community-based approach. The Inter-agency Network for Education in Emergencies, Chronic Crises and Early Reconstruction (INEE), in which UNHCR plays an active role, provides support in implementing a rights-based approach to education and in promoting gender equality in education. This is notably through its work in establishing and disseminating “Minimum Standards”²⁹⁹ and promoting its “Good Practice Guides”.³⁰⁰

More specific responses related to the following issues are provided below:

- right to formal and non-formal education, and to gender-sensitive, quality education programmes;
- equal access to safe schooling and safe learning environments.

Right to education

Suggestions for actions which UNHCR, together with local, national and international partners, should carry out in order to promote women’s and girls’ right to formal and non-formal education and to gender-sensitive, quality education programmes include:

Response	Actions
Coordinate	<ul style="list-style-type: none"> • Work with the Ministry of Education, partners, parents, and students to establish local education committees to coordinate education programmes. • Conduct focus group discussions with students and parents on gender issues and consult women and girls, including those not attending school, as well as youth groups. • In internal displacement situations, ensure both the education and protection “clusters” work together to secure the right to education for internally displaced children.
Assess, analyse and design	<ul style="list-style-type: none"> • Collect and analyse data on a basis that is disaggregated by sex, age and diversity, including sample data from schools on end-of-year examination results, drop-out during and between years, regularity of attendance, etc. • Promote the active participation of girls and women in the design of programmes that focus on improving girls’ access to education, on the quality of education, and on the safety of learning environments. • Use the INEE Minimum Standards as guidelines to establish and run quality education programmes which meet the needs of all pupils and students, women and girls included.

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²⁹⁹ Inter-agency Network for Education in Emergencies, Chronic Crises and Early Reconstruction (INEE), “Minimum Standards for Education in Emergencies, Chronic Crises and Early Reconstruction”, 2004, at <http://www.ineesite.org/page.asp?pid=1240>.

³⁰⁰ See <http://www.ineesite.org/page.asp?pid=1238> and, for information on gender equality, women’s and girls’ education, see <http://www.ineesite.org/page.asp?pid=1149>.

5.6 Access to safe and quality education, continued

Right to education (continued)

Response	Actions
Intervene to protect	<ul style="list-style-type: none"> • Provide women and girls at risk with education and vocational training in safe learning environments, as well as recreational programmes with childcare.³⁰¹ • Negotiate with education authorities in places of origin and asylum to provide certification of students' achievements, in consultation with the country offices of UNICEF and UNESCO, as appropriate. This will facilitate recognition of education attained and re-entry into school systems on return to the area of origin. This is of particular importance for girls in societies that do not value the education of girls. • Ensure girls with disabilities are integrated into schools whenever possible and/or provided with other learning opportunities and support.
Strengthen national capacity	<ul style="list-style-type: none"> • Advocate with States and education authorities to promote their implementation of national laws and international commitments, such as those under the Convention on the Rights of the Child, which promote equal access to quality education for girls and boys regardless of their status, as well as access to learning opportunities for women and adolescent mothers. • Work to ensure equity in women's and girls' participation in national, regional, and local education committees, school management committees, and parent-teacher associations. • Work with the authorities to promote gender-sensitive learning activities, school hours and teacher training. Teachers and classroom assistants should be trained to be aware of how girls and boys are socialized differently, how to provide psycho-social support and treat girls equally and with respect during and after lessons. • Give particular attention to the recruitment and training of female teachers, with a minimum number (and ideally equal numbers) of these in each school. • Encourage the placement of women teachers in high-status positions, not just lower primary grades or for "soft" subjects. At least one female teacher should play a mentoring role for girls. • Work with UNICEF, other agencies, ministries responsible for education and for gender, and other partners to ensure gender- and diversity-sensitive curricula are developed and provided in schools for persons of concern and that curricula also incorporate modules on women's and children's rights
Strengthen community capacity to support solutions	<ul style="list-style-type: none"> • Strengthen women's and girls' capacities, including by enabling their access to quality education, including secondary education, in safe school environments.³⁰² • In line with the rights- and community-based approach, involve women's and youth organizations in raising awareness of the need for girls' and women's education, including life skills education. • Consider giving additional education and training to potential female teachers, if needed. Female classroom assistants may also be appointed to provide security and role models for girls and to help ensure that girls learn basic skills of literacy and numeracy. This can serve as an entry route to teaching. (See West Africa field practice example at the end of this section.) • Ensure that female teachers are able to participate fully in school meetings and in-service training.

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³⁰¹ ExCom Conclusion No.105 (LVII), 2006, para. (o)(iii).

³⁰² ExCom Conclusion, No. 205 (LVII) of 2006, para. (k)(ii).

5.6 Access to safe and quality education, continued

Right to education (continued)

Response	Actions
Strengthen community capacity to support solutions, contd.	<ul style="list-style-type: none"> • Ensure teachers from minority groups (especially women) are encouraged and have equal access to training and employment opportunities. • Work with the community, including parents and especially fathers, to find ways to promote girls' right to education. • In prolonged displacement situations, structure the provision of in-service teacher training so that it will be recognized in the home country. This is particularly important for returnee women who want to work as teachers
Monitor, report and evaluate	<ul style="list-style-type: none"> • Promote the active participation of girls and women in the monitoring and evaluation of programmes to improve girls' access to education, enhance the quality of education, and the safety of learning environments.

Equal and safe access to education

Suggestions for actions which UNHCR, together with local, national and international partners, should carry out in order to promote women's and girls' right to equal access to safe schooling and to safe learning environments include:

Response	Actions
Coordinate	<ul style="list-style-type: none"> • Using UNHCR's guidance on safe learning environments,³⁰³ work in collaboration with education authorities, sister agencies, implementing and operational partners, and the community to determine the types of violence present and identify root causes, establish preventive measures to create safe and supportive learning environments, and response mechanisms to ensure children have access to support and quality services.
Assess, analyse and design	<ul style="list-style-type: none"> • Work with girls in the community to identify and map all the "hot spots" where protection risks arise and hinder equal access to safe education. Discuss these in the education committee and together design response to address each of these risks.
Intervene to protect	<ul style="list-style-type: none"> • Help poorer families of concern enrol and keep their daughters in school, including by helping provide clothing, school materials, and child care, as well as additional coaching from peers or others. It may be possible for them to be exempt from fees. (There should be no fees for primary schools, according to international law, but schools sometimes levy fees for specific purposes.) • Promote the access to, and participation in, education of girls at risk, such as teenage heads-of-households, teenage mothers, girls with disabilities, and girls from minority groups. • Ensure that pregnant girls and adolescent mothers are allowed to continue their education, rather than be excluded from school by rules, discrimination or stigma.
Strengthen national capacity	<ul style="list-style-type: none"> • Work with the authorities to enrich the curriculum with reading materials that promote a positive view of girls and women and provide information on life skills (such as assertiveness/refusal skills and negotiation/conflict resolution/peace skills) to help avoid early pregnancies and exposure to HIV and SGBV. Where relevant, this should also include promoting the development of curricula in line with the traditions and culture of minority groups.

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³⁰³ UNHCR, "Safe Schools and Learning Environments: How to Prevent and Respond to Violence in School", June 2007, at <http://www.unhcr.org/protect/PROTECTION/4677981a2.pdf>.

5.6 Access to safe and quality education, continued

Equal and safe access to education (continued)

Response	Actions
Strengthen national capacity, contd.	<ul style="list-style-type: none"> • Work with education authorities to persuade them to abolish age constraints and/or requirements for birth certificates for school enrolment, so that women and girls can enrol easily. In large primary schools, arrange separate classes for over-age students. • Work with partners and education authorities to persuade them to provide support e.g. through food incentives for girls (and female teachers) who attend school regularly, clothing (especially for older girls), and targeted scholarship schemes. These schemes may have specific objectives, such as enabling girls to qualify as teachers, or ensuring a literate female in every household who can then help other girls with their studies. • Work to improve secondary and non-formal education, including literacy courses for women and out-of-school adolescent girls, as they can increase girls' and women's self-reliance and promote school attendance and success for their children. Secondary school graduates can become female classroom assistants or teachers, ensuring quality education for more girls and boys in the future. Literate mothers can help their children succeed in school. • Use the Committee on the Rights of the Child's General Comment No. 8 on corporal punishment as a framework to work with the authorities and with partners to lobby to remove legislative provisions that permit some degree of violence in schools, make it clear that "it is as unlawful to hit or 'smack' or 'spank' a child as to do so to an adult".³⁰⁴
Strengthen community capacity to support solutions	<ul style="list-style-type: none"> • Ensure that school infrastructures and locations are gender sensitive and meet minimum standards on walking distance between schools and home, separate latrines for girls and boys, and provision of suitable clothing and sanitary materials to all girls. • Develop community-based responses to prevent harassment of students and teachers in the school setting and during transit to and from school. • Develop a code of conduct for teachers, other staff and pupils with all actors involved and make sure that reporting guidelines are made available to, and understood by, girls, boys and their teachers. • Promote the establishment of pre-school classes and arrangements for community childcare in order to acquaint pre-school girls and boys with the education process, enable older girls to attend school rather than care for their younger siblings, and facilitate access to schooling for adolescent mothers. • Consider abolishing school uniforms when this policy leads to non-enrolment and early drop-out from poorer families or, alternatively, support community sewing and tailoring workshops to enable women (and men) in the displaced/returnee community to make uniforms for school children, so that enrolment and drop-out for lack of uniforms can be reduced. • When possible, provide all school materials free to girls and boys, to maximize participation and retention and to prevent stigmatization. • In some situations and where security conditions are met, provide dormitories for older girls to enable them to concentrate on their studies and stay in school.

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³⁰⁴ CRC Committee, "General Comment No. 8 on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment", 2006.

5.6 Access to safe and quality education, continued

Equal and safe access to education (continued)

Response	Actions
Strengthen community capacity to support solutions, contd.	<ul style="list-style-type: none"> • Encourage partners to employ community-mobilization educators, including women, to mobilize community support for schools, liaise with women's and youth groups, conduct girls' education campaigns, and train parent-teacher committees. • Encourage some lessons on reproductive health to be given separately to boys and girls to enable freer discussion. • Encourage the establishment of girls' clubs to help ensure girls are informed about their rights, available support services and reporting mechanisms. • Ensure that schemes for reintegration of children abducted or forcibly recruited by armed forces or armed groups provide for the education needs of girls and women, and their children, as well as of boys and men.
Monitor, report and evaluate	<ul style="list-style-type: none"> • Work with teachers and other education personnel to establish a Code of Conduct for teachers and students that is publicized, including in a child-friendly way, and monitored. • Establish and enforce ethical assessment and examination processes that protect girls and women, e.g., ensure that teachers cannot demand favours in return for good marks or promotions. • Ensure community-based monitoring and evaluation mechanisms are in place to monitor the safety of their children's environment and that children and parents taken an active part.³⁰⁵

Field practice: West Africa

"Following reports of sexual abuse and exploitation of refugee girls in West Africa, the International Rescue Committee implemented programmes to train women classroom assistants for upper-primary classes. Working alongside male teachers, they serve as role models, monitor risks of exploitation of students by teachers and document cases of abuse. Boys and girls in these refugee schools said that their classrooms were more calm, organized and conducive to learning as a result of the initiative. Relations between teachers and students were more respectful, and because the classroom assistants collected examination results directly from the teachers, there were fewer opportunities for exploitation related to grade. The girls especially appreciated having a 'mother' or 'big sister' figure in the classroom."³⁰⁶

Field practice: Lebanon

Immediately after the conflict in southern Lebanon in mid-2006, UNHCR supported the establishment of a summer camp for children from four war-ravaged villages in southern Lebanon. The Office provided tents, mattresses, blankets and kitchen sets from emergency supplies brought in for victims of the war, while the summer camp was set up by the Lebanese NGO Development for People and Nature Association (DPNA). It brought some 100 children affected by the conflict to a school in Jezzine.

As one of 28 volunteers running the camp who was a member of DPNA said: "Those children have gone through very difficult times. They are distressed. They have witnessed atrocities and fear and some of them had even lost homes or loved ones. They need to be children again, and the

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³⁰⁵ UNHCR, "Safe Schools and Learning Environments: How to Prevent and Respond to Violence in School", June 2007, p. 24.

³⁰⁶ OCHR/IRIN, *Broken Bodies: Broken Dreams: Violence Against Women Exposed*, 2005, p. 81

5.6 Access to safe and quality education, continued

Field Practice:
Lebanon (continued)

idea was to provide them with space to express themselves. Here, they are far from destruction. They will be able to forget for a while the cruel scenes they have been seeing for weeks now."

The children, ranging in age from nine to 16, came from villages severely damaged in the war. They spent three weeks on a calm hill overlooking the houses in Jezzine, a village set among green fields and uninhabited hills that was relatively less affected by the fighting. Lamis, 12, shared a tent with five other children. She found the camp a refuge. "During the war, I was so afraid. Each time I hear the shelling, I think I am going to die. Here I feel safe, I am not afraid anymore and I thank god that the war is over."

Acknowledging the importance of addressing the psychological impact of war on children, UNHCR supported the camp. It gave the children the opportunity to recover and recover some of the summer time they had missed out on during the war. It helped them learn to live with other children from different backgrounds and different religions, and exchange ideas and experiences.

Activities in the camp went well beyond leisure. Besides playing, singing, drawing and performing plays, the children participated in sessions on conflict resolution and peace building and on mine awareness. One of the activities was called "ambassador for peace" and involved children splitting into groups and exchanging ambassadors carrying a clear message, that of peace. As 12-year-old Mariana said: "In this camp we learn important things in life. We learn to love and respect each other, and not to be afraid. And the most important thing is to work as a team."³⁰⁷

Field practice:
Liberia

As part of a returnee reintegration programme in Liberia, UNHCR provided funding for the refurbishment of the Suakoko Women's Centre in 2005, in the country's Bong County, north of the national capital, Monrovia. A number of courses gave women practical knowledge about tailoring, hairdressing, tie and dye, cooking, soap-making, and so on. The one most appreciated and valued one was, however, the adult literacy programme. By early 2007, 75 women were enrolled in literacy courses there.

After 14 years of devastating civil war, they were grateful for the chance to make up for years of lost education. The centre depends heavily on volunteer teachers and students are encouraged to themselves become volunteer teachers in a country where up to 85 per cent of adults are illiterate. Referring to the past lack of educational opportunities for girls in Liberia, the (male) volunteer literacy teacher said: "I always remembered how ashamed I was with the way my sisters were treated and how sorry I was for them. This seems to be the way to rectify an old injustice."

The centre also plays an important social role, offering a rare forum for women from neighbouring villages to meet, exchange thoughts and discuss their problems.³⁰⁸

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³⁰⁷ UNHCR, "UNHCR helps Summer Camp in Lebanon to Revive Children's Laughter", 6 September 2006, at <http://www.unhcr.org/news/NEWS/44fef0cc4.html>.

³⁰⁸ UNHCR, "Literacy Programme Opens Up New Opportunities for Women in Liberia", 11 January 2007, at <http://www.unhcr.org/news/NEWS/45a66fe92.html>.

5.6 Access to safe and quality education, continued

**Field practice:
Ninemillion.org
campaign projects
in Africa**

Launched on the World Refugee Day in 2006, the **ninemillion.org** UNHCR-led campaign supports the provision of quality education in safe learning environments to the estimated nine million girls and boys of concern to UNHCR. It promotes a holistic approach to education, “Education (Plus)”, to support children’s access to education from primary to secondary school and beyond to vocational and life-skills training, and their access to recreational and sports programmes.

In eastern Chad, for instance, a project has identified alternate care givers in displaced communities to look after the infants of teenage mothers and/or their younger siblings so as to increase adolescent girls’ enrolment and enable them to stay at school. Additional tuition and “catch-up” classes have been provided for girls unable to attend school regularly. Active participation by the displaced communities is fostered to raise awareness of women’s and girls’ rights, gender issues, and prevention of SGBV. Teachers, religious and other community leaders also take part in these activities.

In Uganda, girls’ education projects are being developed to provide out-of-school girls with basic education, literacy, numeracy and livelihood training as part of a project to produce locally-sourced sanitary pads (the “Maka pad” project as shown in the photo at the start of chapter 2).

The campaign also supports girls’ participation in sports, thus helping realize their right to play and to recreational activities (Convention on the Rights of the Child, Article 31). This enables them to strengthen their team-building, leadership and decision-making skills, as well as being a way to enhance life skills, for example, regarding HIV/AIDS prevention and children’s rights. In Liberia and southern Chad, for instance, sports and play modules have been used as vehicle for information and prevention messages on HIV/AIDS and to help build more peaceful, cohesive and youth friendly communities.

Note: See also chapter 2, section 2, for field practice example in Dadaab, Kenya, and chapter 2, section 4, for example of the work of the Centre for Peace and Development in Puntland, Somalia, and the importance of education for girls.

5.7 Livelihoods and food security

Overview

“Resources for women represent resources for food security. Successful development for women does not stop at the individual; it benefits whole households and communities. Reducing gender disparities by enhancing the human and physical resources commanded by women leads to growth in household agricultural productivity, greater income, and better food and nutrition security for all.”³⁰⁹

Introduction

Displacement jeopardizes physical security and livelihoods and can change gender roles and relations between the sexes. Often women have to assume new responsibilities for the family's safety and economic well-being, if their husbands have not fled with them, have had to seek employment elsewhere, or have been conscripted into armed forces or armed groups. Women and girls become more vulnerable to sexual abuse and exploitation as they try to protect their families' lives and livelihoods. Girls are the first to be removed from school or face early marriage when household livelihoods are at risk.³¹⁰



This Bosnian returnee has been given a cow through a UNHCR project to help victims of domestic violence and trafficking gain greater economic independence. She says: "I was afraid I would not be able to enrol my older daughter in high school because I did not have the money. Now, thanks to God and UNHCR, I will be able to have the means for our life and the education of my children. I will make sure they are independent in life and never have to go through the hell I have been through." / Foundation for Local Democracy (FLD) and Women for Women International / 2007

Challenge

Women often bear the brunt of food shortages. This affects their health and that of their unborn or young children. If their husbands are missing in war, have disappeared, or are detained, they are especially at risk. A woman who is a widow or single or the head of a household often assumes additional roles and responsibilities, including as primary breadwinner for the family. Displaced grandparents may become the head of family, if their son or daughter has not fled, has been killed or died of AIDS, and must assume additional responsibilities even if they are less mobile or able to provide for their grandchildren. Sometimes very young girls and boys may also have to provide for their younger siblings, if their parents are missing or dead.

Definition: Food security

The 1996 World Food Summit agreed that food security exists when "all people, at all times, have physical, social and economic access to sufficient, safe and nutritious food which meets their dietary needs and food preferences for an active and healthy life".

In this section

This section covers the following topics:

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5.7.2 Food security and food distribution	316

³⁰⁹ World Food Programme, *Tackling Hunger in a World Full of Food: Tasks Ahead for Food*, background paper submitted to World Food Summit, 1996.

³¹⁰ WFP, "Food Aid and Livelihoods in Emergencies: Strategies for WFP", WFP/EB.A/2003/5-A, Rome, May 2003.

5.7.1 Livelihoods and food security

“Approximately one-third of Angolan households are headed by women who bear the burden of generating income as well as ... caring for their children. Internally displaced or refugee female-headed households have limited access to land, health care, education, and other social services. Internally displaced or refugee girls face more difficulties because they have no competitive skills for the labour market and an increasing number of them opt for nocturnal lives on the streets of the city... The mothers and community condemn them... They have poor parents and seek means of livelihood by engaging in prostitution.”

From “Report on the Dialogue with Refugee Women”³¹¹

Introduction

A livelihood provides an individual and her or his household with the means to acquire food and meet immediate and long-term needs. Socio-economic factors such as natural, financial, and physical assets, gender inequalities, and ethnicity can determine whether different individuals are able to attain self-sufficiency. Forcibly displaced people are often very poor and have few, or limited, opportunities for securing livelihoods, even though they have a wealth of human and social-political assets and resources, including courage, determination and the potential to thrive. Displaced women, in particular, have often demonstrated their resilience and survival skills.³¹²

Definition: Livelihoods

The term “livelihood” has been defined as “the capabilities, assets (including both material and social resources) and activities required for a means of living. A livelihood is sustainable when it can cope with and recover from stresses and shocks and maintain or enhance its capabilities and assets both now and in future, while not undermining the natural resource base.”³¹³

Livelihood assets

Livelihood assets can be categorized into five groups. By distinguishing between different assets, these can provide a framework for response.³¹⁴

Livelihood assets	Including
Natural	natural resource reserves, such as agricultural and grazing land, water resources, livestock, lakes, trees, fish
Socio-political	social resources, such as kinship structures, religious groups, neighbourhoods, political leaders, legal systems, women’s groups and networks, youth clubs
Human	resources innate to a human being, such as strength and ability to work, skills, capacities, and knowledge
Physical	important support factors facilitating sustainable livelihoods; basic infrastructure, such as transport, shelter, energy, and communication; other production items, such as farm implements, tools, and equipment
Financial	financial resources required to pursue various livelihood options, such as earnings and wages, savings, and access to loans and credit

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³¹¹ UNHCR and the Women’s Commission for Refugee Women and Children, “Report on the Dialogue with Refugee Women”, Geneva, 2001.

³¹² UNHCR, “Framework for Durable Solutions for Refugees and Persons of Concern”, EC/53/SC/INF.3, 16 September 2003.

³¹³ D. Carney (ed), *Sustainable Rural Livelihoods, Department For International Development*, London, 1998. Carney draws this explanation from the work of Robert Chambers and Gordon Conway. See also, <http://www.livelihoods.org/> on creating sustainable livelihoods to eliminate poverty.

³¹⁴ *Ibid.*

5.7.1 Livelihoods and food security, continued

“The danger is the same, near or far, but there’s no wood nearby. When we are there getting the wood, local people sometimes take the girls’ clothes off and do bad things. The people wear green uniforms. Some have camels, some have horses. At the place where we get the firewood they tell us, ‘Line up one by one’. They say, ‘Stand two by two’, and they take us off like that and then they rape us... Sometimes this happens until evenings. We have told the police, but the police say, ‘Stay in your tent and nothing will happen’.”

Women’s Commission for Refugee Women and Children, “Displaced Women and Girls at Risk: Risk Factors, Protection Solutions, and Resource Tools”, New York, 2006

Summary of challenges

Women and children are the most at risk when they have no livelihood opportunities. Some of the specific challenges faced by displaced and refugee women and girls in their attempts to secure livelihoods include:

- lack of access to physical assets;
- cultural and behavioural norms;
- physical security risks when collecting firewood, including for income;
- unsuitable environments for cultivation near camps;
- movement restrictions in refugee camps;
- engagement in negative coping mechanisms in order to survive;
- obstacles to finding employment; and
- risk of exploitation while generating income in camps and urban settings.

Challenge: Access to physical assets

Refugees and displaced persons, particularly women, do not own or have access to assets such as land, farm implements, fishing boats and nets, livestock or credit facilities. Their assets are human.³¹⁵

Challenge: Cultural and behavioural norms

Not only do women already bear heavy, time-consuming domestic workloads, making it more difficult to engage in new activities, but they also have more difficulties in accessing land, credit, skills-trainings/education, rights, and information. Since communities perceive women as the protectors of culture and traditions, they may face social sanctions for challenging behaviour norms by searching for a livelihood.

Challenge: Physical security

As already noted in section 3.1.1 of this chapter on SGBV challenges, the collection of firewood and water is a survival strategy that frequently puts women and girls at risk of sexual assault and rape. In internal displacement and returnee situations, there is the added risk that women and children may look for firewood or water in mined areas.³¹⁶

The need to collect firewood and water is, in addition, directly and indirectly related to numerous protection concerns. It often means, for instance, that women and children have no time for education, skills training, income-generating activities or participation in leadership and decision-making bodies. Firewood may not only be collected for household use, which may be limited, women and girls may need to gather it to sell in local markets for cash so that they can buy other necessary household items, like food, sanitary materials, clothing, and toiletries.

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³¹⁵ Naila Kabeer, “Safety Net and Opportunities Ladders: Addressing Vulnerabilities and Enhancing Productivity in South Asia”, January 2002, Institute of Development Studies, University of Sussex.

³¹⁶ Adapted from Women’s Commission for Refugee Women and Children, “Displaced Women and Girls at Risk: Risk Factors, Protection Solutions and Resource Tools”, 2006.

5.7.1 Livelihoods and food security, continued

**Challenge:
Unsuitable
environments for
cultivation**

Rural households depend primarily on subsistence agriculture and their livestock. In many parts of the world, refugee camps are set up in fragile ecological environments that cannot provide a viable means of livelihood. The camps, themselves, have an adverse affect on the land.

Displaced people are generally not permitted to cultivate the land around camps, to rear livestock, or to have access to the host community's grazing lands. When they live in fishing communities, they are generally not allowed to fish in lakes because they are seen as competition for the local fishermen.

Especially when people are displaced within their own country or when they return, they may be obliged to seek livelihoods in areas which are mined or where there is unexploded ordnance (UXO). This increases the security risks for women who often undertake the bulk of agricultural tasks.

**Challenge:
Negative coping
mechanisms**

Participatory assessments have shown that young girls and women are forced to adopt negative coping mechanisms in order to survive and some are forced into survival sex. Sometimes, adolescent girls are given away in marriage to men twice their age so that the bride price received for the girl can allow the rest of the family to survive or enable a male member in the family to marry or set up a small business.

**Challenge:
Restrictions on
freedom of
movement**

In many asylum countries, refugees are confined to camps in rural areas and are not permitted to leave the camps for employment or education. As a result, refugees become dependent on lower than subsistence-level assistance and become frustrated with their lives of poverty and unrealized potential.³¹⁷

"The labour office did not give the permission and it took several months... the employer was really interested in taking me ... but it didn't come off ... I was visiting the NGOs, none was sure in this matter. And then the position was occupied and I was absolutely down and I lost faith and I didn't want to go out of the house."

Zoja, a Chechen who fled to the Czech Republic, was eventually recognized as a refugee with her daughter after 3.5 years, and who was accepted for a job at a microbiology institute, but was unable to get a work permit.

She now works as a ticket inspector in a Jewish museum and is still seeking to get her diploma recognized.³¹⁸

**Challenge:
Obstacles to
finding work**

Asylum-seekers in many industrialized countries are denied permission to work and are therefore dependent on often very limited State support. The lack of gainful employment slows their integration and increases social exclusion. In some countries, support is removed entirely if their claim is rejected, even though they are afraid to return and feel their case has not been fairly assessed. Destitute women, especially those with children or who are pregnant, are especially vulnerable to exploitation and abuse.

Even if asylum-seeking women are recognized as refugees and allowed to work, they may lack access to childcare, their qualifications may not be recognized in the country of asylum and/or they may need to requalify or take work that leaves them open to exploitation and/or does not utilize their skills.

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³¹⁷ The World Commission on Environment and Development (also known as the Brundtland Commission), 1987.

³¹⁸ See European Council on Refugees and Exiles, Refugee Stories Project (supported amongst others by UNHCR), at <http://www.ecre.org/refugeestories/>.

5.7.1 Livelihoods and food security, continued

Challenge: Risk of exploitation

Despite all the obstacles to finding livelihoods, displaced women and girls living in camps have been resourceful in creating income-generating enterprises, such as hair salons, tailoring shops, kiosks, food shops, and bakeries. In urban areas, they have found jobs as domestic workers, packers, cleaners, and sales women. Yet because they often work in the informal sector, they usually have no employment safeguards and may be at risk of exploitation, abuse and trafficking.

International legal standards and guidelines

Article 3 of the ICESCR affirms the equal right of men and women to enjoy the rights in the Covenant, including the right set out in Article 6 of everyone to the opportunity to gain his or her living by work which he or she freely chooses or accepts. The right to work is essential for realizing other human rights and forms an inseparable and inherent part of human dignity.³¹⁹

Under CEDAW, women enjoy the right to choose their profession and employment, the right to equal remuneration, the right to the protection of health and safe working conditions, and to protection against dismissal for maternity or marital reasons.

Four International Labour Organization (ILO) Conventions aim to eliminate discrimination and achieve gender equality in the work place. These are Convention No. 111 on Discrimination (1958), which addresses discrimination in employment; Convention No. 100 on Equal Remuneration (1951); Convention No. 156 on Workers with Family Responsibilities (1981); and Convention No. 183 on Maternity Protection (2000).

Under Articles 17 and 18 of the 1951 Refugee Convention, refugees are entitled to the most favourable treatment accorded to foreign nationals as regards both wage-earning and self employment. Article 24 of the same Convention sets a higher standard, as it entitles refugees to the same treatment as nationals as regards regulations e.g. on "remuneration, ... women's work and the work of young persons" and as regards social security. This includes access for refugee women to industrial and commercial activities as well as agriculture and handicrafts.

Responsibility

The ICESCR obliges States Parties to take appropriate steps to achieve the full realization of the right to work. CEDAW provides that rural women be given the opportunity to obtain the training and education required to improve their technical proficiency. States' specific obligations as regards refugees under the 1951 Refugee Convention are briefly outlined above.

UNHCR has a responsibility to enhance the livelihoods of displaced women and ensure food security, as an integral part of its responsibility under its Statute to protect and secure durable solutions for them. Action to promote self-reliance is appropriate at all stages of an operation and regardless of what the ultimate durable solution will be.³²⁰ It is critical to the protection of women and girls.

Continued on next page

³¹⁹ Committee on Economic, Social and Cultural Rights, General Comment No. 18 on the right to work (2006), para. 1.

³²⁰ UNHCR, *Handbook for Self-reliance*, August 2005, p. 2.

5.7.1 Livelihoods and food security, continued

How to respond Suggestions for actions which UNHCR, together with local, national and international partners, should carry out in order to empower women and girls and keep them safe during food distributions and fuel collection and to promote equality in relation to livelihoods and food security include:

Response	Actions
Coordinate	<ul style="list-style-type: none"> • Identify local partners and authorities who could be stakeholders in economic activities, including local NGOs involved in micro-credit projects and women's associations able to provide skills training. • Involve women from displaced and returnee communities, as well as local communities in developing plans and mechanisms to address potential disputes about property, land, custom, and culture so that obstacles to women's ability to seek livelihoods and food security are removed.
Assess, analyse and design	<ul style="list-style-type: none"> • Assess markets so that existing skills within the displaced community can be matched to labour needs in the camp or surrounding area and so that targeted livelihood strategies can be designed. • Analyse existing livelihood programmes to determine whether supply/outputs correspond to local markets and cultures. • Conduct market assessments, including of emerging markets where gender roles are not yet defined. • Through participatory assessments,³²¹ identify the various resources available to women and men of different age groups and backgrounds, as well as groups whose livelihoods are too precarious to guarantee basic survival and those who manage to meet basic needs but need greater security for their livelihoods. • Consult the community, including women and girls, to ensure the design of livelihood programmes reflects their concerns, at the same time working also to ensure that these programmes do not automatically reinforce traditional gender roles. • Conduct economic mapping exercises, examining what businesses women are engaged in, what skills they have, what obstacles they must overcome and what market opportunities exist for business start-ups and growth. • Design comprehensive skills training programmes for women, including pre-counselling, apprenticeship, job placement, and micro-finance, so that skills training does not only raise expectations but is also more likely to lead to job placements. Provide guidance on how to invest remittances and income and diversify economic activities and risks. • Work to expand microfinance demographically to women and young people and geographically to rural settings. If programmes also target host community members this can promote economic development in the area of displacement and enhance receptiveness of the local community and government to the programmes.
Intervene to protect	<ul style="list-style-type: none"> • Since women often play multiple roles, do not overburden them with the responsibility for developing time-consuming or costly business ideas. Be sensitive about the specific needs of women, such as for day care centres and women's organizations. • Implement strategies to increase safety and security during fuel collection, e.g. by ensuring that regular patrols are present and/or that mixed groups of men and women go together to collect fuel. Reduce fuel consumption by promoting and using, for example, fuel-efficient stoves. Combine these fuel-related activities with livelihood initiatives so women and girls do not still have to collect firewood to sell in markets.

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³²¹ See, UNHCR, *Tool for Participatory Assessment in Operations*, May 2006, and chapter 2, section 3, above.

5.7.1 Livelihoods and food security, continued

How to respond (continued)

Response	Actions
Intervene to protect, contd.	<ul style="list-style-type: none"> • Strengthen women's and girls' capacities, including by enhancing food security, livelihood opportunities, freedom of movement and economic independence, including through access to labour markets;³²² • Ensure sufficient basic assistance, especially to women and girls at heightened risk.
Strengthen national capacity	<ul style="list-style-type: none"> • Support government reviews of laws, policies and regulations relating to refugee employment, taxation, movement, access to markets, legal support etc., in order to identify opportunities to strengthen livelihood opportunities and secure tangible benefits for refugees and asylum-seekers.³²³ Examine, for instance, whether refugees are granted legal rights to work on an employed basis and whether refugees are discriminated against by potential employers. • Work with governments to persuade them to give asylum-seekers permission to work and allow them freedom of movement, on the basis of international human rights standards, as has been achieved, for instance, in Chile, Argentina, Chile, Ecuador and Peru. Such action enables the host country to take advantage of the skills and resilience of asylum-seekers and refugees and enables the latter to become self-reliant, provide for themselves, and reduce their dependence on humanitarian assistance/social security. • Build host country capacity and strengthen regional and local institutions to support community development and provide services for both host and refugee/internally displaced populations.³²⁴
Strengthen community capacity to support solutions	<ul style="list-style-type: none"> • Promote community-based livelihood strategies that target women and girls at risk so they can take care of themselves and their families and as a prelude to solutions, especially in prolonged displacement situations.³²⁵ • Promote women's access to skills training, including in literacy/numeracy, credit and employment opportunities, to job placements, agricultural, and income-generating projects and microfinance institutions, focussing specific activities on women, such as business skills training courses for women only. • Reduce the risk of friction within the family or community by raising awareness of the positive aspects of women's entrepreneurship. Work in particular with male community members to enhance their understanding of the benefits derived from women being self-reliant and help them appreciate and support women's entrepreneurial activities. • Work with grassroots women's organizations to strengthen the coping skills of displaced and returnee women, upgrade their livelihood skills, and encourage their participation in decision-making. • Before launching large-scale micro-credit schemes, promote land-based agricultural activities and introduce diversification with small-scale home-based enterprises, such as rearing poultry and small animals, that provide not only additional income but also nutritional supplements. • Support education for girls, including leadership training for adolescents, so that they can aspire to better work and employment. • Build on positive traditional and community mechanisms, such as common property resources and customary rights for the poor. • Include agricultural tools for women in non-food item (NFI) distributions

Continued on next page

³²² ExCom Conclusion, No. 105 (LVII), 2006, para. (k)(ii).

³²³ UNHCR, *Handbook for Self-reliance*, August 2005, p. 10.

³²⁴ UNHCR, *Handbook for Self-reliance*, August 2005, p. 11.

³²⁵ ExCom Conclusion No.105 (LVII), 2006, para. (o)(iii).

5.7.1 Livelihoods and food security, continued

How to respond (continued)

Response	Actions
Monitor, report and evaluate	<ul style="list-style-type: none"> • Work with partners to monitor women's access to skills training and credit schemes and analyse their impact on households and level of income generated. Monitor with women how any additional income is used to and who benefits from it.

<p>Field practice: Sudan</p>	<p>The Lulu Works project provides an example of how Sudanese women were able to use skills learn while in a Ugandan refugee camp upon their repatriation to south Sudan. Lulu Works now employs 24 women, the majority of whom are returnees. The project leader gained her soap and lotion-making skills in exile and when she returned she organized a small group of women to use these skills to sustain themselves. Their initiative was noticed by an NGO which then sponsored a refresher course for them, provided a grant to buy raw materials, and continues to support the export of their finished products.</p> <p>The group has gained the respect and support of their husbands, families, and the community, especially as they live in a society where there is a clear lack of livelihood opportunities and a culture that limits women's economic independence. The popularity of the initiative and its acceptance by the community have increased participation, for instance, of single female parents. Lulu oil products are in high demand in the community and many parts of Sudan, as well as in Kenya, where they are exported. To show their level of commitment, members are required to pay registration and membership fees.</p> <p>The output of the Lulu Works project adds high economic value to the community. It provides sustainable livelihoods and empowers the women involved. Many of the members have been able to send their children to school with the proceeds of their work and to provide food and basic household items for their families. The group has also been able to co-sponsor a machine operation room by raising \$530 for its construction; provide loans to members; and initiate farming activities on a small scale. The latter has been especially fruitful as the area has fertile soil, but food is still being imported. As a source of income for their activities, members provide tailoring services and are currently constructing huts for guest quarters, in addition to constructing a multi-purpose hall for hire to the community. Members often explain that any assistance provided to them will be multiplied within their community.</p>
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<p>Field practice: Sierra Leone</p>	<p>At monthly meetings with Liberian refugee women in Sierra Leone, the women indicated they were tired of making soap and tie-dye garments. They explained to UNHCR and the implementing partner which ran the income-generating activity that they wanted to become drivers. They felt that this would provide them with excellent employment opportunities on return. The women themselves contacted and met the drivers' licensing organization in the capital Freetown, which agreed to provide driving licenses. UNHCR and its partner are trying to find vehicles to be used for this initiative and a driving school that will agree to provide driving lessons at low cost.</p> <p>In another initiative, a rice mill project that provided machines for cleaning and drying rice enabled women and girls to save time, attend school, reduce workloads, and earn a small amount of income.</p>
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Field practice: Community development and social entrepreneurship, Belarus

Introduction

In the Republic of Belarus, UNHCR has helped refugee communities to establish and register four formal community organizations and to launch two social enterprises. This has provided employment opportunities for women and men and ensured the financial sustainability of the newly created community organizations. The community organizations interact with UNHCR, governmental and public institutions to represent the interests of refugee communities.

UNHCR has supported the establishment of a bakery in Grodna and a billiards club in Gomel as refugee-community owned and run social enterprises. Profits generated enable local community organizations to invest into the community and its members.

Rights promoted

Among the rights promoted by this initiative are:

- the right to work;
 - the right to education;
 - the right to an adequate standard of living; and
 - the equal right of women and men to enjoyment of economic, social and cultural rights
-

Steps to implementation

UNHCR worked with the refugee communities to help them establish leadership and organizational structures, prepare the necessary legal documents, and register the community organizations with the Ministry of Justice.

In June 2003, UNHCR announced a competition for best economic projects with the goal of creating employment opportunities for refugees, asylum-seekers and locals, promoting the social welfare of the refugee community and enhancing their local integration. The winning projects were provided with equipment and the revolving funds required for their first month of operation.

Activities and progress have been monitored on a quarterly basis through site visits, meetings with the community organizations concerned, and their management boards, as well as by analysing financial records and reports.

AGDM and empowerment

Both enterprises have mainstreamed age, gender and diversity by employing women and men and by ensuring that refugees of different ethnic origin work together with local people. Women represent 30 per cent of the workforce, while roughly half the employees are locals. Employment opportunities are available to people from different age groups. Although both community organizations are headed by men, the chief accountant in both is a woman. Women are present at board meetings, can voice their opinions and their needs and priorities are taken into account when developing new social and cultural initiatives.

Considering employment opportunities are scarce, the social enterprises provide the women employed with a rare opportunity for self-sufficiency. The extension of the billiards club to include a pizzeria has provided new workplaces for women and has allowed new social initiatives that involve women, such as teaching Afghan language classes.

Continued on next page

Field practice: Community development and social entrepreneurship, Belarus, continued

Community involvement

The community has set up the organizational structure of the social enterprises and the community organizations. Community members have produced the business plans and have been employed by the enterprises.

Profits are channelled through community organizations to help realize common social, cultural, and developmental goals.

Partners and their involvement

The proposals submitted to the UNHCR competition on sustainable economic projects were reviewed by representatives from UNHCR, UNDP, the Counterpart Alliance for Partnership, the Belarusian Red Cross, a local audit company "Partner Audit", and migration officials.

The cooperation of UNHCR with specialized agencies and State authorities helps provide the necessary expertise and resources to sustain established social enterprises.

Constraints

The overregulated environment for both NGO and micro/macro business activities in Belarus has created challenges for the establishment and the functioning of the social enterprises and community organizations.

Legislation on public associations and foundations has a direct impact on the activities of the community organizations. Further monitoring and consultancy services from UNHCR are crucial for their sustainability and further development.

Impact

These initiatives have helped the local integration of the refugees by providing employment opportunities for 23 refugees of different ethnic origins, mostly Afghans and Georgians, and 21 members of the local community. Almost a third of those employed are women.

The community organization financed by bakery profits has provided financial assistance to support a number of asylum-seekers at risk, paid the tuition fees of a refugee girl studying medicine, and co-financed the participation of women and girls in the Republican Festival of National Cultures. Women and girls have been the main beneficiaries of the cash assistance provided by the organization.

The community organization financed by the billiards club enacted social programmes and provided targeted social support to refugees in the region.

Lessons learned

It is difficult to implement such projects without a strong business initiative coming from the refugees and their communities. The financial and labour costs of organizing such enterprises may also not be commensurate with potential individual incomes, although there is a wider social benefit within the refugee community. Many refugees do not want to abandon their activities in the local markets, although most work there illegally.

5.7.2 Food security and food distribution

“People cannot eat retroactively. It is extremely difficult to make up for the damage inflicted by inadequate nutrition in the first five years of life. The nutritional welfare of mothers and infants is vital. If it is inadequate, the damage is both lasting and far broader than the individuals and families involved. Society as a whole suffers losses when children cannot learn, when poor health restricts energy and productivity, when hungry women give birth to a new generation that is malnourished.”³²⁶

“UNHCR will ensure that refugee women participate directly and indirectly in the management and distribution of food and non-food items.”

Fourth of UNHCR's Five Commitments to Refugee Women

Introduction

Hunger dulls the intellect and thwarts productivity, keeping entire societies from realizing their potential. This fact becomes evident when expectant mothers and their unborn babies, children under five, and nursing mothers lack food. Inadequate nutrition before birth and in the first years of life is likely to damage health, mental development and future productivity. If a woman is malnourished during pregnancy and lactation, she is more susceptible to disease and her capacity to work and care for her children is reduced. When this hardship is multiplied by millions of families worldwide, it creates a devastating ripple effect that jeopardizes global development.³²⁷

Hunger continues to cause widespread suffering despite the fact that the right to food is recognized either directly or indirectly by all countries in the world. Enjoyment of the human right to adequate food is crucial for the enjoyment of all rights.³²⁸

Challenge: Malnutrition

When there is no food security for displaced populations, humanitarian organizations often provide food aid. Yet food aid is not always sufficient: food baskets may not meet minimal caloric standards or lack nutritional value, the food-assistance pipeline may break down, and rations may be cut due to funding problems. When food rations are inadequate, children cannot perform well at school or stop attending classes, while women will often be the first to deny themselves food in favour of others, particularly their children and male partners.

Challenge: Sexual exploitation

Food insecurity is not only linked with malnutrition; it can also result in sexual exploitation. Those who have surplus food (or non-food items) have power over those who have no food and those who distribute food are usually men. Women and girls may be compelled to engage in survival sex because they lack a livelihood and desperately need food for themselves and their families.³²⁹ In some instances, humanitarian workers and peacekeepers have demanded sexual favours in return for food or money.

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³²⁶ WFP, *Tackling Hunger in a World Full of Food: Tasks Ahead for Food*, background paper submitted to World Food Summit, 1996.

³²⁷ Adapted from FAO, *Food: A Fundamental Human Right*, Rome, 2001.

³²⁸ Committee on Economic, Social and Cultural Rights, General Comment No. 12: The right to adequate food, 1999, para. 1.

³²⁹ Adapted from Women's Commission for Refugee Women and Children, *Displaced Women and Girls at Risk: Risk Factors, Protection Solutions and Resource Tools*, New York, 2006.

5.7.2 Food security and food distribution, continued

“The right to food is not primarily about food aid; it is the right to be able to feed oneself through an adequate livelihood.”³³⁰

International legal standards and guidelines

Under Article 11 of the ICESCR States Parties “recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing”. The reference to “himself and his family” does not imply any limitation upon the applicability of this right to individuals or to female-headed households.³³¹ States Parties also recognize “the fundamental right of everyone to be free from hunger”.

The Rome Declaration on World Food Security, adopted at the 1996 World Food Summit, reaffirms “the right of everyone to have access to safe and nutritious food, consistent with the right to adequate food and the fundamental right of everyone to be free from hunger”.³³²

UNHCR’s *Handbook for Emergencies* requires us to “ensure the maximum possible appropriate involvement of refugee women in all aspects of distribution”, including food. This means women should be involved in the decision-making process and monitoring; in the distribution itself (whether by supervising or handing out the commodities); and in collecting them (where they are distributed to women not men).³³³

Responsibility: States

States Parties to the ICESCR are obliged to work to improve methods of production, conservation and distribution of food and to ensure equitable distribution of world food supplies in relation to need. The right to adequate food can only be realized progressively, but States still “have a core obligation to take the necessary action to mitigate and alleviate hunger ... even in times of natural and other disasters”.³³⁴

In times of international armed conflict, States are obliged to allow free passage of essential foodstuffs for children under 15, expectant mothers and maternity cases.³³⁵ States and other entities have a responsibility to not to prevent access to humanitarian good aid in internal conflicts or other emergency situations.³³⁶

Responsibility: States and UN organizations

States and UN organizations, including UNHCR in coordination notably with the World Food Programme, have an obligation to provide disaster relief and humanitarian assistance, including food, to refugees and the internally displaced and should give priority to those most at risk and those with specific needs.

As the Committee on Economic and Social Rights notes: “Food aid should, as far as possible, be provided in ways which do not adversely affect local

Continued on next page

³³⁰ “Human Rights in Lebanon: Report of the Special Rapporteur on the right to food, Jean Ziegler, on his mission to Lebanon”, A/HRC/2/8, 29 September 2006, p. 2, at <http://daccessdds.un.org/doc/UNDOC/GEN/G06/141/71/PDF/G0614171.pdf?OpenElement>.

³³¹ Committee on Economic, Social and Cultural Rights, General Comment No. 12: The right to adequate food, 1999, para. 1.

³³² FAO, *Food: A Fundamental Human Right*, May 2001.

³³³ For further details see, UNHCR, *Handbook for Emergencies*, 3rd edition, February 2007, pp. 232–35.

³³⁴ Committee on Economic, Social and Cultural Rights, General Comment No. 12: The right to adequate food, 1999, para. 6.

³³⁵ 1949 Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War, Article 23.

³³⁶ Committee on Economic, Social and Cultural Rights, General Comment No. 12: The right to adequate food, 1999, para. 19.

5.7.2 Food security and food distribution, continued

Responsibility: States and UN organizations (continued)

producers and local markets, and should be organized in ways that facilitate the return to food self reliance of the beneficiaries. Such aid should be based on the needs of the intended beneficiaries. Products included in international food trade or aid programmes must be safe and culturally acceptable to the recipient population.”³³⁷

ExCom recommends that States, UNHCR and other relevant agencies, and partners “make all efforts to ensure integrated nutrition and health interventions and access to adequate food through measures that address the root causes of food insecurity and malnutrition, including by enhancing families’ enjoyment of self-reliance, age and gender-sensitive food distribution systems, targeted nutrition programmes for pregnant women and children during their critical first years of development, and by providing treatment for malnourished children”.³³⁸

How to respond

Suggestions for actions which UNHCR, together with local, national and international partners, should carry out in order to empower women and girls and keep them safe during food distributions, and promote equality in relation to food security and food distribution include:

Response	Actions
Coordinate	<ul style="list-style-type: none"> • Ensure close cooperation and regular exchange of information between UNHCR and World Food Programme (WFP) on the basis of the 2002 Memorandum of Understanding between the two agencies and the 2004 UNHCR/WFP Joint Assessment Guidelines. • Work with partners, including governments, WFP, and NGOs to ensure, for instance, that UNHCR and WFP adopt common systems for issuing ration cards to families, that measures to ensure the protection of women and girls are a priority, and that common approaches are adopted towards the issue of ration cards to members of polygamous families.
Assess, analyse and design	<ul style="list-style-type: none"> • Assess micro-nutrient deficiencies among groups of women and children with specific needs, including older women, young children, unaccompanied and separated children. • Study and replicate traditional feeding mechanisms. • Analyse with women their preferred eating and cooking habits and design programmes with them accordingly, taking into account local eating and cooking habits.
Intervene to protect	<ul style="list-style-type: none"> • Provide women with individual ration cards for themselves and their children, including especially separate ration cards for each wife and her dependants in polygamous families. • Ensure women have safe access to firewood, alternative fuel, and water. Make sure that these items are easily accessible so that they do not have to go into isolated areas to collect them. • Provide women and others at heightened risk with sufficient rations and NFIs to avoid exposure to survival sex and further abuse. • When appropriate, support needy families in the host community.

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³³⁷ Committee on Economic, Social and Cultural Rights, General Comment No. 12: The right to adequate food, 1999, para. 39.

³³⁸ ExCom Conclusion No. 107 (LVIII), 2007, para. (h)(ix).

5.7.2 Food security and food distribution, continued

How to respond (continued)

Response	Actions
Strengthen national capacity	<ul style="list-style-type: none"> • Where possible, use local markets to supply additional materials and NFIs to support local produce and reduce tensions. • Ensure that, whenever food aid is provided, it both meets the short-term needs of the displaced population and helps restore the population's long-term food security. This can be accomplished by assigning plots of land for cultivating in the names of both the man and woman in the family, allowing the rearing of small animals and poultry in the camps, and re-establishing local markets. • Work with the authorities to ensure their support for food distribution systems.
Strengthen community capacity to support solutions	<ul style="list-style-type: none"> • Strengthen women's leadership, including by enhancing their access to and control over services and resources, and supporting implementation of UNHCR's fourth Commitment to Refugee Women to ensure that refugee women participate directly and indirectly in the management and distribution of food and non-food items.³³⁹ Experience has shown that women's participation in distributions lessens the possibility for sexual exploitation by food distributors. Women have also generally been found to be more aware of the needs of individual households in their communities than men. • Target relief food distributions to households, ensuring that women control the family entitlement, especially since women tend to have more control over food in the household than over cash. • Be sure that essential items, such as food, water and cooking fuel, are either given directly to women or are distributed through women. • Train all workers on their responsibilities under the Secretary-General's Bulletin on special measures for protection from sexual exploitation and abuse and related complaints mechanisms.³⁴⁰ • Adopt a zero-tolerance policy for sexual exploitation and other forms of abuse of power perpetrated by staff and partners against beneficiaries, as required in the Secretary-General's Bulletin. • Ensure confidential complaints mechanisms for report exploitation and abuse are in place and known by the community.
Monitor, report and evaluate	<ul style="list-style-type: none"> • Ensure that women's committees are involved in monitoring distribution and post-distribution activities. Aid workers should always be present at the distribution sites to monitor the process. • Undertake home visits to persons of concern who are older, at heightened risk, and/or have disabilities to ensure adequate food distribution and nutrition. • Ensure specific monitoring of the food security and nutrition of unaccompanied and separated girls and boys.

³³⁹ See UNHCR, "Report on the High Commissioner's Five Commitments to Refugee Women", EC/55/SC/CRP.17, 13 June 2005; ExCom Conclusion No. 105 (LVII), 2006, para. (k)(i).

³⁴⁰ Secretary-General, "Bulletin on Special Measures for Protection from Sexual Exploitation and Sexual Abuse", ST/SGB/2003/13, 9 October 2003, at <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain/opendocpdf.pdf?docid=451bb6764> and circulated in IOM/FOM/77/2003 of 13 November 2003.

5.8 Housing, land and property

Overview

“Housing, land and property disputes and problems are also an almost inevitable consequence of armed conflict, as people flee their homes and lands in search of safety, or are forced to flee, in particular through ethnic cleansing or sectarian violence, as currently plagues Iraq. Such situations invariably give rise to complex issues that, if not prevented in the first place, must be addressed later if any future peace is to be sustained and further violence prevented. These include forced evictions; property transactions made under duress; illegal destruction or appropriation and occupation of abandoned property; the illegal confiscation of land; discriminatory application of abandonment laws; and the loss or deliberate destruction of documentary evidence of ownership. Such problems are further compounded by the application of inheritance laws that deny women and minors the right to inherit, own or use land and property.”

Report of the Secretary-General on the Protection of Civilians in Armed Conflict”,
S/2007/643, 28 October 2007, para. 54

Introduction

Lack of adequate housing during displacement, and lack of access to land, property, and housing on return, can expose women and girls to severe protection risks, including SGBV and other forms of violence.

Lack of adequate housing during displacement is often related to lack of access to other rights, such as water, sanitation facilities, and health care.

In return situations, women and girls who are denied access to their land, property, and housing lose their main source of physical, economic, and food security.

Discrimination against women not only on account of gender, but also race, caste, ethnicity, age, relative impoverishment, and lack of access to social and economic resources compound these problems.



Russian Federation / Ingushetia / Chechen IDPs
/ A grandmother minds her children in a tented
camp in Sunzhenski District / UNHCR / T.
Makeeva / March 2003

In this section

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5.8.1 Housing and shelter during displacement

"We checked that it was the correct number and walked up the stairway, which was dark even though it was noon. The place had a terrible smell. We looked all along the stairway and its pathway for the correct unit but we could not find it. Finally we found it at the bottom of a very dark and dirty stairwell that went downstairs, which we were first afraid to venture into... Ms A. opened the gate to us that led to a corridor. On the left was a big space that was very dark except for the fire from the stove at the far corner. She led us to what she said was her room towards the right... As we entered the room we saw men's clothing and toiletry. We asked her where she slept and she pointed to the space furthest from the door... All the men in the flat had gone out to work except one. Ms. A. says she is afraid to be at home alone with just one man."³⁴¹

"In Mitrovica, northern Kosovo, over 500 internally displaced persons are living within the Zitkovac, Cesmin Lig, and Kabalare camps, constructed in 1999 by the United Nations High Commissioner for Refugees when Roma, Ashkali, and Egyptian community members were driven from their homes in Roma Mahalla. The camps were built as an ad hoc, temporary response to the flow of refugees. They were built on highly toxic land and individuals living there are alleged to have been, and continue to be, exposed to serious lead poisoning and other environmental health problems. The impact on women has been particularly grave, resulting in stillbirths and miscarriages."

From "Study by the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living"³⁴²

Introduction

Whether living in urban slums, collective centres, refugee settlements, or with host families, women face a series of protection risks due to or associated with the lack of adequate housing. This and a lack of privacy can result in sexual and gender-based violence (SGBV), including domestic violence. Many women and girls cannot leave violent family situations simply because they and their children have no place to go.³⁴³ Inadequate housing usually also means inadequate water, sanitation and safety.³⁴⁴

Summary of challenges

Some of the specific housing challenges faced by women and girls during displacement are discussed below and include:

- finding affordable and suitable accommodation in urban settings;
- overcrowding and lack of privacy in camps;
- insufficient plastic sheeting, blankets, and clothing; and
- protection risks in reception and transit centres.

Challenge: Accommodation in urban settings

Urban asylum-seekers and refugees often find it extremely difficult to find affordable and suitable accommodation. Consequently, groups of unrelated families may share one flat or even one room. Single men and women often share rooms. Eviction by landlords or for urban regeneration is common. In such circumstances, women and girls, in particular those who are alone or who head families, are at great risk of SGBV, either by those with whom they are living or by landlords. In addition, these flats often do not have kitchens or fresh water and many people may be required to share one toilet. This can lead to serious sanitation and health problems.

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³⁴¹ "Needs Assessment for a Shelter to House Women of the Chin Community who are at Risk/are Survivors of Sexual Harassment", A project by Malaysian Care for UNHCR, 2004.

³⁴² Commission on Human Rights, Women and Adequate Housing, "Study by the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living", E/CN.4/2005/43, 23 February 2005, para. 65.

³⁴³ *Ibid.*, para. 67.

³⁴⁴ Commission on Human Rights, "Women and Adequate Housing: Study by the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living", E/CN.4/2003/5, 3 March 2003.

5.8.1 Housing and shelter during displacement, continued

**Challenge:
Overcrowding and
lack of privacy in
camps**

In camp situations, overcrowding and a lack of privacy between and within dwellings can create protection risks for women and girls. Single women, women and girls with disabilities, and unaccompanied or separated girls often end up with the most insecure accommodation in the camp. Even when camps are planned to avoid this, these problems may arise as camp populations grow and additional land is not available.

When sanitation facilities and water are located far from accommodation, women and girls face further protection risks, especially if there is not lighting at night.

**Challenge:
Insufficient NFIs in
camps**

Insufficient non-food items (NFIs), such as plastic sheeting, blankets, and clothing, can compound these risks. For example, when there are fewer than five members of a family, as may be the case with child-headed households or single women, women and girls may be required to share tents and/or plastic sheeting with unrelated strangers.

While office policy might be to provide one blanket per person, inadequate supplies and insufficient consideration to the needs of those who are single and thus will not be warmed by the presence of family members can lead to ill health and undignified and threatening situations. Clothing is not regularly distributed or included in emergency packages or distributed on a regular basis during protracted refugee situations, even when refugees have no access to income-generating activities. This increases women's and girls' risk of exposure to SGBV.

**Challenge:
Risks in reception
and transit centres**

In some regions of the world, asylum-seekers are accommodated in reception centres, refugees and internally displaced persons may be housed in collective centres, while returnees may be housed in transit centres before they go back.

Such centres are used to provide short-term accommodation and can suffer from a lack of privacy and inadequate services, which can expose women and girls to SGBV and other rights violations. Because of their temporary nature, sanitation and cooking facilities are minimal and these accommodations often do not contain any partitions.

Some refugee or internally displaced women, particularly those who are older and unable to rebuild their homes or cultivate their land, have remained in collective centres indefinitely.

Some returnees may remain in transit centres for longer than originally intended. This is particularly a problem for older, unaccompanied women, for those with disabilities, or those who may not have anywhere else to go.

**International legal
standards and
guidelines**

The right to adequate housing forms an integral part of the right to an adequate standard of living contained in Article 11 of the ICESCR, Article 27 of the CRC, and Article 14(2)(h) of CEDAW. This right also implies a continuous improvement of living conditions.

Continued on next page

5.8.1 Housing and shelter during displacement, continued

International legal standards and guidelines (continued)

The Special Rapporteur on adequate housing as a component of the right to an adequate standard of living has defined the right to adequate housing as “the right of every woman, man, youth, and child to gain and sustain a secure home and community in which to live in peace and dignity”.³⁴⁵

The Committee on Economic, Social and Cultural Rights has identified seven criteria of adequate housing:

- legal security of tenure;
- availability of services, materials facilities and infrastructure;
- affordability;
- habitability;
- accessibility;
- location; and
- cultural adequacy.³⁴⁶

The Special Rapporteur on adequate housing has identified nine additional elements when evaluating adequacy: access to land, water, and other natural resources; freedom from dispossession, damage, and destruction; access to information; participation; resettlement, restitution, compensation, *non-refoulement* and return; privacy and security; access to remedies; education and empowerment; and freedom from violence against women.

The Inter-Agency Standing Committee’s *Women, Girls, Boys and Men: Different Needs, Equal Opportunities: Gender Handbook in Humanitarian Action* (2006) provides useful guidance on gender considerations relating to shelter in emergencies on pp. 97–104.

Responsibility

States have a responsibility to adopt positive measures aimed at alleviating the situation of refugees and displaced persons, including women and girls, living in inadequate housing. As part of their responsibility to ensure access to adequate housing States should ensure that accommodation provided gives security from harassment and violence in the home, as well as protection from illegal forced eviction.

The 1951 Refugee Convention requires States to give refugees treatment as regards housing which is as favourable as possible and not less favourable than that accorded to aliens generally in the same circumstances.

Principle 18 of the Guiding Principles on Internal Displacement affirms that the competent authorities have a responsibility “at the minimum, regardless of the circumstances, and without discrimination ... to provide internally displaced persons with and ensure safe access to ... basic shelter and housing”. They should also make special efforts to ensure women’s full participation in the planning and distribution of such shelter and housing.

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³⁴⁵ Commission on Human Rights, “Women and Adequate Housing, Study by the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living”, E/CN.4/2006/118, 27 February 2006, para. 10.

³⁴⁶ Committee on Economic, Social and Cultural Rights, General Comment No. 4” the right to adequate housing, 1991, para. 8.

5.8.1 Housing and shelter during displacement, continued

Responsibility (continued)

Relevant UN agencies, including UNHCR, have a responsibility in emergency situations to undertake participatory planning to ensure the right to an adequate standard of living and housing. Planning must include assessing and ensuring that shelter distribution and allocation to families and households are made in a non-discriminatory manner, without distinction of any kind. The right and needs of women, girls, boys, female-headed households, widows and other groups with specific needs should be addressed, including possibly through the adoption of affirmative measures that positively impact specific groups.³⁴⁷

How to respond

Suggestions for actions which UNHCR, together with local, national and international partners, should carry out in order to promote women's and girls' rights to housing, land and property include:

Response	Actions
Coordinate	<ul style="list-style-type: none"> • Consult with all members of the community when planning shelters. Hold separate consultations with women and girls of diverse backgrounds and incorporate their views into the site plan. • Consult with women and girls to see what actions might be taken to minimize the protection risks that they face as a result of lack of adequate housing. • During registration and participatory assessment, identify women and girls in need of specific shelter assistance and follow up to ensure that they receive the support needed.
Assess, analyse and design	<ul style="list-style-type: none"> • When designing site plans, consider how to: <ul style="list-style-type: none"> – promote a sense of community and reinforce community-based protection; – ensure privacy of the family unit; – ensure women and girls' safe access to water, sanitation facilities, fuel, and other services; – provide a common area where children can play and that is visible from their families' homes;³⁴⁸ and – ensure adequate lighting in communal areas and for individual use. • When designing reception centres, ensure standards, including the following are respected: <ul style="list-style-type: none"> – single women and single men are accommodated separately; – families are accommodated together; – there are adequate partitions between families if families are accommodated collectively; – rooms can be locked by their occupants; – there are separate toilet and bath/shower facilities in different areas or, at a minimum, different timetables are established and monitored for their use by males and females; – there is adequate lighting throughout; – facilities and services are available to meet the educational, medical, psychological, religious, and recreational needs of asylum-seeking children and that special attention is paid to the risk of trafficking; and – the centres are protected 24 hours a day by guards, including female guards, trained on the gender-specific needs of those living there.³⁴⁹

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³⁴⁷ For more information, see IASC, *Women, Girls, Boys and Men: Different Needs, Equal Opportunities: Gender Handbook in Humanitarian Action*, Dec. 2006, p. 97; UNHCR, *Handbook for Emergencies*, 3rd edition, Feb. 2007, chapter 12, especially p. 218.

³⁴⁸ As promoted by UNICEF, "child friendly spaces" established in emergencies can go on to become a school or play area where educational, health and social support can be provided.

³⁴⁹ For further details see, ExCom Conclusion No. 93 (LIII), 2002; UNHCR, "Reception of Asylum-seekers, including Standards of Treatment, in the Context of Individual Asylum Systems", EC/GC/01/17, 4 Sept. 2001, especially paras. 20–23.

5.8.1 Housing and shelter during displacement, continued

How to respond (continued)

Response	Actions
Intervene to protect	<ul style="list-style-type: none"> • Provide support with the community for housing/shelter construction for older single women and women with disabilities, female- and child-headed households. • Ensure these same groups of people are located in safe central locations with easy access to facilities and services and not marginalized. • Provide access to land for cultivating crops. • In urban areas, use proGres and Geographic Information Systems (GIS) to map locations and inform people about where to find support networks, services and improved security. (See also field practice example for Kenya relating to access to information for refugee domestic workers in Nairobi in section 1.1 of this chapter above.)
Strengthen national capacity	<ul style="list-style-type: none"> • Lobby with the authorities to ensure refugees in rural areas are in safe locations away from the border and with access to firewood and water. • Work with the host community to address any tensions with the displaced community in a timely manner. • Work with the authorities to persuade them to give refugees living in urban areas the right to work, and where this is not provided to provide adequate support, to enable them to find adequate housing, so that they do not have to live in the poorest and most dangerous neighbourhoods, where women and girls may be particularly at risk of violence or abuse. • Ensure accommodation centres incorporate livelihood activities and people are organized to prevent idleness and increased security risks.
Strengthen community capacity to support solutions	<ul style="list-style-type: none"> • Mobilize community support for individuals require specific shelter assistance in relation, for instance, to construction and plot allocation. • Ensure that centres where women can network, convene, and work on projects are available for women during displacement. Adolescent girls should also have access to centres where they are offered skills training and information on sexual and reproductive health. • Consider establishing a transit house for newly arriving women and girls who may be alone or part of female-headed households to reduce their initial vulnerability to exploitation when they arrive in the camp or urban areas. Make sure that such a transit house is funded and managed properly. (See field practice example for Ethiopia in section 3.1.2 of this chapter above.)
Monitor, report and evaluate	<ul style="list-style-type: none"> • Monitor how women are accommodated during displacement and return, including women living in urban areas, in refugee settlements, in transit centres, and with host families, and take action to prevent and respond to protection problems due to lack of adequate housing.

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5.8.1 Housing and shelter during displacement, continued

**Field practice:
Indonesia**

Due to the lack of involvement of women in the planning and recovery process in Aceh, Indonesia, following the Tsunami in December 2004, UNIFEM organized a series of consultations with women to identify the needs and concerns of survivors and to ensure the incorporation of a gender perspective in the reconstruction process.

The issue of land, inheritance, and property rights, particularly for children who had lost their entire families, and access to adequate housing were identified as critical issues by the women.

In Aceh, women put at the top of their list of recommendations the re-establishment of Balai Inong, or “women’s house.” Before the Tsunami, every village in Aceh had Balai Inong, where women could meet to network, convene, or work together on projects.

According to the women, setting up these houses again would be an effective way of ensuring that women’s concerns were heard, while also providing a safe space for women to grieve, share experiences, and develop skills to sustain their livelihoods.

**Field practice:
Turkey**

Many asylum-seekers and refugees in Turkey have great difficulties finding housing and encounter a wide range of protection problems as a result. The Office in Ankara therefore sought to raise awareness of the problem and secure funding for the opening of reception centres.

As part of the “Welcome to Turkey” activities of the multi-functional Gender and Children Team, refugees and asylum-seekers were given cameras to document their experiences in Turkey. Since many asylum-seekers and refugees photographed poor housing conditions, their photographs contributed to discussions on the possibilities for opening reception centres, literally showing the great need for them. An exhibition of the photographs was held on World Refugee Day. A booklet on the project was also printed and included among submissions for funding for the reception centres.

5.8.2 Housing, land and property on return

"I am too old and gnarled to plant. I will try to work the land, but it will be hard."

54-year-old returnee widow and grandmother, returning to Angola with her young grandson whose mother died of AIDS³⁵⁰

"My life has been very hard since my parents died. Since their death I have not had access to my forest or my fields. When I went to court I was told that I had lost even before they started my case. I was not even given the chance to speak. I couldn't even cut a tree on my property or grow a potato."

Concessa Nibgore, internally displaced woman in Rwanda³⁵¹

Introduction

Many displaced women returning home from conflict find themselves homeless and landless. As a result, they lose their personal security, social status, and economic and food security and so may no longer be able to care for their families and children.³⁵² The risk of violence against women in such situations increases.

Summary of challenges

Some of the challenges displaced women and girls face in gaining access to housing, land and property on return from conflict include:

- discrimination and inheritance rights;
- cultural practices preventing widows from accessing safe and secure housing, land and property; and
- separated or unaccompanied children being denied their right to housing, land and property.

Challenge: Discrimination and inheritance rights

Discrimination against women and girls in relation to land, property, and inheritance rights contributes enormously to the challenges they face on return.

Women may be subject to limited inheritance from husbands, harmful customary practices, unequal inheritance from parents, unequal division of property upon divorce, discriminatory laws and customs, lack of control over property, biased attitudes among family and community members, unresponsive authorities, and ineffective courts.³⁵³ Even when laws provide for women's right to inherit property and land, women may lack documents and titles, while few have the social and economic resources to pursue their claims, either through non-formal or statutory means.³⁵⁴

Challenge: Widows denied access

Widows are particularly at risk. Cultural practices commonly prevent widows from having access to safe and secure housing, violate their rights, and expose them to additional protection risks. These include the requirement to commit themselves to lives of celibacy, to undergo a "cleansing ritual", in which a widow is forced to have sex with a man specially hired for the

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³⁵⁰ Human Rights Watch, "Coming Home: Return and Reintegration in Angola", 2005, p. 32.

³⁵¹ Quoted in "Going Home: Land and Property Issues", by L. Farha, Women's Right to Land, Property and Housing, *Forced Migration Review*, 2000, p. 24.

³⁵² Adapted from Centre on Housing Rights and Evictions (COHRE), "Bringing Equality Home: Promoting and Protecting the Inheritance Rights of Women, A Survey of Law and Practice in Sub-Saharan Africa", 2004, pp. 21–23.

³⁵³ Human Rights Watch, "Fact Sheet: Women's Property Rights Violations in Kenya", 2003, at <http://www.hrw.org/campaigns/women/property/factsheet.htm>.

³⁵⁴ Commission on Human Rights, "Women and Adequate Housing, Study by the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living", E/CN.4/2006/118, 27 February 2006, para. 45.

5.8.2 Housing, land and property on return, Continued

Challenge:
Widows denied access (continued)

purpose by the family, or to marry a male relative of her deceased husband in order to continue to have access to her marital home and land.³⁵⁵ Separated and divorced women may also lose their rights to their housing, land and property.

Even if they continue to have access to their housing, land and property, older women may not have the capacity to farm it to support themselves and those for whom they are responsible. If there is no legal transfer of ownership or no will, “in-laws” may take back property belonging to the deceased husband, leaving widows homeless. In these circumstances, some prefer to give their land to the next male heir.

Challenge:
Girls denied access

Unaccompanied and separated children and orphans, including those living in child-headed households, find it particularly difficult to gain access to their land and property. Girls are at particular risk of being denied their right to housing, their land and property. A girl child may, for instance, not be permitted to inherit property on an equal basis with her brother on the pretext that she will “not need it” because she will eventually be married. She may often not be aware of her rights. Even when girls have access to their land, they may not be able to build a home or shelter by themselves.

After the genocide in Rwanda, for instance, children in child-headed households lived a precarious existence. Ninety-five percent had no access to education or healthcare and most lived under plastic sheeting or in substandard housing. More than 60 per cent lived solely off agriculture, three quarters of whom owned less than one hectare of land and one quarter of whom were landless. Average revenue per family per month rarely exceeded 2,500 Rwandan francs (USD 5) per month. They were at the mercy of neighbours, relatives, and local officials when they needed assistance or protection, yet could find themselves marginalized and ignored, in part due to conflicts over management of assets left by their own parents.³⁵⁶

International legal standards and guidelines

The right to adequate housing is equally applicable to women and girls in displacement and on return. In addition, the equal rights of women and girls to own, have access to, control, and inherit housing, land and property are clearly established in international law.³⁵⁷ These rights include the right not to be arbitrarily deprived of housing, land and property in the first place.³⁵⁸ Ensuring that women, as well as men, have the right to land, property, and adequate housing on return is essential for post-conflict peace-building and sustainable return. Displaced women and girls are entitled to return to the homes from which they had been evicted or which they had left behind. If this is not possible, they should be provided with adequate compensation for any loss they have suffered.³⁵⁹

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³⁵⁵ Centre on Housing Rights and Evictions (COHRE), “Bringing Equality Home: Promoting and Protecting the Inheritance rights of Women, A Survey of Law and Practice in Sub-Saharan Africa”, 2004, p. 21, and Commission on Human Rights, Women and Adequate Housing, Study by the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living”, 25 Feb. 2005, E/CN.4/2005/43, para. 68.

³⁵⁶ Human Rights Watch, *Rwanda Lasting Wounds: Consequences of Genocide and War for Rwanda’s Children*, March 2003, pp. 47–48.

³⁵⁷ See CEDAW, Articles 14(2)(g), 16(1)(h).

³⁵⁸ See General Comment No. 7 of the Committee on Economic, Social and Cultural Rights on the right to adequate housing (Article 11.1): forced evictions; Guiding Principles on Internal Displacement, Principle 6; UN Principles on Housing and Property Restitution for Refugees and Internally Displaced Persons (Pinheiro Principles), Principle 5.

³⁵⁹ Guiding Principles on Internal Displacement, Principle 28; Pinheiro Principles, Principle 10.

5.8.2 Housing, land and property on return, continued

International legal standards and guidelines (continued)

The 2005 United Nations Principles on Housing and Property Restitution for Refugees and Internally Displaced Persons (also called the “Pinheiro Principles” after the Sub-Commission Special Rapporteur on Housing and Property Restitution, Paulo Sérgio Pinheiro) set out the applicable legal standards regarding the right of refugees and internally displaced persons to return to their housing, land, and property. An inter-agency Handbook on implementing the Principles was issued in March 2007.³⁶⁰

Responsibility

These UN Principles contain a number of provisions aimed at ensuring gender equality in relation to housing, land and property. They require States to adopt positive measures to ensure that women and girls are not discriminated against in the restitution process and the requirement to ensure the representation and inclusion of women and children, particularly unaccompanied children, in this process.

The Principles also outline the responsibilities of the international community, including international organizations such as UNHCR. These include the responsibility to:

- promote and protect the right to housing, land and property restitution, as well as the right to voluntary return in safety and dignity;
- work with national governments and share expertise on the development of national housing, land and property restitution policies and programmes, help ensure their compatibility with international human rights, refugee and humanitarian law and related standards, and support the monitoring of their implementation; and
- strive to ensure that peace agreements and voluntary repatriation agreements contain provisions related to housing, land and property restitution, including through the establishment of national procedures, institutions, mechanisms and legal frameworks.

How to respond

Suggestions for actions which UNHCR, together with local, national and international partners, should carry out in order to ensure the equal rights of men, women, boys, and girls to housing, land, and property restitution in the context of return include:

Response	Actions
Coordinate	<ul style="list-style-type: none"> • Identify all actors, in particular local authorities and UN agencies, including UN HABITAT and development agencies, involved in housing, land and property and coordinate with them to develop a strategy to support women's and girls' realization of their rights on this issue.
Assess, analyse and design	<ul style="list-style-type: none"> • Undertake an analysis of national law on property and inheritance from a gender perspective to review women's and girls' entitlements and work to address any gaps. • Ensure that land, housing, and property rights for internally displaced and refugee women and girls are included in peace agreements and integrated into repatriation plans.³⁶¹ • Ensure that women are involved in designing restitution processes and procedures.

³⁶⁰ The Pinheiro Principles are at <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain/opendocpdf.pdf?docid=41640c874> and at <http://www.cohre.org/store/attachments/Pinheiro%20Principles.pdf>, while the *Handbook on Housing and Property Restitution for Refugees and Displaced Persons: Implementing the "Pinheiro Principles"*, March 2007, is at [http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=search&docid=4693432c2&skip=&query="Pinheiro%20Principles"](http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=search&docid=4693432c2&skip=&query=).

³⁶¹ See generally, “Report of the Secretary-General on the Protection of Civilians in Armed Conflict”, S/2007/643, 28 October 2007, para. 59.

5.8.2 Housing, land and property on return, continued

How to respond (continued)

Response	Actions
Intervene to protect	<ul style="list-style-type: none"> • Intervene in individual cases to ensure that women and girls can enjoy their right to have restored to them any housing, land, and/or property of which they were deprived or to be compensated for any housing, land, and/or property that cannot be restored to them.
Strengthen national capacity	<ul style="list-style-type: none"> • Advocate and provide technical assistance to governments to abolish laws and practices that discriminate against women and girls on issues concerning inheritance and ownership of housing, land and property. • Advocate with and provide technical assistance to governments to ensure that restitution processes and procedures promote the equal rights of women and girls, particularly single women, widows, and unaccompanied and separated girls, to land, housing, and property upon return. • Establish legal counselling and advisory services to support women and girls in claiming their housing, land, and property on return.
Strengthen community capacity to support solutions	<ul style="list-style-type: none"> • Work with communities and governments to abolish harmful practices, such as wife inheritance, which violate the rights of women and girls and prevent them from accessing their right to land, housing, and property. • Raise awareness in the community of the importance of ensuring formal transfer of housing, land and property ownership and of having a will to secure housing, land and property for family members. • Ensure that centres where women can network, convene, and work on projects are available for women during return. Adolescent girls should also have access to centres where they are offered skills training and information on sexual and reproductive health. • Ensure that redistribution of land takes into consideration joint ownership of land instead of titling the land only to male heads-of-households. (See Guatemala field practice below.) • Train and build the capacity of community para-legal workers in return and reintegration situations who will provide support in setting up livelihood enterprises and help obtain restitution and compensation when property cannot be restored.
Monitor, report and evaluate	<ul style="list-style-type: none"> • Monitor the extent to which women with specific needs, such as older women, women with disabilities and women or girls who head households, are able to own property and cultivate their land. • Hold focus group discussions in urban contexts to ensure women have been able to access their property.

Continued on next page

5.8.2 Housing, land and property on return, continued

Field Practice: Rwanda

In 1996, UNHCR launched the Rwanda Women's Initiative (RWI), which supports the efforts of women to rebuild their houses and empowers them to take control of their households. Prior to the genocide, Rwandan women did not have the right to inherit property, a major obstacle in a country where over 90 per cent of the population depend on subsistence agriculture for their livelihood.

Recognizing the difficulties female heads of household encountered as they returned and attempted to reclaim their land, the Government of Rwanda took steps to change the law on this issue. UNHCR, the Ministry of Gender and Women in Development and RWI-funded local organizations were actively involved in the drafting of this legislation, and RWI supported its passage by promoting public awareness and providing forums for consultation with women at the grass-roots level on the law. RWI has also provided forums for women parliamentarians to meet and exchange experiences, critical not only to building a political presence of women in the country, but also to passing important laws on gender equality.³⁶²

Field Practice: Guatemala

In the context of the voluntary repatriation of 43,000 Guatemalan refugees from Mexico to Guatemala in the second half of the 1990s, UNHCR supported women's refugee organizations which mobilized to demand co-ownership of land allocated to returning refugee families (which might otherwise have been ceded through male heads of household).

UNHCR devised a strategy whereby male-dominated refugee organisations, through their legal advisors in conjunction with the Office in Guatemala, agreed to sign a document affirming that no legal impediments would remain in gaining equal ownership of land between men and women. Refugee women analysed this document at a workshop and it was subsequently made public in a conference where authorities were asked to formally respond to the women's request to be included as co-owners. After protracted negotiations between the parties, co-ownership for refugee couples was achieved.

This process of clarifying institutional policies and debate was difficult and challenging, but it enabled the refugee women's organizations and UNHCR to learn valuable lessons about women's land rights in the Guatemalan context. In particular, the process revealed the clear and discriminatory bias against women in the interpretation and application of institutional policies by government officials (most of whom were male); the need for appropriate models of implementing land acquisition; engaged male-dominated-refugee organizations in the public promotion of women's rights; and reinforced the women's decision to continue their struggle for co-ownership of land.

As a result, women gained equal access to resources and had to be considered beneficiaries of plots of land and/or full associates of cooperatives, if their marriage or common law relationship was dissolved or their husband/partner died. As part of this programme, UNHCR also supported women's participation in credit schemes to purchase land.³⁶³

³⁶² Study by the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination, Miloon Kothari, in accordance with Commission resolution 2002/49, "Women and adequate housing", E/CN.4/2003/55, 26 March 2003, para. 68, at <http://daccessdds.un.org/doc/UNDOC/GEN/G03/123/81/PDF/G0312381.pdf?OpenElement>.

³⁶³ UNHCR, "Guatemala Reintegration, 1994–2000".



Kenya / A "Stop early marriage" billboard in Kakuma refugee camp reinforces the message that "traditional practices prejudicial to the health of children" must be abolished as stated in Article 24(3) of the 1989 Convention on the Rights of the Child / UNHCR / A. Webster / December 2006



Sri Lanka / Older internally displaced woman collecting water from a water pump in Kaluwankerny camp in Batticaloa District / Everyone is entitled to the enjoyment of fundamental human rights and freedoms without distinction of any kind, including as regards their sex and age / This includes the right to water, which "is indispensable for leading a life in human dignity [and] is a prerequisite for the realization of other human rights" / See UN Committee on Economic, Social and Cultural Rights, General Comment No. 15 (2002) / © Norwegian Refugee Council / S. de Silva / 2007