



# THE INTERNATIONAL LEGAL FRAMEWORK FOR PROTECTION

**P**rotection encompasses all activities aimed at obtaining full respect for the rights of the individual in accordance with the letter and the spirit of the relevant bodies of law (human rights, humanitarian and refugee law), without discrimination of any kind.

Protection is first and foremost the responsibility of the State. However, human rights and humanitarian actors also have protection responsibilities, and our policies, programmes and operations should further the realization of the equal rights of women and girls in accordance with the relevant bodies of law. Gender equality is above all a human right, and mainstreaming a gender perspective in all our policies, programmes and operations in order to achieve gender equality forms an important aspect of our protection responsibilities.

Protection activities have been categorized as falling into three broad categories:

- **Responsive action** — activities undertaken in the context of an emerging or established pattern of abuse and aimed at preventing its recurrence, putting a stop to it and/or alleviating its immediate effects;
- **Remedial action** — activities aimed at restoring women's, girls', boys' and men's dignity and ensuring adequate living conditions through effective remedy and reparation, including supporting due process of law and justice for victims while combating impunity; and
- **Environment building** — activities aimed at creating or consolidating an environment conducive to full respect for the rights of individuals.

**Activities for protection** will vary according to specific institutional mandates and capacities. For example, human rights workers may protect women and girls by monitoring and investigating abuses and working with national authorities to open judicial inquiries and pursue prosecutions of perpetrators. Humanitarian workers protect women, girls, boys and men by, for instance, ensuring the delivery of critical relief supplies or improving the physical security of people affected by conflict or disasters. The complementary relationship between the work of human rights and humanitarian organizations is of special importance since both aim to protect people from rights violations and ensure that they can live their lives in dignity and safety.

Tensions sometimes arise around the goal of protection. For example, in crisis situations or disasters, human rights violations may abound. Some of these violations could be perpetrated by State agents who might also have authority for granting relief access in a certain location. Humanitarian actors may face a dilemma in trying to address violations while safeguarding their ability to deliver relief supplies. Both actions — preventing violations by seeking to hold perpetrators accountable and delivering much-needed food and medical supplies — will contribute to the goal to protect. However, it may prove difficult for the same actor to achieve both actions simultaneously. Humanitarian actors may choose to prioritize their interventions on the basis of their institutional mandate and capacities. However, the duty to protect individuals and groups against human rights violations remains and humanitarian actors should not be silent. In such a scenario, a division of tasks with human rights actors may prove the most effective way of ensuring that State agents, includ-

ing members of armed forces, comply with their human rights obligations, with humanitarian staff alerting human rights staff when there is a suspicion or evidence of abuse. Information should be referred through the appropriate channel to the appropriate staff or organization for follow-up, bearing in mind that the protection of victims and witnesses, including their identities and information that may compromise their security, should be of primary concern. Humanitarian actors could facilitate access to crisis areas and populations for human rights officers and other staff with protection duties. They could also work to influence the responsible authorities to ensure respect for the norms, rights and duties set out in international law, alerting political bodies like the Security Council to protection problems.

Practices within a community, including cultural, traditional or religious practices, may violate the rights of women and girls and serve as obstacles to achieving gender equality. In such situations, it bears noting that international law is negotiated by States which then voluntarily agree to be bound by it. The international human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child (CRC), contain minimum acceptable standards. While culture and social factors should be considered, humanitarian actors should at all times respect and promote respect for these standards and work with all parties, including States and the communities concerned, to ensure that the rights of women and girls are respected, promoted and fulfilled. Humanitarian workers should never condone, consent or contribute to violations of human rights.

It is crucial, however, that human rights and humanitarian actors work closely with individual community members and different groups in the community to identify and address the protection problems faced by women, girls, boys and men. Otherwise there is a risk of a backlash, which may present additional protection problems.

### The international legal framework

The international legal framework for protection is primarily composed of three interrelated and mutually reinforcing bodies of treaty law: international human rights, humanitarian and refugee law. Customary international law, which is derived from a consistent practice by States rather than a legal text, also contains a number of important rights and, for instance, prohibits acts such as arbitrary detention, extra-judicial killings, slavery and torture.

## INTERNATIONAL HUMAN RIGHTS LAW

### What are human rights?

Article 1 of the Universal Declaration of Human Rights (UDHR) states: "All human beings are born free and equal in dignity and rights." Human rights — such as the right to life — are inherent and inalienable in human beings simply by the fact of their being human. Individuals and groups cannot voluntarily give up their human rights, nor can others take them away.

Human rights enjoy legal protection through codification in seven core international treaties. Some of the treaties are supplemented by optional protocols dealing with specific issues. Many regional treaties also protect and promote human rights. Taken together, these instruments and national law provide safeguards against actions and omissions that interfere with human dignity, fundamental freedoms and entitlements.

States establish their consent to be legally bound by a treaty, and to implement its provisions nationally, through the act of ratification or accession. For example, 156 States have so far ratified the ICCPR, thus undertaking to guarantee to all individuals within their territory and subject to their jurisdiction (even if not situated within the territory of the State) the rights in the Covenant. The ICCPR prohibits distinction on the basis of sex, and specifically commits States to ensuring the equal right of women and men to the enjoyment of all rights enshrined in the Covenant, including:

- the right to life;
- freedom from torture or cruel, inhuman or degrading treatment or punishment;
- freedom from slavery, servitude and forced or compulsory labour;
- the right to liberty and security of person and freedom from arbitrary arrest or detention;
- the right of detained individuals to be treated with humanity and dignity;
- equality before the law and equal protection of the law;
- the right to a fair trial; and
- freedom of religion, expression, assembly and association.

The ICESCR protects the following rights, which correspond to sectors of humanitarian assistance:

- the right to education;

- the right to an adequate standard of living, including food, clothing and housing;
- the right to the highest attainable standard of physical and mental health; and
- the right to work and to favourable conditions of work.

Under international human rights law, States have the obligation to respect, protect and fulfil human rights. The obligation to *respect* requires that a State, principally, refrain from interfering directly or indirectly with the enjoyment of the right; the obligation to *protect* means preventing third parties from interfering with the enjoyment of the right; and *fulfilling* human rights means taking steps to realize the right in question, progressively in the case of economic, social and cultural rights. In order to meet these obligations, States should, *inter alia*, put in place appropriate policies; review and ensure (by amending, enacting or repealing) that national legislation is in conformity with international standards; ensure that an effective institutional framework (e.g. police, judicial system, prisons, etc.) exists to protect and claim rights, and offer possibilities for individuals and groups to seek remedy when their rights have been violated; implement programmes to give effect to rights; and seek international assistance and cooperation as needed.

### Women's human rights

Despite the fact that international law guarantees women and men equal rights in the enjoyment of all human rights, women and girls continue to face *de jure* (in law) and *de facto* (in practice) inequalities in virtually all societies. In addition, armed conflict and natural disasters often exacerbate discrimination and inequalities, further impeding progress towards gender equality and the full enjoyment by women of their human rights. Humanitarian assistance and protection during armed conflicts and natural disasters should contribute to achieving equality and women's human rights. The involvement of men and boys as partners in empowering women and girls and achieving gender equality is also of crucial importance.

The **Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)** was adopted in 1979 to reinforce the provisions of existing international instruments aiming to eliminate discrimination against women and achieve gender equality. To date, it has been ratified by 183 States. Despite being the subject of more reservations than any other human rights treaty, the significant number of ratifications is expression that the international community considers that discrimination against half the world's population is unacceptable and

should be eliminated. UN and other actors should build on — and promote — this international legal consensus in their work during conflicts and disasters.

CEDAW defines discrimination against women as “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.” It imposes obligations on States to, *inter alia*, embody the principle of equality of women and men in their national constitutions and legislation; adopt legislative and other measures prohibiting discrimination against women; effectively protect women against any act of discrimination and provide opportunities for recourse; take measures to modify social and cultural patterns that contribute to discrimination against women; suppress prostitution and trafficking of women; and ensure equality in political and public life, nationality laws, education, employment and labour rights, access to health, finance and social security, legal and civil matters and family law. It permits States to adopt temporary special measures to achieve equality.

While CEDAW does not address the gender-based violence that is often widespread in crisis situations, the Committee that monitors the Convention's implementation has addressed the issue in its General Recommendation No. 19 and jurisprudence, opining that “the definition of discrimination includes gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty. The International Criminal Tribunals for the former Yugoslavia and Rwanda have prosecuted crimes of sexual violence, thereby providing legal precedents for protecting women and combating impunity for violations of their rights. The Rome Statute of the International Criminal Court (ICC) explicitly recognizes that, under specified circumstances, sexual violence constitutes an international crime.

In addition to the human rights treaties, several UN resolutions and world conferences have sought to strengthen the protection and promotion of women's human rights. These include the 1993 World Conference on Human Rights, which affirmed the universality of women's rights as human rights, stressed the importance of eliminating violence against women and especially recognized violence against women in armed conflict as a violation of

human rights and humanitarian law. The 1993 **Declaration on the Elimination of Violence against Women** furthermore emphasized that violence against women and girls is not only a grievous human rights abuse in itself, but also a serious impediment to the realization of many other rights for women and girls. The **1995 Beijing World Conference on Women** included strategic objectives to address the impact of armed conflict on women.

**Security Council resolution 1325** (2000) also reiterated that civilians, particularly women and children, account for the vast majority of those negatively affected by conflict and called for measures to ensure that women are more equally represented in all stages of peace processes. It furthermore called on all parties to armed conflict to fully respect international law applicable to the rights and protection of civilian women and girls, in particular the four Geneva Conventions of 1949 and two Additional Protocols of 1977, the Refugee Convention of 1951 and Protocol of 1967, the human rights instruments, including CEDAW and its Optional Protocol of 1999, and the CRC and its two Optional Protocols of 2000. The Council cautioned all parties to armed conflict to bear in mind the relevant provisions of the Rome Statute. The crime of genocide, crimes against humanity and war crimes fall within the jurisdiction of the ICC, which can hold individuals criminally responsible and punishable for committing acts amounting to these crimes.

### Children's human rights

The **Convention on the Rights of the Child (CRC)** provides a comprehensive framework of children's rights, as well as mechanisms of accountability. The Convention recognizes children's right to be free from abuse and neglect, sexual exploitation, trafficking, abduction, torture, deprivation of liberty and other forms of maltreatment at all times, and provides for special protections during times of conflict.

The Rome Statute of the ICC defines the "most serious crimes of international concern" to come under the ICC and classifies rape and other forms of sexual violence, recruitment or use of children under the age of 15 into armed groups and attacks against schools as war crimes. In addition, the International Labour Organization's Convention 182 declares child soldiering to be one of the worst forms of child labour and prohibits forced or compulsory recruitment of children under the age of 18 in armed conflict. The Optional Protocol to the CRC on the involvement of children in armed conflict sets 18 as the age limit for compulsory recruitment and participation in hostilities. The optional protocol also requires that States

parties shall provide all appropriate assistance to children for their physical and psychological recovery and their social reintegration.

These instruments, together with the relevant provisions of the Geneva Conventions, the Genocide Convention, the 1997 Mine Ban Treaty, the 1951 Refugee Convention, the 1967 Protocol protecting refugee children and several Security Council Resolutions (1261, 1314, 1379, 1412, 1460, 1539, 1612), constitute a strong and comprehensive body of legal instruments which provide standards on the protection of children affected by armed conflict and emergencies. In addition, Security Council Resolution 1612 establishes a UN monitoring mechanism on the use of child soldiers and other violations against children affected by armed conflict.

Save the Children has identified seven critical types of protection that children require in disaster areas and war zones:

- protection from physical harm;
- protection from exploitation and gender-based violence;
- protection from psycho-social distress;
- protection from recruitment into armed groups;
- protection from family separation;
- protection from abuses related to forced displacement;
- protection from denial of children's access to quality education.

Protection needs and the methods to address them may be different for girls and boys. A gender analysis is therefore critical to designing and implementing appropriate child protection programmes.

For example, special measures for girls should be taken into account when developing release and reintegration programmes for children formerly used or recruited by armed forces or groups. In many conflicts, gender-based violence against women and girls is endemic. Girls who have been recruited and used by armed forces and groups in many contexts are likely to have been victims of such violence. Girls may be forced to provide sexual services, which is a less common problem for boys. Girls may also take on other roles in armed forces or groups, for example as fighters, cooks, porters or spies. The Cape Town Principles and Best Practices on the Recruitment of Children into the Armed Forces include girls recruited for sexual purposes and forced marriage in its definition of child sol-

diers, making the case that demobilization and social re-integration efforts must include children who have been part of the armed forces without carrying arms.

Girls may also, as evidenced in Nepal, take on decision-making roles and leadership positions that upon return to their communities are ignored or undervalued. Girls are also more likely to be ignored or excluded from advocacy and other initiatives to secure children's return to civilian life. Proactive measures therefore are required to ensure the full involvement and inclusion of girls in all aspects of prevention, release and reintegration; services provided must respond to their specific needs for protection and assistance, including the needs of pregnant girls, girl mothers and the needs of their children.

Addressing these and other child protection concerns, UNICEF uses the protective environment as a conceptual framework for understanding protection and assisting in programming. A protective environment is one where everyone — from children, families and health workers to governments and the private sector — lives up to their responsibilities to ensure that children are protected from abuse, violence and exploitation. It focuses on eight key areas:

- attitudes, traditions, customs, behaviour and practices;
- governmental commitment to fulfilling protection rights;
- open discussion and engagement with child protection issues;
- protective legislation and enforcement;
- the capacity to protect among those around children;
- children's life skills, knowledge and participation;
- monitoring and reporting of child protection issues; and
- services for recovery and reintegration.

Children are at the centre of the protective environment since they play both an active role in their own protection and as advocates for the protection of others. The creation of a protective environment that takes gender into account involves activities to prevent and/or alleviate the immediate effects of abuse; to restore adequate living conditions; and to promote the rights of children.

## INTERNATIONAL HUMANITARIAN LAW

International humanitarian law (IHL) is the body of international law that protects persons not or no longer taking part in hostilities, that is civilians, wounded, sick, shipwrecked and captured combatants, and which regulates the means and methods of warfare. It is applicable in international and non-international armed conflicts and is binding on States, armed opposition groups and troops participating in multilateral peacekeeping and peace-enforcement operations if they take part in the hostilities. Today the principal instruments of IHL are the four Geneva Conventions of 1949 and their two Additional Protocols of 1977, as well as numerous conventions restricting or prohibiting the use of specific weapons. IHL establishes mechanisms to ensure that the rules are respected, provides for the individual criminal responsibility of persons for violations that they commit or order to be committed, and requires States to prosecute persons suspected of serious violations.

IHL provides a two-tiered protection regime for women, namely, general protection, which applies to women and men equally, be they combatants or civilians, and specific additional protections that attempt to respond to the particular needs of women.

### General Protection:

- **Principle of non-discrimination:** One of the basic tenets of IHL is that the protection and guarantees it lays down must be granted to all without discrimination.
- **Principle of humane treatment:** IHL requires belligerents to provide "humane treatment" to civilians, captured combatants and other persons "hors de combat." These norms — similar to human rights provisions — lay down minimum standards of treatment, conditions of deprivation of liberty and fundamental guarantees that parties to a conflict must grant to everyone within their control.
- **Principle of distinction and protection of the civilian population against the effects of hostilities:** IHL requires parties to an armed conflict to distinguish between civilians and combatants at all times and to only direct attacks against combatants and military objectives. In addition, IHL also prohibits indiscriminate attacks that, although not targeting civilians, might strike military objectives and civilians or civilian objects without distinction. A number of rules of IHL stem from the general principle that civilians must be spared from the effects of hostilities.

- **Restrictions and prohibitions on the use of specific weapons:** The principle of distinction set out above prohibits parties to a conflict from employing weapons incapable of distinguishing between combatants and civilians. The lasting effect of weapons on civilians is also a consideration that may lead to the restriction or prohibition of the use of certain weapons, such as anti-personnel mines. IHL also prohibits the use of weapons or methods of warfare of a nature to cause superfluous injury or unnecessary suffering.

#### Specific Protection:

The specific protection regime for women under IHL relates primarily to women's distinct health, hygiene and physiological needs and role as mothers. The aim of these specific provisions is to provide additional protection for women in response to their particular medical and physiological needs, and for considerations of privacy.

- **Protection against sexual violence:** IHL expressly protects women against rape through Article 27(2) of the 4th Geneva Convention, which reads: "Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault." Since the word honour did not reflect the full brutality of the act of sexual violence, which is not merely an attack on a woman's modesty or chastity, but on her physical and psychological well-being, the Additional Protocols replaced it with the term "**dignity**." In addition, it is well established that sexual violence falls within the prohibitions of cruel treatment or torture in the Geneva Conventions.
- **Women deprived of their liberty:** IHL contains specific protections for women deprived of their liberty, requiring separate quarters and sanitary conveniences for women (unless women and men are accommodated together as members of the same family) and stipulating that women must be held under the immediate supervision of female guards. Sex is also considered a relevant consideration in the determination of disciplinary punishment and in the labour of prisoners of war.
- **Expectant mothers and maternity cases:** A range of provisions deal with expectant mothers, maternity cases and mothers of children under 7 years old. Interned expectant and nursing mothers are to be given additional food in proportion to their physiological needs and interned maternity cases have a right to be admitted to institutions where they can receive adequate medical treatment. In terms of physical safety, parties to armed conflict are encouraged to adopt practices to ensure the physical safety of pregnant women by establishing safety zones for pregnant women and mothers of young children or by concluding agreements for the evacuation of maternity cases.

- **Preservation of family links:** Women are the main initiators of requests for news of family members, bearing the emotional and economic burden of missing loved ones. Such women often lack a clear legal status under national law — not being recognized by the law either as wives or widows — and may have no right to access pensions or other entitlements. In an attempt, *inter alia*, to address such issues, IHL seeks to preserve and restore family unity by preventing the separation of family members against their will, requiring the adoption of measures that facilitate family reunification and laying down measures aimed at facilitating the re-establishment of family ties through correspondence and transmission of information.

## INTERNATIONAL REFUGEE LAW

International refugee law is the branch of law that deals with the rights and protection of refugees. The main principles of refugee law are set out in the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, which sets out the general definition of a refugee and guarantees refugees a number of rights specific to their status. Other important instruments include regional refugee instruments, the Statute of the UN High Commissioner for Refugees (UNHCR) and the Conclusions of its Executive Committee (ExCom).

While gender is not specifically mentioned in refugee law it is widely accepted that the refugee definition, when properly interpreted, covers gender-related claims. The 1951 Convention defines a refugee as someone who is outside his or her country of origin or habitual residence and is unable or unwilling to return there owing to a well-founded fear of persecution on the grounds of race, religion, nationality, membership of a particular social group or political opinion. An expanded definition is used by UNHCR under its mandate and in some regional treaties, including also persons who flee their country because their lives, safety or freedom have been threatened by conflict, generalized violence or events seriously disturbing public order. Gender can both influence and dictate the type of harm suffered. While women, girls, boys and men will often suffer similar harm, women and girls are often the main targets of violence and abuse because of their gender. For example, women and girls are more likely to suffer rape and other forms of gender-related violence, such as dowry-related violence, coerced family planning, female genital mutilation, family/domestic violence and trafficking. Such acts, whether perpetrated by a State or non-State actor, can support a claim to refugee status.

Asylum claims may also be based on discriminatory acts amounting to persecution, persecution on account of one's sexual orientation and trafficking for the purposes

of forced prostitution or sexual exploitation. In other cases, an individual refusing to adhere to socially or culturally defined roles and mores may face persecution.

The 1951 Convention guarantees refugee women, girls, boys and men a range of rights and freedoms and stipulates the treatment they are entitled to by the country of asylum. These include:

- the right to seek asylum;
- the right not to be returned to a country where the refugee's life or freedom would be in danger (*non-refoulement*);
- the right to non-discrimination;
- the right to documentation and to access work and education; and
- the right to freedom of movement, to access courts and practise one's religion.

In addition, Conclusions adopted by UNHCR's ExCom articulate a number of principles to be followed and measures to be taken by ExCom Member States as well as UNHCR to enhance the protection of displaced and returnee women and girls. Some of the Conclusions focus specifically on the protection of women and girls, while others focus on specific themes, such as preventing and responding to sexual and gender-based violence.

Humanitarian and human rights workers working with refugees and asylum-seekers play an important role in identifying, preventing and responding to gender-related protection risks. This may include: ensuring that asylum procedures are gender sensitive; guaranteeing that those suffering violations have access to and/or are referred to the proper authorities, whether national agencies, international organizations, such as UNHCR, or non-governmental partners; assuring the provision of counselling and medical care as the circumstances require; preserving evidence and the confidentiality of any information; and ensuring proper follow-up of the case by the relevant authorities, agencies, guardians and legal representatives. In particularly serious cases, women and girls may need to be assisted in relocating within the country or resettling in a third country in order to ensure their safety.

## GUIDING PRINCIPLES ON INTERNAL DISPLACEMENT

The Guiding Principles on Internal Displacement provide States, the UN and other human rights and humanitarian actors with important guidance relating to the protection of internally displaced persons. Although the Guiding

Principles are not binding as such, they are based upon and reflect the protection offered by international human rights, humanitarian and, by analogy, refugee law. In addition, many countries have incorporated them into their national laws.

The Guiding Principles provide protection against arbitrary displacement, offer a basis for protection and assistance during displacement and set out guarantees for safe return, resettlement and reintegration. They apply to everyone who is internally displaced without discrimination of any kind, including on account of their sex or social status. The Principles pay particular attention to gender-related problems common in situations of internal displacement and guarantee, for instance:

- freedom from gender-specific violence, including rape, forced prostitution and indecent assault, and freedom from slavery, including sale into marriage, sexual exploitation and forced labour of children;
- the right to non-discrimination and equality, including as regards employment and economic activities;
- the right to the full and equal participation of displaced women in the planning and distribution of basic supplies, in educational and training programmes;
- the right to special attention to women's needs for reproductive and psychological health care;
- the right to respect of family life and family reunification; and
- the right of women and girls to personal identification and other documentation.

## COMPLEMENTARITY OF INTERNATIONAL HUMAN RIGHTS, HUMANITARIAN AND REFUGEE LAW

International human rights, humanitarian and refugee law share a common goal in aiming to prevent and relieve suffering, and to protect the rights and freedoms of women, girls, boys and men. As such, they complement and reinforce each other, thus providing a comprehensive framework for the protection of women, girls, boys and men.

These three bodies of law are, however, different in both applicability and scope. Humanitarian law is specific to armed conflict while refugee law only applies to refugees and asylum-seekers. Human rights law is broader and applies to all human beings during times of both peace and war.

Human rights and humanitarian law have built-in constraints that influence their applicability and interpreta-

tion. The ICCPR article 4, for example, permits States, in times of public emergency which threaten the life of the nation, to derogate from certain obligations subject to the following conditions: the emergency must be officially proclaimed; the measures must be strictly limited to the exigencies of the situation; they must not be inconsistent with other obligations under international law or discriminatory in nature. It is important to note that article 4 does not permit States to derogate from the following rights:

- the right to life;
- freedom from torture or cruel, inhuman or degrading treatment or punishment;
- freedom from slavery, the slave trade and servitude;
- freedom from imprisonment because of the inability to fulfil a contractual obligation;
- prohibition of retroactive criminal laws;
- the recognition of everyone as a person before the law; and
- freedom of thought, conscience and religion.

The guarantees offered by the different bodies of law are mutually reinforcing, thus enabling humanitarian and human rights actors to maximize the protection offered to people. In some situations they will overlap and a determination should be made on how to apply them to secure the greatest protection for affected populations.

## RIGHTS-BASED AND PARTICIPATORY COMMUNITY APPROACHES

A **rights-based approach** uses international human rights law to analyse inequalities and injustices, and to develop policies, programmes and activities in all areas of work to redress these obstacles to the enjoyment of human rights. It focuses both on process and outcomes.

A rights-based approach is a framework that begins with the civil, cultural, economic, political and social rights of individuals and groups, and States' obligations under international human rights law to respect, protect and fulfil these rights.

It identifies **rights-holders** (i.e. women, girls, boys and men) and their *entitlements* on the one hand, and corresponding **duty-bearers** (i.e. principally the State and its agents; however, there are duty-bearers at various levels of society, including in the household and community, and at the national and international levels) and their *obligations* on the other hand, and seeks to strengthen

the capacities of rights-holders to make their claims and of duty-bearers to satisfy these claims. It also emphasizes pursuing accountability for violations of human rights.

Such a framework can be applied to strengthen humanitarian programming and achieve the aims of protection activities by basing actions and objectives in law, and ensuring that the policies and programmes of humanitarian actors, including UN organizations, non-governmental organizations (NGOs) and others such as the Red Cross and Red Crescent Movement, contribute directly to the realization of human rights by assisting rights-holders and duty-bearers.

Using a rights-based approach requires that human rights principles and standards, along with the recommendations of the human rights treaty bodies and mechanisms, guide and underpin all phases (assessment, analysis, planning, implementation, monitoring, evaluation and reporting) and sectors of humanitarian programming.

A rights-based approach espouses the principles of participation and empowerment of individuals and communities to promote change and enable them to exercise their rights. Given the inequalities and discrimination that women and girls face, their participation and empowerment are crucial to making real and sustainable improvements.

A rights-based approach entails:

- understanding international human rights principles (such as equality and non-discrimination, participation and inclusion, empowerment and accountability) and standards and the content of rights as defined by the human rights treaty bodies;
- knowing the human rights obligations by which a particular State is bound;
- assessing and analysing the reasons for the non-realization of rights, including looking at underlying and structural obstacles;
- working in partnership with all members of the community in order to understand the community's priorities, capacities and resources and to build on them in order to empower the community and work towards the realization of their rights;
- in partnership with rights-holders and duty-bearers, developing policies and programmes to build the capacity of rights-holders to claim their rights and duty-bearers to meet their obligations, with attention to marginalized and vulnerable groups;
- measuring progress and results against indicators of enjoyment of human rights; and



- ensuring that policies and programmes do not unintentionally violate the human rights of the individuals and communities concerned.

In crisis situations, the use of a rights-based approach can guide and strengthen humanitarian action as concerns matters beyond the conduct of hostilities. In turn, the provision of humanitarian assistance can contribute to realizing the rights to life and security of person, education, food, housing and physical and mental health. Following are some human rights considerations vis-à-vis humanitarian assistance.

- Provision of humanitarian assistance should be based on humanitarian principles of humanity, neutrality and impartiality and human rights principles of equality and non-discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
- Humanitarian assistance must go beyond meeting basic needs to realizing human rights.
- Humanitarian actors can ensure that the assistance programmes they design and deliver do not inadvertently expose women and girls to more danger from raiding, looting, exploitation, rape, isolation, permanent displacement or corruption. Human rights considerations, derived from law and practice, should thus factor into the basic methodology and structures of humanitarian assistance programmes.
- Humanitarian actors must ensure input and participation from those they seek to help and should provide opportunities for empowerment of women and girls.
- Aid distribution systems should prioritize based on needs, including the specific needs of women and girls, and include mechanisms to ensure that assistance reaches children, women, the elderly, internally displaced persons (IDPs), etc. They should take into account social factors that could endanger those in receipt of assistance.

## ACTIONS TO ENSURE GENDER EQUALITY PROGRAMMING USING A RIGHTS-BASED APPROACH

### Establish as policy the achievement of gender equality and women's human rights through humanitarian action.

- Identify State obligations related to women and girls.
- Develop a policy of where humanitarian assistance and protection can be given to close gaps left by the State.

### Assess and analyse, using participatory approaches, the circumstances preventing women and girls from enjoying their human rights.

- Conduct a general assessment of the human rights situation, with attention to the civil, cultural, economic, political and social rights of women and girls.
- Identify laws, institutions, mechanisms and procedures for protecting the human rights of women and girls.
- Determine the capacity of individuals and communities, local authorities, NGOs and civil society to prevent and respond to protection risks and problems.
- Identify gaps in implementation.

### Assess and analyse the circumstances preventing women and girls from enjoying equal rights and achieving full equality with men and boys.

- Examine *de jure* and *de facto* discrimination.
- Examine cultural or social patterns and prejudices.
- Examine customary, traditional or other practices.
- Conduct focus group discussions with different groups of women, girls, boys and men.

### Develop and implement, with the participation of women and girls, gender-sensitive humanitarian policies and operations that meet needs and build the capacity of women and girls to claim their rights and of the government and other national stakeholders to deliver rights.

- Design policies and programmes to reflect the findings of your analysis.
- Ensure equal access to services by all individuals and groups (non-discrimination in assistance and protection activities).
- Identify individuals and groups with special needs, such as marginalized women and girls, and those separated from their families, girl mothers, girl soldiers and others.
- Identify local and national authorities for partnerships in implementing policies and programmes.
- Develop networks and partnerships with local communities and civil society organizations, in particular community-based women's organizations, to ensure protection for women and girls and their families.
- Build an environment that strengthens and empowers women and girls through targeted affirmative action, education, knowledge and skills transfers and provision of information about livelihood opportunities.

**Ensure that the voices of women are always taken into consideration in the design and implementation of programmes, and when intervening or responding to protection risks.**

- Establish a mechanism for regular consultation with women and girls.
- Establish a complaints mechanism that is accessible so that women may register their concerns.
- Establish a coordination and response mechanism to ensure that complaints are being channelled in the right direction and that action will be taken.
- Provide information on local and national avenues for remedying rights violations.

**Ensure proper coordination between various actors.**

- Participate in coordination fora with humanitarian and human rights staff.
- Create partnerships with relevant government officials and ministries and civil society organizations, including those providing medical and psycho-social care, legal services, training and skills transfer.

- Maintain contact with donors and other actors in the international community.
- Set up regular meetings/mechanisms to ensure contact with affected communities and local actors.

**Contribute to ensuring accountability for realization of human rights and human rights violations.**

- Contribute to strengthening national structures for accountability and remedy.
- Liaise with human rights staff to combat impunity.
- Ensure all staff and partners are aware of and understand the UN policy on protection from sexual exploitation and abuse (SEA).
- Ensure accountability for any staff engaged in SEA in the humanitarian field.
- Cooperate with the UN monitoring mechanism on children in armed conflict.

**CHECKLIST FOR ASSESSING GENDER EQUALITY PROGRAMMING FOR PROTECTION**

The checklist below is derived from the activities section in this chapter, and provides a useful tool to remind sector actors of key issues to ensure gender equality programming. In addition, project staff should develop context-specific indicators to measure progress in gender equality programming. Refer to the sample indicators in the Basics Chapter.

**CHECKLIST FOR ASSESSING GENDER EQUALITY PROGRAMMING FOR PROTECTION**

1. A comprehensive assessment of the protection needs of women, girls, boys and men has been completed.
2. A gender analysis of national legislation has been conducted to identify gaps and advocate for reform as required.
3. Human rights, including the rights of women and girls, form the basis for the humanitarian response and are incorporated into all policy, programming and planning documents, including the Common Humanitarian Action Plan (CHAP).
4. Equal numbers of women and men in affected populations are empowered through trainings on their rights, including the specific rights of women and girls such as CEDAW and Security Council resolution 1325, for instance through community workshops.
5. Women and girls participate directly in assessments, negotiations and other decision-making processes, and when developing, implementing and evaluating policies and programmes.
6. A monitoring and reporting mechanism for human rights violations is in place.
7. A mechanism for reporting human rights violations has been established and is easily accessible to the affected population and responds to the particular needs of women and girls.
8. An analysis of how humanitarian programmes affect human rights, in particular the rights of women and children, is routinely undertaken.
9. Contacts with local and national authorities are made and maintained throughout the humanitarian response efforts to correct inequalities and put in place measures for post-disaster and conflict protection and empowerment of women and girls.

## POSSIBLE PROTECTION ACTIVITIES

**1. Responsive action**

- Alleviate immediate suffering by means of appropriate material assistance to affected persons and their families; medical assistance to affected persons and their families; psycho-social care to affected persons and their families; support (technical help to local structures [public and private]).
- Provide direct services to persons exposed to abuse by means of their presence in the affected areas, IDP/refugee camps, places of detention, etc.; transfers /evacuations (including relocation of refugees or IDPs farther from conflict zones or borders); registering persons; re-establishing/maintaining family links (tracing missing relatives, organizing family visits, exchanging messages and/or letters); information and communication (e.g. about human rights conditions, conditions for return, information about the work of various organizations, location of resources, etc.).
- Integrate human rights protection into humanitarian needs assessment, programming, monitoring and evaluation.
- Monitor and report, including providing information to officials at UN headquarters, inter-governmental human rights mechanisms and other such bodies.
- Pressure the authorities concerned, through public disclosure, into taking the required measures to stop and prevent the abuse.
- Convince the authorities concerned, through dialogue, into taking the required measures to stop and prevent the abuse.
- Contribute to obtaining respect for judicial rights of the individual by providing legal assistance/support to the persons subjected to a judicial process and their families; supporting and protecting institutions (government, local NGOs, etc.), working toward respect for rights as well as individuals working as human rights defenders.

**2. Remedial action**

- Provide direct services to the persons affected by abuse by means of: their presence in affected areas, displaced/refugee camps, places of detention, etc.; help in voluntary repatriation/resettlement/return/property, housing and land; restitution/(re)integration/final arrangements; maintaining family links; contributing to the setting up of mechanisms to clarify the fate of missing persons; facilitating information and communication.
- Promote and/or support the due process of law and justice for both perpetrators and victims.
- Proceed with “lessons-learned” exercises aimed at feeding and reinforcing “environment building”-type activities.

**3. Environment building**

- Disseminate, promote and apply international human rights and humanitarian standards.
- Promote the drafting and adoption of treaties and the development of customary law.
- Promote the administration of a fair system of justice providing for punishment and reparation for violations of international human rights and humanitarian law.
- Create a public culture consistent with human rights and humanitarian values.
- Promote knowledge of and adherence to human rights and humanitarian law instruments and principles among all groups concerned.
- Contribute to the development and establishment of institutions, both governmental and non-governmental, at the national and international levels which, by their role and function, can enhance respect for human rights and humanitarian law.
- Undertake advocacy — bring violations to the attention of human rights monitors and protection officers so that they may make representations to the relevant authorities.
- Build local and national protection capacity — national human rights bodies, civil society, the judiciary, etc..
- Provide protection training for international staff, national authorities, non-state actors, civil society, the judiciary, the police, prison staff, etc.

## RESOURCES

### 1. International human rights treaties and conventions

The seven core international human rights treaties are the International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the Convention on Elimination of All Forms of Discrimination against Women (CEDAW), the UN Convention against Torture (CAT), the Convention on the Rights of the Child (CRC) and the Migrant Workers Convention (MWC).

All treaties, General Comments of the human rights treaty bodies and Concluding Observations on State Party reports can be found at: <http://www.ohchr.org/english/>

### 2. Examples of optional protocols

- Second Optional Protocol to the ICCPR aiming at the abolition of the death penalty.
- Optional Protocol to the CRC on the involvement of children in armed conflict.
- Optional Protocol to the CRC on the sale of children, child prostitution and child pornography.
- Optional Protocol to the CAT aiming to establish a system of regular independent visits to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.

### 3. Examples of regional treaties

- The African Charter on Human and Peoples' Rights and its Protocol on the Rights of Women in Africa.
- The American Convention on Human Rights and its Protocol on Economic, Social and Cultural Rights.
- The European Convention on Fundamental Rights and Freedoms, and its Protocols, as well as the European Social Charter.
- The 1969 Convention Governing Specific Aspects of the Refugee Problem in Africa.
- The 1984 Cartagena Declaration on Refugees.
- The 2001 Revised Bangkok Principles on the Status and Treatment of Refugees.

### 4. Selected reference materials

- Human Rights Committee General Comment No. 28, "The equality of rights between men and women" and Committee on Economic, Social and Cultural Rights General Comment No. 16 on "The equal right of men and women to the enjoyment of all economic, social and cultural rights."
- Committee on the Elimination of Discrimination against Women, General Recommendation No. 19 on "Violence against Women."
- Reports of the Special Rapporteur on Violence against Women.  
<http://www.ohchr.org/english/issues/women/rapporteur/>
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