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PROTECTING WOMEN AND GIRLS IN REFUGEE CAMPS

States' obligations under international law

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PART I: INTRODUCTION

The physical displacement of persons is an inevitable “by-product” of armed conflict.¹ Refugee camps the world over are inhabited by people who have fled their homes for fear of war-related violence and destruction, and who have crossed an international border to reach safer territory.

Armed conflict harms women, men and children alike. However, it is now widely accepted in the humanitarian community and reflected in international law and policy, that conflict-induced displacement has specific gender dimensions. This means that protection-needs of refugee women and girls often differ significantly from those of men. Women and girls living in refugee camps are at far greater risk of rape and sexual assault. Living conditions are often unstable and unhygienic: camps foster insecurity, rather than prevent it, and the female refugee is frequently deprived of her means of self-reliance. Women and girls are also at risk of being trafficked, and their access to justice is often limited.

Some refugees only spend a short period of time living in camps before obtaining a more secure, stable means of living. For others, camp-life extends for decades. The damaging consequences of protracted camp-life is fully recognised by the humanitarian community, as demonstrated by UNHCR’s 2014 policy paper on alternatives to camps:

[t]he defining characteristic of a camp ... is typically some degree of limitation on the rights and freedoms of refugees and their ability to make meaningful choices about their lives. Pursuing alternatives to camps means working to remove such restrictions so that refugees have the possibility to live with greater dignity, independence and normality as members of the community, either from the beginning of displacement or as soon as possible thereafter.²

In 2016, the president of the International Rescue Committee also called for the closure of all refugee camps, arguing that they ‘were designed for yesterday’s problems, not tomorrow’s.’³

Nevertheless, close to 20 million refugees continue to live in camps.⁴ States of refuge often insist upon the establishment of camp settlements for reasons of public order and/or security,⁵ especially when confronted by a sudden influx of people fleeing conflict. For host governments, protecting the well-being of their own citizens is a powerful, if not decisive factor for maintaining camps, not least in locations where there are pre-existing pressures on basic resources such as water and food. Moreover, camps are often the most effective operational response to emergency situations in conflict scenarios, as the UNHCR itself recognises.⁶



It is within this context that this report has been drafted. Mindful of the generosity of many governments, and of some governments' limited resources for humanitarian assistance to refugees, this report examines the core international human rights obligations of States toward non-citizen refugee women and girls who live in camps within the State's territory and/or jurisdiction. The objective of this report is to assist decision-makers in ascertaining whether a State is in breach of an international obligation that gives rise to international responsibility, and the attendant requirement to provide a remedy.

States' obligations regarding internally displaced persons (IDPs) lie beyond the scope of this report, as do non-State actors' obligations under international human rights law. Nor does this report consider the international humanitarian law obligations of States, even if applicable.

The scope of this report is further limited to obligations relevant to life *within* refugee camps. Arguments about camp alternatives, refugee-status determination for purposes of the 1951 Refugee Convention, and durable solutions for refugees will not be considered.

The interest of the Centre for Women, Peace and Security (LSE WPS) in presenting a report on these issues is closely connected to the Centre's commitment to gender equality, the promotion of justice, human rights and the participation of women in decision and policy-making in conflict-affected situations around the globe. For as long as camp-life is a reality for millions of refugees, it is imperative that States uphold their international obligations to protect women and girls who remain vulnerable to myriad sources of abuse and insecurity, and to prosecute the perpetrators of such harm.



PART II: BACKGROUND TO THE ESTABLISHMENT AND ADMINISTRATION OF REFUGEE CAMPS

This section provides an overview of three ways in which a refugee camp may come into existence. First, the State of refuge may decide to set up a camp, especially in the context of an influx of refugees (for example, a large number of people fleeing conflict in a neighbouring State). Second, an organisation such as the UNHCR may obtain a permit from the host State to establish a camp for refugees within that State's territory. Third, informal camps may be created by refugees who, for a variety of reasons, are not sheltered in an official refugee settlement. In such circumstances, these refugees may establish a make-shift camp or shanty town which, in turn, attracts a mixture of refugees and migrants.

A. CAMPS ESTABLISHED AND/OR ADMINISTERED BY THE STATE OF REFUGE

In certain exceptional circumstances, States have established and administered a refugee settlement at their own expense. The refugee camp in Kilis, Turkey, is one such example. On 29 April 2011, over 250 Syrians crossed the border into Turkey, fleeing the armed conflict in their homeland. The Turkish government swiftly established an emergency "tent camp" for the Syrian arrivals. Three years later, the government had established twenty-two camps for around 210,000 refugees who had arrived from Syria. The Kilis camp was officially opened in 2012; the vast majority of funding and administrative responsibility for this "container camp" (where structures similar to shipping containers were provided as shelter) was taken on by Turkey. Rather than delegate responsibility to the UNHCR, the government seemingly preferred to maintain strict oversight of the refugee camps within its territory.⁷

At one time, Greece's Elliniko refugee camp was inhabited by over 1,000 refugees and migrants.⁸ The majority of residents lived in tents within the former domestic arrivals terminal of a disused airport, or in a pair of deserted Olympic sports stadiums also located on the outskirts of Athens. In contrast to the Kilis camp in Turkey, the conditions at Elliniko were notoriously poor. The allocation of funding for camps, as well as the selection of refugee projects to be funded, became the sole responsibility of Greek authorities in May/June 2017. The Greek government assumed greater responsibility of services which, until 2017, had been administered by the UNHCR and the wider humanitarian community.⁹ The Elliniko camp was subsequently dismantled and its inhabitants were relocated to alternative camps.¹⁰



B. CAMPS ESTABLISHED AND ADMINISTERED BY AN ORGANISATION SUCH AS THE UNHCR

Refugee camps are frequently run and resourced by intergovernmental and non-governmental organisations. Perhaps the best known UNHCR refugee settlement is the Dadaab camp in Kenya. In 1991, in the midst of civil war and the collapse of government in Mogadishu, Somali refugees fled across the land-border into Kenya.¹¹ The UNHCR set up the first Dadaab camps between 1991 and 1992. Initially intended to shelter approximately 90,000 people, Dadaab is now home to over 200,000 refugees.¹² A significant proportion of Dadaab residents have also arrived from Ethiopia and South Sudan, after fleeing conflict.¹³ Although the UNHCR continued to provide food, water and healthcare in Dadaab,¹⁴ the restrictions on movement introduced by the Kenyan Government, which prevent many refugees from leaving the camps, resulted in the most destitute struggling to survive.¹⁵ In 2016, the World Food Programme cut rations by up to one third for larger “households”. This led to significant hardship for the newest Dadaab residents who had few connections or resources of their own.¹⁶ As of 2017, the Dadaab camp’s future is uncertain. The Government wishes to close the camp and forcibly repatriate many of its inhabitants, partly due to concerns about extremism linked to Somali-based Al-Shabab occurring on Kenyan soil. The High Court in Kenya blocked the closure of the camp in February 2017.¹⁷ At the end of January 2018, the Dadaab camp had a population of 235,269 registered refugees and asylum-seekers.¹⁸

In the wake of the Syrian armed conflict, the UNHCR and the Jordan Hashemite Charity Organization jointly planned and developed the Za’atari refugee camp on desert land owned by Jordan’s armed forces. The original organisation of the camp featured housing placed in rows to allow for access, fire prevention, and sanitation management. Syrian refugees subsequently “rearranged” the housing units, tents and caravans in order to create U-shaped or courtyard-shaped housing units to act as compounds for extended families.¹⁹ From July 2012, the Za’atari camp – once described as “the world’s newest slum”²⁰ – developed to include approximately 100,000 people.²¹ Jordan provides security within the camp.²²

C. INFORMAL CAMPS ESTABLISHED BY REFUGEES

Refugees who flee armed violence often do not reach their desired destination territory. Frequently, they will be physically prevented from crossing a border and so be left with little choice but to set up their own make-shift camps which go on to attract a mixture of refugees and migrants. The now-dismantled shanty town at Calais, France, was a prime example of this. In July 2017, nine months after the French authorities closed the large migrant camp at Calais, at least 500 refugees and asylum-seekers, some of whom had fled armed conflict, were still living on the streets or in wooded areas in the hope of reaching the United Kingdom.²³

Informal refugee camps may also exist when the number of people fleeing conflict exceeds the limit that a State can manage. In 2015, the UNHCR estimated that 84 per cent of Jordan’s refugee population – many of whom are Syrian – did not live in official refugee camps. Inevitably, conditions are much harsher in informal camps; around 86 per cent of refugees in Jordan live below the poverty line.²⁴



In some circumstances, informal camp settlements established by refugees will eventually be wholly or partly administered by the humanitarian community in collaboration with the host State, as in the case of the Kutupalong and Nayapara settlements in Bangladesh. Following the targeted attacks on the Rohingya community in Rakhine State in late August 2017, thousands of refugees fled Myanmar across the border into Bangladesh. In early September 2017, the UN estimated that 120,000 Rohingya had arrived in Bangladesh, joining approximately 400,000 Rohingya refugees who had fled Myanmar during previous bouts of violence and who continued to live in Bangladeshi camps and settlements.²⁵ By August 2018, over 723,000 Rohingya refugees had entered Bangladesh and established makeshift settlements with shelters of bamboo and tarpaulin.²⁶

Refugees may also gather in informal camps because they view life in *official* camps as more restrictive. It has been reported that some residents of informal camps near Za'atari, Jordan, did not wish to feel trapped in the official camp. Instead, they sought greater independence by risking the harsher conditions and greater uncertainty of life in a makeshift settlement.²⁷ In Greece, too, many have been reluctant to leave the informal camps. The Greek authorities cleared Idomeni refugee camp in 2016. At that time, it was the country's largest informal refugee settlement. The camp had been established at an informal pedestrian border-crossing from Macedonia, and was principally home to refugees from Syria, Afghanistan and Iraq. At first, national authorities provided portable toilets to those living in tents in Idomeni, but eventually began an operation to clear the site and transport its residents to official camps near Thessaloniki. According to reports, some refugees feared being moved to a settlement where conditions were incompatible with a dignified way of life.²⁸

In Somalia, approximately 350,000 displaced people are currently living in unprotected, makeshift settlements on the government's doorstep in Mogadishu. Many of these people are former refugees who earlier left Somalia for Kenya where they stayed in the Dadaab camp. Despite continued violence in Somalia, they have returned from Kenya. Although the Somali inhabitants of these settlements now qualify as internally displaced persons, their situation evidences the brutal conditions which arise in makeshift, informal settlements in which refugees may find themselves.²⁹ Food is scarce and violence (including sexual violence) is rife. Such conditions can be equally stark for refugees living in informal camps in a developed State – as exemplified in Calais, France.



PART III: APPLICABLE INTERNATIONAL LEGAL REGIMES

A. INTERNATIONAL HUMAN RIGHTS LAW

This report focuses primarily on the obligations of States flowing from international human rights law. International human rights law comprises a network of global and regional treaties, and other instruments applicable to all persons – including women and girls who have been forcibly displaced across an international border. There are a variety of institutional protection mechanisms through which women and girls in refugee camps can bring a claim or seek to have their human rights enforced.³⁰

Crucially, the universality of international human rights law can bolster protection for refugees who are either located in States not parties to the 1951 Refugee Convention³¹ and/or its 1967 Protocol,³² or who do not satisfy the criteria for Refugee Convention protection.³³ Many of the rights enshrined in the Refugee Convention – such as the rights to life, freedom from torture, or adequate housing – are found in one of two, key treaties: the International Covenant on Civil and Political Rights (ICCPR) or the International Covenant on Economic, Social and Cultural Rights (ICESCR).³⁴ Reference is made to these throughout the report.

The other key international human rights instruments are the Convention on the Elimination of Racial Discrimination (CERD),³⁵ for women, the Convention on the Elimination of Discrimination against Women (CEDAW),³⁶ the Convention against Torture (CAT),³⁷ and the Convention on the Rights of the Child (CRC).³⁸ States are bound by the treaties to which they have ratified or acceded to.

Each of the principal UN human rights treaties provides for an independent expert Committee, which plays a supervisory and quasi-enforcement role, to monitor States Parties' compliance with their obligations under the relevant legal instrument. The relevant Committee supervises compliance through examination of States' reports, submitted periodically. In addition, some Committees are competent to undertake field investigations and to consider inter-State and/or individual complaints.

The concluding observations to States' reports and recommendations of the UN human rights committees have no legally binding force. However, they remain a crucial tool of interpretation for a treaty's provisions and States Parties' consequent obligations. The UNHCR has, for a number of years, worked with these Committees – in particular, the UN Human Rights Committee, the Committee against Torture and the Committee on the Rights of the Child. The Committees' concluding observations and recommendations are a useful reference for 'negotiating and discussing specific refugee protection issues with governments'.³⁹ Moreover, whilst General Recommendations and opinions are not legally binding, the International Court of Justice (ICJ) has recognised that 'great weight' should be given to the opinion of a human rights treaty body.⁴⁰



States may choose to formalise their international obligations through, *inter alia*, enacting legislation, creating national mechanisms to handle human rights complaints, and – perhaps most importantly for the protection of refugees in camps – ensuring that State authorities respect certain legal norms.⁴¹ With regard to legal obligations flowing from international *refugee* law, Goodwin-Gill states that the test should be:

[...] whether, in light of domestic law and practice, including the exercise of administrative discretion, the state has attained the international standard of reasonable efficacy and efficient implementation of the treaty provisions concerned.⁴²

It seems reasonable to argue that the same test should be employed vis-à-vis States' compliance with their international human rights obligations towards refugees.⁴³

B. APPLICABILITY OF INTERNATIONAL HUMAN RIGHTS LAW TO NON-CITIZEN WOMEN AND GIRLS

International human rights treaties oblige States to ensure the equal treatment of all persons present within their respective territory and/or jurisdiction. This means that the protection guaranteed by international human rights instruments accrues to any woman or girl living in a refugee camp – even if she is a non-citizen of the country in which she is located.⁴⁴ The United Nations has defined a non-citizen as 'any individual who is not a national of a State in which he or she is present.'⁴⁵

The term 'non-citizen', as used in this report, also applies to stateless persons – individuals who have either not formally acquired citizenship of the country in which they were born, or who have lost their citizenship without acquiring another.⁴⁶ The Convention Relating to the Status of Stateless Persons defines such persons as those 'not considered a national by any State under the operation of its law.'⁴⁷

The rights enshrined in the ICCPR apply equally to all non-citizen refugees.⁴⁸ The Human Rights Committee has explained that 'the rights set forth in the [ICCPR] apply to everyone, irrespective of reciprocity, and irrespective of his or her nationality or statelessness.' Thus, the general rule is that each of the rights of the ICCPR must be guaranteed to citizens and aliens, without discrimination, by the State in whose territory or jurisdiction they find themselves.⁴⁹

The Human Rights Committee has stated that the term "discrimination" means 'any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.'⁵⁰ Note, also, that the Committee has highlighted that "equal treatment" does not require that all persons be treated in exactly the same way:

not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation is *reasonable and objective* if the aim is to achieve a *purpose which is legitimate under the [ICCPR]*.⁵¹



In this regard, the rights of non-citizens may be qualified by limitations recognised pursuant to the ICCPR. Specifically, the ICCPR permits States to draw a distinction between citizens and non-citizens with respect to two categories of rights: political rights explicitly guaranteed to citizens, and freedom of movement. With regard to political rights, Article 25 of the ICCPR establishes that 'every citizen' shall have the right to participate in public affairs, to vote and hold office, and to have access to public services. Therefore, aside from these limitations, the provisions of the ICCPR must be applied equally to protect refugee women and girls within the territory of States of refuge.

In the context of socio-economic rights, Article 2(2) of the ICESCR declares that States Parties guarantee the rights enunciated in the Covenant 'without discrimination of any kind as to race, colour... national or social origin... or other status'.⁵² It can be argued that refugees (and other non-nationals) are covered by the "other status" provision.⁵³ In addition, Article 2(3) of the ICESCR contains a specific reference to the situation of non-nationals: '[d]eveloping countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognised in the present Covenant to non-nationals.' Although Article 2(3) appears to create an exception to the rule of equality for developing countries, it must be *narrowly* construed, and may be relied upon *only* by developing countries and only with respect to *economic* rights. States must not draw a distinction between citizens and non-citizens' social and cultural rights.

The CERD requires States Parties to 'assure everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions'.⁵⁴ The CERD Committee has also reaffirmed that 'human rights are, in principle, to be enjoyed by all persons' and that 'States parties are under an obligation to guarantee equality between citizens and non-citizens in the enjoyment of these rights to the text recognized under international law'.⁵⁵

The overall object and purpose of the CEDAW is to eliminate all forms of discrimination against women, on the basis of sex or gender, with a view to achieving women's *de jure* and *de facto* equality with men in the enjoyment of human rights and fundamental freedoms.⁵⁶ The CEDAW Committee has addressed concerns about women trafficked across international borders, female refugees and asylum-seekers, and unaccompanied or undocumented female children outside their country of origin.⁵⁷ The Committee has previously stated that 'all categories of women migrants fall within the scope of the obligations of States Parties to the Convention and must be protected against all forms of discrimination by the Convention'.⁵⁸

Importantly, the CEDAW sets out the bases for application of "temporary special measures" as a means of realising *de facto* and/or substantive equality for women.⁵⁹ Article 4(1) of the CEDAW states that the implementation of temporary special measures aimed at accelerating *de facto* equality between women and men must not be considered discriminatory, and such measures must not result in the maintenance of 'unequal or separate standards'. The provision also directs States to "discontinue" such temporary special measures as and when 'the objectives of equality of opportunity and treatment have been achieved'.⁶⁰



According to the CEDAW Committee, the application of temporary special measures prescribed by Article 4(1) CEDAW are *not* ‘an exception to the norm of non-discrimination, but rather an emphasis that temporary special measures are part of a necessary strategy by States parties directed towards the achievement of’ equality.⁶¹ The term “special” indicates that such measures must serve a ‘specific goal’⁶² such as the allocation and reallocation of resources; practices of targeted recruitment, hiring and promotion in the employment context; and quota systems.⁶³ Temporary special measures are intended to remedy the effects of past discrimination against women and girls,⁶⁴ but should not include the provision of general conditions ensuring women and girls’ civil, political, economic, social and cultural rights.⁶⁵ For, such general conditions are designed to ensure women and girls’ lifelong dignity and protection from discrimination.⁶⁶

Under the CRC, States have a clear obligation to ‘respect and ensure the rights set forth ... to each child within their jurisdiction’.⁶⁷ The CRC defines a child as a person under the age of 18, unless the relevant national laws state an earlier age of adulthood.⁶⁸ This means that the CRC applies to everyone up to 18 years of age, unless it is shown that she or he is an adult under national law.

Determination of a child refugee’s protection needs should include an age-assessment procedure and should take into account both the child’s physical appearance and psychological maturity.⁶⁹ The Committee on the Rights of the Child has stated that:

State obligations cannot be arbitrarily and unilaterally curtailed either by excluding zones or areas from a State’s territory or by defining particular zones or areas as not, or only partly, under the jurisdiction of the State.⁷⁰

The above applies in the context of official *and* informal refugee camps. Note, also, that the Committee has developed a set of general principles for application when an unaccompanied child is outside her country of origin – as is often the case when children flee conflict and end up living in a refugee camp abroad.⁷¹

Thus, States have a clear legal obligation to respect and protect all non-national or non-citizen refugee women and girls present in their territory or jurisdiction, pursuant to the ICCPR, ICESCR, CEDAW, CRC and CERD. This logically includes those female refugees residing in camps, regardless of whether such camps are administered by the State in question.

C. REGIONAL HUMAN RIGHTS LAW

Regional human rights regimes can provide non-citizen refugee women and girls with further protections. For example, the African Charter on Human and Peoples’ Rights (ACHPR) recognises that most of the substantive rights accrue to ‘every individual’ within the State’s territory or jurisdiction;⁷² the American Convention on Human Rights (ACHR) guarantees that almost every right is enjoyed by ‘all persons subject to [States Parties] jurisdiction’;⁷³ the European Convention on Human Rights (ECHR) requires all States Parties to ‘[s]ecure to everyone within their jurisdiction the rights and freedoms defined’ in the Convention.⁷⁴



D. INTERNATIONAL LEGAL INSTRUMENTS RELATING TO HUMAN TRAFFICKING

The principal international legal instrument which deals with human trafficking is the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (the Trafficking Protocol)⁷⁵ to the United Nations Convention against Transnational Organised Crime (UNTOC).⁷⁶ The Trafficking Protocol entered into force in December 2003.

E. THE DOCTRINE OF INTERNATIONAL STATE RESPONSIBILITY

The doctrine of State responsibility holds a State accountable for breaches of international customary law or treaty obligations which were committed by, or are attributable to, that State.⁷⁷ The doctrine has been codified by the International Law Commission, taking the form of the Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA). The Articles do not constitute a legally binding instrument but rather represent a “soft law” instrument. Their legal weight should not be overstated. Nevertheless, the Articles have undoubtedly become the primary point of reference for this area of international law and have been cited regularly by international courts and arbitral tribunals.⁷⁸ They have had a significant impact on debates about the rules of State responsibility and are increasingly referred to in the human rights arena. Claims concerning State responsibility may also be brought before domestic courts which, in turn, helps to ensure States’ compliance with international human rights law.

Importantly for this report, the rules on States responsibility have significant practical value. The Articles are not concerned with international law’s “primary” rules (i.e. the *content* of an international obligation), but on “secondary” rules of responsibility. This means that the Articles can help to determine:

- a) whether the conduct in question has led to a violation of an international obligation (including under human rights law); and
- b) the consequences of such a breach (including the key obligation to make full reparation, as well as the obligation to put an end to the wrongful act in question).⁷⁹

Whether an act is internationally wrongful is governed by international law, even if it does not contravene a State’s domestic legislation.⁸⁰ Generally, and according to the ARSIWA, a State is responsible for an act or omission attributable to it under international law where the conduct breaches an *international obligation of that State* and when an act of that State is not in conformity with what is required of it by that obligation, regardless of its origin or character.⁸¹ The applicable standard of fault depends on the applicable international legal rule.



F. HUMAN RIGHTS OBLIGATIONS OF STATES

By becoming parties to international human rights treaties, States assume obligations and duties to respect, protect and fulfil international human rights law. The obligation to respect requires States to refrain from interfering with or curtailing the enjoyment of a right. This obligation includes the duty to ensure that no law is discriminatory and that the State does not directly or indirectly deny women and girls equal enjoyment of their rights. The obligation to protect requires States to protect individuals and groups against human rights abuses by third parties. The obligation to fulfil means that the State must take positive steps to facilitate and guarantee the enjoyment of rights. Human rights mechanisms have interpreted the obligation to fulfil to extend to the need to provide the right directly in situations where an individual or group is unable, for reasons beyond their control, to enjoy the right by the means at their disposal.⁸²

Due diligence in international human rights law

States' obligation to respect, protect and fulfil a person's rights has been rendered more concrete by the duty and standard of due diligence.⁸³ The standard is long established in international law with respect to attributing State responsibility for the wrongful conduct of non-State actors such as private individuals, corporations, armed groups, humanitarian workers, or employees of inter-governmental and non-governmental organisations. A human rights violation by non-State actors will give rise to the international responsibility of the State if it has failed to exercise due diligence to prevent the violation or to respond to it appropriately.

Due diligence is not a form of strict liability; as such, the State is held internationally responsible not for the wrongful act itself, but for failing to act with all means at its disposal either to prevent third-party violations or to investigate, prosecute and punish perpetrators of such violations. That a State or State-agent did not actively participate in the commission of human rights violations does not necessarily preclude the application of that State's obligation to protect or punish.⁸⁴ It is through the concept of due diligence that structural and social shortcomings are addressed in international law.

The standard of due diligence is highly context-specific and depends upon the exact nature of the international obligation in question.⁸⁵ It should therefore be noted that due diligence is an 'obligation of conduct'.⁸⁶ According to the UN Special Rapporteur on human trafficking, this means that the standard of due diligence 'does not insist on a one-size-fits-all approach that requires uniform outcomes from differently situated States.'⁸⁷ States must exercise due diligence in good faith,⁸⁸ but a lack of resources and/or capacity does not remove their due diligence obligations.⁸⁹

The due diligence standard is particularly relevant in the context of women's rights,⁹⁰ for it is within the private sphere that women and girls face a disproportionate threat of their rights being violated.⁹¹ States' obligations to respect, protect and fulfil human rights 'include the binding obligation to prevent, investigate and punish violence against women and to provide redress for such acts of violence, wherever they take place.'⁹² This necessarily includes the context of the refugee camp.



PART IV: THE SUBSTANTIVE OBLIGATIONS OF STATES

A. OBLIGATION TO PROVIDE FOR WOMEN AND GIRLS' BASIC NEEDS IN REFUGEE CAMPS

Context of the refugee camp

UN Security Council Resolution 1325 (2000) on women, peace and security calls upon 'all parties to armed conflict to respect the civilian and humanitarian character of refugee camps and settlements, and to consider the particular needs of women and girls, including in their design.' However, in determining the gendered needs of women and girls, it is important that those within refugee camps are not treated as lacking agency. Meaningful participation is a pillar of WPS; it should continue to be applicable within such camps. Accordingly, refugee women must be accorded participation and representation in the decision-making processes leading to the design and implementation of all camp policies, including those relating to the delivery and distribution of services and measures for prevention of and protection against violence.

As with all other persons, refugees are entitled to an adequate standard of living. This includes adequate food and housing, as well as physical and mental health. Refugees who have fled conflict frequently arrive in the host country traumatised and in need of medical treatment. Women and children have particular health and security needs and may suffer gender-specific, adverse health consequences if these are not addressed.⁹³ They are also very vulnerable to exploitation and violence whilst living in refugee camps.⁹⁴

The life of a refugee is typically characterised by dependency 'on others for such basic needs as food, clothing and shelter'.⁹⁵ Refugees' confinement to camps may, in itself, have implications for their socio-economic rights (ESC rights). For example, where camps are located in remote and/or poor areas of the country of refuge, access to wage-earning employment may be limited. Worse still are situations in which refugees' rights of free movement to and from the camp are restricted, as is the case for inhabitants of the Dadaab camp in Kenya. Refugee women, in particular, have few economic opportunities to build their livelihoods; their earning options are often limited to low-paid and low-skilled informal work, whilst they also bear the responsibility for unpaid family labour.⁹⁶ This dire socio-economic context increases the risk that refugee women might engage in transactional sex to support themselves and their families.⁹⁷ Lack of security or social restrictions on the movement of unaccompanied women may cause refugee women to confine themselves to their tents.⁹⁸



International legal instruments

Prima facie, the 1951 Refugee Convention is limited in protecting the ESC rights of refugees. First, the Convention only applies to those countries which are States Parties (either to the 1951 Convention or the 1967 Protocol). Secondly, it does not refer to certain ESC rights, such as an adequate standard of living or physical and mental health. Lastly, refugees may only be able to access entitlements under the Convention when the domestic authorities have formally recognised them as refugees.

International human rights law provides a more comprehensive protection regime for all people in refugee camps, encompassing civil, political and ESC rights. In particular, some of the core rights enumerated in the ICESCR (including, for example, the right to water, food, shelter and health) take on added significance for those who have been forcibly displaced. These rights are particularly pertinent to refugee women, who usually take on additional obligations of providing for other vulnerable family members, including the young and the elderly. The core of a rights-based approach to refugee assistance is the 'identification of a certain standard of treatment to which an individual refugee is entitled'.⁹⁹

Before elaborating on the relevant standards pertaining to ESC rights of non-citizen refugee women and girls, two preliminary clarifications are made regarding the general principles of ICESCR interpretation. The first relates to the concept of "progressive realisation"; the second to the concept of a "minimum core" of obligations.

Concept of progressive realisation

Enshrined in Article 2(1) of the ICESCR, the concept of progressive realisation is frequently misinterpreted to mean that States do *not* have an obligation to protect ESC rights until they have the sufficient resources to do so.¹⁰⁰ This deprives the obligation of meaningful content,¹⁰¹ and ironically it enables States to escape accountability for their failures to fulfil ESC rights.¹⁰² The ESCR Committee has clarified that progressive realisation imposes an *immediate* obligation to 'move as expeditiously and effectively as possible'¹⁰³ towards the full realisation of ESC rights. Accordingly, a lack of resources cannot 'justify inaction or an indefinite postponement of measures to implement [ESC rights]'.¹⁰⁴ Indeed, States Parties' duty 'to protect the vulnerable members of their societies assumes greater rather than lesser importance in times of severe resource constraints'.¹⁰⁵

Progressive realisation should be interpreted such that it captures a "pattern of improvement" which obliges States to ensure a broader enjoyment of ESC rights over time.¹⁰⁶ The ESCR Committee has emphasised that steps taken by States to fully realise ESC rights 'should be deliberate, concrete and targeted as clearly as possible'¹⁰⁷ towards meeting their obligations to respect, protect and fulfil the rights set out in the ICESCR. While States enjoy a margin of discretion in selecting the means that are available for implementing their obligations, the burden remains on the State to demonstrate that measurable progress is being made towards the full realisation of rights.¹⁰⁸ In addition, States cannot deliberately pursue retrogressive measures.¹⁰⁹

In addition, the concept of progressive realisation mandates that a States Party also comply with certain obligations which are *independent* of the level of resources available to it. These obligations include non-discrimination and equality in the delivery of social services¹¹⁰ (re-affirmed in Article 3 of the CEDAW) and the efficient use of available resources.¹¹¹ Concretely, the international prohibition on discrimination requires States to 'improve the de facto position of women through concrete and effective policies and programmes', including in the context of the refugee camp.¹¹²



Minimum core obligations

The concept of a “minimum core” of obligations is a doctrinal advance on the ICESCR.¹¹³ It may be distinguished from progressive realisation by the higher standards to which States are held. The minimum core is the *baseline* of the obligation to progressively realise rights: the identification of certain essential obligations helps to ensure that States provide people with the basic conditions under which they can live with dignity. This, in turn, provides a “bottom line” for State responsibility.

The primary international sources for the doctrine of minimum core obligations are the General Recommendations and Comments issued by various treaty bodies, such as the ESCR Committee. Such Recommendations and Comments, whilst not legally binding, are highly persuasive. According to the ESCR Committee, the minimum core of the main economic, social, and cultural rights has become customary international law and is therefore binding on all States, regardless of whether they have signed or ratified treaties protecting those rights.¹¹⁴

Albeit a soft law instrument, the 1998 Maastricht Guidelines state that minimum core obligations ‘apply irrespective of the availability of the resources of the country concerned or any other factors and difficulties’.¹¹⁵ In this regard, Article 2(1) of the ICESCR acknowledges States’ resource constraints by setting out that a State party is obligated to take the necessary steps ‘to the maximum of its available resources’. Nonetheless, in order for a State Party to cite a lack of available resources as the reason for its failure to meet the minimum core obligations, it must demonstrate that ‘every effort has been made’¹¹⁶ to use all resources at its disposal as a matter of priority in satisfying the core. Otherwise, the State will be considered to have failed, or be failing, to meet its obligations under the ICESCR.¹¹⁷ In addition, even where the available resources are demonstrably inadequate, the obligation remains for a State Party ‘to strive to ensure the widest possible enjoyment of the relevant rights under the prevailing circumstances’.¹¹⁸ Of particular relevance to refugee women and girls is the fact that non-discrimination is considered part of the minimum core content of *all* rights in the ICESCR – it applies immediately to all States.¹¹⁹

Prohibition on discrimination in respect of women and girls in camps

In order for States Parties to ‘guarantee’ that the Covenant rights are exercised without discrimination, as set forth in Article 2(2), both formal *and* substantive discrimination must be eliminated.¹²⁰ In order to guarantee that women and girls in refugee camps are able to exercise their Covenant rights, host States must ensure that their laws and policies do not discriminate on the grounds of sex (i.e. they must eliminate formal discrimination). To eliminate substantive discrimination, host States should, and in some cases *must*, adopt special measures to attenuate or suppress conditions that perpetuate discrimination on the grounds of sex.¹²¹ The Committee has noted that, exceptionally, some positive measures may need to be of a permanent nature. The Committee has further elaborated on direct and indirect discrimination pursuant to Article 2(2).



Standards applicable to refugee women and girls

States must avoid different standards of treatment between citizens and non-citizens that might lead to the unequal enjoyment of ESC rights.¹²² Accordingly, governments are required to take steps to the maximum of their available resources to protect the rights of everyone, including non-citizens, to 'an adequate standard of living ... including adequate food, clothing, housing, and the continuous improvement of living conditions';¹²³ the 'enjoyment of the highest attainable standard of physical and mental health';¹²⁴ education;¹²⁵ and social security.¹²⁶

It is crucial that States do not shirk the abovementioned responsibilities, especially in the context of *informal* refugee camps and/or shanty towns. State obligations which flow from the ICESCR rights to water, sanitation, shelter, food, healthcare and education are now discussed in turn.

B. RIGHTS TO WATER, SANITATION AND SHELTER

Applicable international law

The right to water and sanitation has been recognised in a wide range of international instruments, including UN General Assembly resolutions, treaties and declarations.¹²⁷ Although the right to water is not expressly set forth in the ICESCR, the ESCR Committee has read the right into Article 11(1) and has also found it to be inextricably linked to the right to the highest attainable standard of health (Article 12(1) ICESCR) and to the right to adequate housing and food (Article 11(1) ICESCR).¹²⁸

As elaborated by the ESCR Committee, 'the elements of the right to water must be *adequate* for human dignity, life and health, in accordance with articles 11(1) and 12'.¹²⁹ While conceding that adequacy is dependent on context, the Committee has stressed that the following factors apply in all circumstances:

- a) Availability: the water supply must be sufficient and continuous for personal and domestic uses (including drinking, food preparation, sanitation and hygiene);¹³⁰
- b) Quality: the water required for personal or domestic use must be safe;
- c) Accessibility: water and water facilities must be physically and economically accessible to everyone without discrimination.¹³¹

Insofar as accessibility is concerned, States Parties have an obligation to prevent both direct and indirect discrimination on the basis of sex and gender.¹³² Moreover, States must pay "special attention" to individuals and groups that have traditionally faced difficulties in exercising the right to water, including women, children, refugees and asylum-seekers.¹³³ In particular, refugees should be provided with adequate drinking water at camps and granted the right to water on the same conditions as nationals.¹³⁴

The ESCR Committee has emphasised the need for women *not* to be excluded from decision-making processes in respect of water resources and entitlements and, in that context, has called on States to ensure the alleviation of the disproportionate burden borne by women in the collection of water.¹³⁵ Pursuant to its *Women and peace and security* agenda, the UN Security Council has recognised that the obligation on States to ensure the equal and meaningful participation of refugee women and girls in the decision-making process extends throughout the displacement cycle and includes the development, implementation, monitoring and evaluation of policies and programmes.¹³⁶



As with the right to water, the right to adequate sanitation is not expressly set forth in the Covenant. The ESCR Committee has, however, read this right into the right to health and adequate housing.¹³⁷ Moreover, in describing access to adequate sanitation as fundamental for human dignity and privacy, the Committee has reminded States Parties of their obligation to extend progressively safe sanitation services, including within rural and deprived urban areas, whilst always considering the needs of women and girls.¹³⁸

With the adoption in 2016 of UN General Assembly resolution 70/169, States acknowledged the importance of providing adequate water and sanitation facilities to women and girls to enable them to manage their menstrual hygiene. The resolution also recognised that the States' failure to do so not only contributes to reinforcing stigma associated with menstruation, but also negatively affects gender equality and women's and girls' enjoyment of human rights.¹³⁹ Likewise, the human rights mechanisms have drawn attention to the material needs of women and girls in the context of menstrual hygiene and of how the lack of adequate provisions has a knock-on effect on the enjoyment of other rights including, for example, access to education, freedom of movement, right to health, or indeed security. Human rights mechanisms have also reminded States of their obligations to prevent and respond to gender inequalities in access to water and sanitation.¹⁴⁰

The right to adequate housing is set forth in Article 11(1) of the ICESCR. According to the ESCR Committee, this right 'should not to be interpreted in a narrow or restrictive sense which equates it with, for example, the shelter provided by merely having a roof over one's head or views shelter exclusively as a commodity' but 'rather it should be seen as the right to live somewhere in security, peace and dignity'.¹⁴¹

Although the definition of 'adequate' is dependent on context, the Committee has identified a number of features which must be taken into account. In particular, housing must contain certain facilities essential for health, security, comfort and nutrition. The housing must be habitable and of such quality as to ensure protection from the elements; be connected to public utilities and sanitation services; be connected to public services; reflect the cultural requirements of inhabitants; and allow access to work opportunities through an adequate infrastructure.¹⁴² It should also include adequate protection against forced or summary eviction.¹⁴³

The interdependence of the human right to housing and other human rights must be recognised by States. For example, the Special Rapporteur on adequate housing has highlighted that inadequate housing usually means inadequate water, sanitation and safety.¹⁴⁴

Application in the context of the refugee camp

States must provide adequate water and sanitation services to women and girls in refugee camps. The particular needs in respect of menstrual hygiene may require States to take additional measures to ensure that women and girls in camps are not prevented from enjoying the right to adequate water and sanitation facilities alongside the full spectrum of rights which depend upon such access. For example, States must ensure that there are adequate water and sanitation facilities in schools. Failure to do this will present an obstacle to girls' right to access education and, consequently, will constitute indirect discrimination.



States should be mindful that, where temporary latrines and bathrooms are scarce in refugee camps, girls and women suffer the most because of forced retention for prolonged hours. This has been shown to lead to potentially life-long reproductive health complications.¹⁴⁵ Accordingly, States must ensure that sanitation and hygiene facilities in refugee camps are readily accessible to women and girls so that they do not have to walk long distances alone – especially at night.¹⁴⁶

Pragmatic decisions about the layout of a camp – including the location of sanitation facilities – may heighten or decrease women's physical safety. For example, camp latrines are often placed far from the shelters in unlit, isolated areas.¹⁴⁷ In Guinea, Liberia and Sierra Leone, most sexual attacks on girls occurred when the girls went to the latrine or the bathroom. It has been reported that, in Guinea, the walls of the women's latrines had been perforated with holes used for peeking at the women.¹⁴⁸ In Pakistan, Afghani women would wait until dark to go to the latrines because of traditional cultural rules, thereby increasing their chances of attack at night and harming their renal system because of the lack of water intake throughout the day.¹⁴⁹ In addition to ensuring that sanitation facilities are readily accessible to women and girls in camps, States must ensure that they are safe spaces, and well-illuminated.¹⁵⁰

States should ensure that refugee camps are established as close as possible to water supplies.¹⁵¹ Given that women and girls are usually the ones who fetch water, security measures are necessary if water supplies are situated some distance from living quarters. Such preventive measures are necessary to reduce the risk of women and girls being exposed to violence and, in particular, sexual violence.

Camp officials often ignore women's housing needs. In the past, many refugees living in camps in Guinea were required to build their own housing.¹⁵² A woman who is the head of a household may have a difficult time building her own shelter because she lacks the time and/or technical knowledge to build the shelter.¹⁵³ Even when housing is available, unaccompanied women are more susceptible to violence because they are often housed with strangers.¹⁵⁴ Indeed, single women and girls often complain about sexual intimidation and abuse which is caused primarily by their having to live in quarters with unrelated males or even males who would have been their enemies in their home countries.¹⁵⁵ For example, in Guinea, when an adult male relative was not in the shelter, women and girls were more vulnerable to physical violence from 'neighbours, care givers and male friends of the mother.'¹⁵⁶

Refugee women are particularly vulnerable when they are unable to sustain themselves and their dependents, when they are housed among strangers, and in circumstances where traditional social protection systems no longer exist.¹⁵⁷ Problems occur especially in refugee camps where unrelated groups of men and women are forced to live together, and where water and sanitation facilities are communal and/or situated at some distance from the living quarters.¹⁵⁸

Women should be consulted about the specific risks they run when they have to live with large groups of unrelated men. Their suggestions for improvement should be followed.¹⁵⁹ If unaccompanied women feel safer by establishing a separate living area for themselves, efforts should be made to facilitate this.¹⁶⁰ Even if separate quarters are not requested, there should be completely separate washing facilities and latrines for women.¹⁶¹ This would significantly enhance the safety and dignity of unaccompanied women and girls in refugee camps.



C. RIGHT TO FOOD

Applicable international law

The right to adequate food is recognised in several instruments under international law. Article 11 of the ICESCR not only encapsulates the right to adequate food but also recognises that States may need to take more urgent steps to ensure 'the fundamental right to freedom from hunger and malnutrition'.

The ESCR Committee has elaborated on the scope of Article 11 as follows:

The right to adequate food is realized when every man, woman and child, alone or in community with others, has physical and economic access at all times to adequate food or means for its procurement. The right to adequate food shall therefore not be interpreted in a narrow or restrictive sense which equates it with a minimum package of calories, proteins and other specific nutrients. The right to adequate food will have to be realized progressively. However, states have a core obligation to take the necessary action to mitigate and alleviate hunger, even in times of natural or other disasters.¹⁶²

The Committee considers that the core content of the right to adequate food implies the following:

- The *availability* of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture; and
- The *accessibility* of such food in ways that are sustainable and that do not interfere with the enjoyment of other human rights.

The obligation to ensure freedom from hunger – the *minimum core obligation* with regard to the right to food – requires a State Party 'to provide minimum basic resources to enable individuals [to be] free from threats to their survival, [not to] deny access to food [...], to make sure people do not starve at the very least and to provide food for those who are in danger of starving.'¹⁶³

A State's failure to satisfy, at the very least, this minimum level constitutes a *prima facie* violation of its ICESCR obligations.¹⁶⁴ If a State argues that its failure to meet such obligations is due to resource constraints, it must show that 'every effort has been made to use all the resources at its disposal in an effort to satisfy, as a matter of priority, those minimum obligations.'¹⁶⁵

In addition, any discrimination in relation to access to food, as well as to means and entitlements for its procurement (on the grounds of, *inter alia*, sex, national or social origin, property, birth or other status that nullifies or impairs the enjoyment of the right) constitutes a violation of the ICESCR.¹⁶⁶



Application in the context of the refugee camp

Food insecurity affects women and girls in particular ways. When food in refugee camps is scarce, women are more prone than men to malnutrition.¹⁶⁷ Traditionally, men have been placed in charge of the decision-making process regarding humanitarian assistance and its distribution, despite the fact that women are generally far more experienced in food production, distribution, and preparation.¹⁶⁸ For example, male heads of households are usually given food ration cards, according to which food is generally distributed.¹⁶⁹ Consequently, women are frequently disadvantaged, either deliberately or because they have dietary needs (for instance during pregnancy, lactation, or for older women), which are not properly understood or accommodated.¹⁷⁰

In addition, when food supplies are limited, there is the potential of biased and unequal food distribution plans disproportionately harming women. The resulting shortage of food, in combination with a lack of opportunity regarding other forms of livelihood, may lead women to resort to sexual bartering.¹⁷¹

D. RIGHT TO PHYSICAL AND MENTAL HEALTHCARE

Applicable international law

The right to health, enshrined in Article 12 of the ICESCR, is formulated as the 'right of everyone to the enjoyment of the highest attainable standard of physical and mental health'. This right is reaffirmed in numerous treaties and instruments.¹⁷²

States Parties to the ICESCR have a core obligation to provide essential primary health care. More specifically, this requires States (in addition to the core obligations on water, sanitation, food and housing, as elaborated above) to ensure the right of access to and equitable distribution of health facilities, goods and services on a non-discriminatory basis, especial for vulnerable or marginalised groups.¹⁷³ The Committee has identified the obligation to ensure reproductive, maternal (pre-natal as well as post-natal) and child health care as being of comparable priority.¹⁷⁴

CEDAW, Article 12 requires States to take all appropriate measures to ensure women equal access to healthcare. This includes taking account of the ways in which women and girls' healthcare needs differ from those of men and boys. This is due to biological and socio-cultural factors. In order to eliminate discrimination against women and girls, States must, among other measures, ensure that all barriers interfering with access to health services are removed and that healthcare information is made available, including in the area of sexual and reproductive health. In addition, the ESCR Committee has emphasised the need for States 'to take preventive, promotive and remedial action to shield women from harmful traditional cultural practices and norms that deny them their full reproductive rights'.¹⁷⁵ The CEDAW Committee has similarly noted that special attention should be given to the health needs and rights of women belonging to vulnerable and disadvantaged groups. This inevitably includes refugee women and girls.

Further, the ESCR Committee's General Comment 22 on the right to sexual and reproductive health specifies core obligations in this sub-field of the human right to health.¹⁷⁶ Importantly, it sets out that States Parties have a core obligation to ensure the satisfaction of, at the very least, minimum essential levels of the right to sexual and reproductive health.



The minimum core obligations regarding sexual and reproductive health include, at the very least:

- a) Repealing laws that criminalise, obstruct or undermine the access of an individual or group to sexual and reproductive health goods and services;
- b) Providing medicines, equipment and technologies essential to sexual and reproductive health;
- c) Guaranteeing universal and equitable access to affordable, acceptable and quality sexual and reproductive health goods and services, particularly for women and disadvantaged and marginalized groups;
- d) Enacting and enforcing the legal prohibition of harmful practices and gender-based violence, including female genital mutilation, child and forced marriages and domestic and sexual violence including marital rape; and
- e) Ensuring access to effective and transparent remedies and redress, including administrative and judicial ones, for violations of the right to sexual and reproductive health.¹⁷⁷

Application in the context of the refugee camp

The absence of medical services and basic supplies has vastly different implications for women than for men. Sexual violence committed during flight may have resulted in pregnancy or sexually transmitted diseases, which cannot be appropriately addressed because of shortages in medicine, and treatment by appropriately qualified personnel.¹⁷⁸ Another problem is the inadequate supply of reliable birth control, especially in situations where sexual violence is frequent. Studies have found that 'botched abortions constitute 20-25% of maternal deaths among refugees, compared with 13% of such deaths worldwide.'¹⁷⁹ In addition, women who carry their pregnancies to term have been found to be more susceptible to malnourishment, infection and hazardous birthing conditions.¹⁸⁰

Women have distinct gender-specific needs which the State must consider so as to ensure that it fulfils its obligations not to discriminate against particular groups and to ensure substantive equality. For example, relief workers and officials have treated the provision of sanitary towels (or the appropriate items, given the cultural practices of the women concerned) as a minor concern.¹⁸¹ Access to pain relief medication during menstruation is another need, especially for adolescent girls. For women, such matters are basic to their dignity and well-being. Another example pertains to the lack of female health-providers, which adversely affects the provision of healthcare services. For example, health providers would not test Afghani female refugees in Pakistan for sexually transmitted diseases because there were not enough female health care providers available, and the women did not want a male health provider to examine them.¹⁸²



Moving forward, and in line with the CEDAW Committee's General Recommendation No. 30 on the rights of women in conflict-affected areas, States should ensure that refugee camps meet the following, non-comprehensive list of standards:

- a) Sexual and reproductive health care provided in refugee camps includes access to sexual and reproductive health and rights information, which includes female health-care providers;
- b) Provision of sanitary towels (or the appropriate items given the cultural practices of the women involved);
- c) Care to treat injuries such as fistula arising from sexual violence, complications of delivery or other reproductive health complications;
- d) Psychosocial support, especially for victims of trauma and sexual violence;
- e) Family planning services, including emergency contraception;
- f) Prevention and treatment of HIV/AIDS and other sexually transmitted infections, including post-exposure prophylaxis;
- g) Maternal health services, including antenatal care, skilled delivery services, prevention of vertical transmission and emergency obstetric care; and
- h) Safe abortion services and post-abortion care.

E. RIGHT TO EDUCATION

Applicable international law

The right to education is enshrined in numerous international human rights instruments, including Article 26 of the UDHR, Articles 13 and 14 of the ICESCR, Article 10 of the CEDAW and Articles 28 and 29 of the CRC. According to the ESCR Committee, the core content of the right to education includes: access to public educational institutions and programmes on a non-discriminatory basis; the conformity of education to the objectives of the full development of the human personality and a sense of its dignity; free and compulsory primary education, the adoption and implementation of a national educational strategy which includes provision for secondary, higher and fundamental education; and free choice of education without interference from the State or third parties, subject to conformity with "minimum educational standards".¹⁸³

The Committee has identified a number of interrelated and essential features of the right, including: availability, accessibility, acceptability and adaptability. The Committee has further emphasised that education must be accessible to all and especially to the most vulnerable groups, without *de facto* or *de jure* discrimination.¹⁸⁴ Temporary measures to bring about *de facto* equality between the sexes in relation to education may be necessary and, as the Committee notes, are legitimate as long as such affirmative action does not lead to the 'maintenance of unequal or separate standards for different groups, and provided they are not continued after the objectives for which they were taken have been achieved'. The Committee also provides that States 'must closely monitor education – including all relevant policies, institutions, programmes, spending patterns and other practices – so as to identify and take measures to redress any *de facto* discrimination. Educational data should be disaggregated by the prohibited grounds of discrimination.'¹⁸⁵



The CRC elaborates on the right to education and the aims of education in Articles 28 and 29 respectively. Read in conjunction with Article 2(2), there is a clear obligation on States to ensure equality and non-discrimination in education. The aims of education expressly include 'the preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin'.

The CEDAW requires States to 'take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education'.¹⁸⁶ This obligation includes providing equal access to studies, teaching staff and curriculum, eliminating 'any stereotyped concept of the roles of men and women ... in all forms of education', providing the same opportunities, reducing female students' drop-out rate, and providing access to educational information to ensure the health and well-being of families.¹⁸⁷

The UNESCO Convention against Discrimination in Education affirms that the principles of equality of educational opportunities and non-discrimination are central to the full realisation of the right to education.¹⁸⁸ The Convention explicitly prohibits any discrimination based, *inter alia*, on social origin, economic condition, or birth. Given that the right to education is protected by the general normative framework, this right is universal and everyone (including refugees) is a right-holder.¹⁸⁹

Insofar as the treatment of unaccompanied and separated children outside their country of origin is concerned, States should ensure that access to education is maintained during all phases of the displacement cycle.¹⁹⁰ As stated by the former UN Special Rapporteur on the Right to Education, 'women, men, boys and girls of all ages and backgrounds – whether migrants, refugees, asylum-seekers, stateless persons, returnees or internally displaced persons – have the right to education'.¹⁹¹

The UNHCR Executive Committee has reaffirmed the fundamental right of refugee children to education and, in its thirty-eighth session, called upon all States to intensify their efforts – both individually and collectively – to ensure that refugee children benefit from primary education.

In General Comment 13, the Committee outlined the minimum core obligations for the right to education:¹⁹²

- a) To ensure the right of access to public educational institutions and programmes on a non-discriminatory basis;
- b) To ensure that education conforms to the objectives set out in Article 13(1) (i.e. that education be directed to the human personality's 'sense of dignity', 'enable all persons to participate effectively in a free society', and 'promote understanding among all 'ethnic' groups, as well as nations and racial and religious groups');
- c) To provide primary education for all in accordance with Article 13(2)(a) (i.e. education must exhibit the elements of availability, accessibility, acceptability and adaptability; must be universal, ensuring that the basic learning needs of all children are satisfied, must be 'compulsory' and 'available free to all', and must 'take into account the culture, needs and opportunities of the community');
- d) To adopt and implement a national educational strategy which includes provision for secondary, higher and fundamental education; and
- e) To ensure free choice of education without interference from the State or third parties, subject to conformity with 'minimum educational standards'.



Application in the context of the refugee camp

States must ensure that women and girls in refugee camps are able to enjoy their right to education free from both direct and indirect discrimination. Yet, the latest data indicates that for every ten refugee boys in primary school, there are fewer than eight refugee girls. At secondary school the figure is worse, with fewer than seven refugee girls for every ten refugee boys.¹⁹³ In many refugee communities, culture, practices and beliefs function to deny girls their right to education past primary school.¹⁹⁴ Whilst States must ensure that education opportunities at all levels, including secondary and beyond, are expanded and made available to all refugees, the statistics indicate that States are failing to take adequate measures to counter discrimination in the field of education.¹⁹⁵

Without access to secondary education, refugee children and adolescents are vulnerable to child labour, exploitation and negative coping behaviour, such as drugs and petty crime, associated with idle time and hopelessness.¹⁹⁶ Girls' education can also help to protect them from early marriage, 'temporary' marriage and/or pregnancy and the risks of sexual exploitation.¹⁹⁷

In addition, refugee girls need better protection from harassment, sexual assault and the risk of being kidnapped on the way to school. States should institute measures to protect female students and teachers from physical and sexual abuse by State and non-State actors occupying educational institutions.¹⁹⁸ In this regard, the creation of "school trains," whereby groups of pupils travel together with a regular adult escort, is a potential solution when the school is within walking distance.¹⁹⁹ However, long journeys to secondary school can remain a deterrent for girls. States should remain mindful that improved transport, such as the provision of all-girl buses, can determine whether refugee parents will allow their daughters to go to school.

Refugee women face many of the same impediments to education and skills-training as refugee girls – inadequate resources, teachers and classes. In addition, women face other barriers. Cultural constraints sometimes prevent women from accepting work or undertaking training that takes them out of the household. The culture may also set restrictions on the type of work that is considered to be appropriate for women.²⁰⁰

Practical problems also constrain enrolment, including the need for day-care and lack of time and energy after household work and/or jobs as a wage earner.²⁰¹ In addition, many skills-training programmes assume some level of prior education, most notably in terms of literacy. Refugee women may not qualify for such programmes, having been discriminated against in their country of origin in obtaining elementary education.²⁰²

Problems of access for refugee women can be found in skills-training programmes. Refugee situations often call for new skills and occupations for women that may further their economic empowerment.²⁰³ Many of the skills which women bring with them are not immediately or directly relevant to their experiences in refugee camps or settlements. Although many of their skills are transferable, refugee women often need training to undertake new roles to themselves and their families.²⁰⁴ Training must not be limited to traditional 'female' skills and should provide women with greater choices with respect to future opportunities.

F. OBLIGATION TO PREVENT SEXUAL AND GENDER-BASED VIOLENCE AGAINST WOMEN AND GIRLS IN REFUGEE CAMPS

Sexual violence, gender-based violence and violence against women are terms which are often used interchangeably (SGBV).²⁰⁵ For the purposes of this report, the abbreviation “SGBV” will be used in place of these various terms. SGBV is perpetrated by a wide variety of actors and occurs at all levels within refugee communities: individual, relationship, community, society.²⁰⁶

SGBV has been defined as including ‘acts that inflict physical, mental or sexual harm or suffering, threat of such acts, coercion and other deprivations of liberty.’²⁰⁷ The UNHCR’s expanded definition of SGBV sets out that SGBV is understood to encompass, but is not limited to, the following:

- a) Physical, sexual and psychological violence occurring in the family, including battering, sexual exploitation, sexual abuse of children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation;
- b) Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution;
- c) Physical, sexual and psychological violence perpetrated or condoned by the State and institutions, wherever it occurs.²⁰⁸

SGBV should be distinguished from ‘common’ or ‘everyday’ violence, on the basis that women or groups of women are specifically targeted on the basis of their gender or sex.

For analytical purposes, the SGBV suffered by refugee women and girls in camps can be broadly divided into two main categories of (1) structural violence, and (2) direct violence:

Structural violence refers to the ‘rules and policies of a community that systematically discriminate against or degrade particular groups within that community.’²⁰⁹ Within the context of a refugee camp, this could refer to a variety of components ranging from the administration of the camp including its physical layout, to policies that relate to security, healthcare, shelter, and food distribution.

Direct – or physical – violence includes all types of physical assault, including attempted assault and threats of assault, as well as harmful traditional practices such as child marriage and female genital mutilation.²¹⁰ Emotional and psychological abuse also falls within this category.

Sexual violence is a form of gender-based violence (as clarified within the aforementioned, expanded definition of SGBV).²¹¹ Sexual violence, including exploitation and abuse, may be specifically defined as any act, attempt or threat of a sexual nature that results, or is likely to result, in physical, psychological and emotional harm.²¹² Sexual exploitation and sexual assault are violations of the fundamental human right to personal security.²¹³ In its General Recommendation No. 19 (1992) the CEDAW Committee defined gender-based violence as ‘violence that is directed at a woman because she is a woman or affects women disproportionately.’



Outline of the international legal framework

There exists no global treaty on the prevention and prosecution of violence against women.²¹⁴ States' obligations in respect of this issue would arise under a range of international and regional human rights instruments. For the purposes of this report, the focus lies on the former, which is further supplemented by multiple 'soft law' instruments.

Despite the absence of a comprehensive international treaty, State- and institutional practice demonstrates the acceptance of international legal obligations within international human rights law regarding elimination of violence against women.²¹⁵ Application of such obligations can, of course, be extended to the specific context of women within refugee camps.

Indeed, the UNHCR Executive Committee has acknowledged that violations of the fundamental right to personal security inflict serious harm and injury on the victims, their families, and their communities.²¹⁶ Refugee women and girls do not forfeit this basic human right when they cross a national border. They should still be able to enjoy their rights to life and security of person.²¹⁷ Indeed, Security Council Resolution 1820 (2008) on women, peace and security seeks protection for displaced women, requesting 'the Secretary-General ... to develop effective mechanisms for providing protection from violence, including in particular sexual violence, to women and girls in and around UN managed refugee and internally displaced persons camps'. The Resolution also emphasises the need to consult with women when so doing.

Acts of sexual and gender-based violence violate a number of human rights principles enshrined in international human rights instruments. Among others, these include:

- a) The right to life, liberty and security of the person;
- b) The right to the highest attainable standard of physical and mental health;
- c) The right to freedom from torture or cruel, inhuman, or degrading treatment or punishment;
- d) The right to freedom of movement, opinion, expression, and association;
- e) The right to enter into marriage with free and full consent and the entitlement to equal rights to marriage, during marriage and at its dissolution;
- f) The right to education, social security and personal development;
- g) The right to cultural, political and public participation, equal access to public services, work and equal pay for equal work.

Several international instruments specifically mention sexual and gender-based violence against women and girls. The CEDAW Committee's 1992 General Recommendation No. 19 has interpreted the definition of discrimination found in Article 1 of the CEDAW to include gender-based violence 'that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men'.²¹⁸ This definition was also adopted in the CEDAW Committee's 2017 General Recommendation No. 35 on gender-based violence.²¹⁹ In addition, the CRC expressly provides that States must protect children from all forms of sexual exploitation and sexual abuse, including through the adoption of appropriate legislation, administrative, social and educational measures.²²⁰



Supplementing the aforementioned treaties are a number of ‘soft law’ instruments, including the Beijing Declaration and Platform for Action adopted in Beijing in 1995²²¹ (and the subsequent 5-, 10- and 15-year follow-up processes), and resolutions of the UN General Assembly, Human Rights Council, and the Commission on the Status of Women (CSW).

Of particular importance is the United Nations Declaration on the Elimination of Violence against Women, adopted by the General Assembly in 1993,²²² and the CSW’s adoption of ‘The elimination and prevention of all forms of violence against women and girls’ affirming that gender-based violence is a “form of discrimination”.²²³ In 2017, the CEDAW Committee updated its General Recommendation No. 19 with General Recommendation No. 35, which sets out in considerable detail States Parties’ obligations regarding gender-based violence against women.²²⁴

Moving forward, and in light of a broad international consensus on States’ obligation to eliminate and prevent all forms of violence against women and girls, it follows that States Parties within whose territories refugee camps are located are obliged to *eliminate* and *prevent* all forms of violence against the women and girls housed in those camps.

The context of the refugee camp

There is no doubt that refugee women and girls are particularly vulnerable to gender-based violence.²²⁵ Studies have shown that female refugees are more affected by, and more at risk of, sexual violence compared to any other population of women in the world.²²⁶

Refugee camps offer limited protection from sexual violence. They are unstable environments where altered economic and social factors aggravate women’s existing cultural vulnerabilities to sexual exploitation.²²⁷ Few refugee camps have effective police or security personnel to stop criminals, batterers, or armed combatants. As a result, people living in refugee camps often suffer chronic violence.²²⁸

Moreover, the refugee camp context engenders the specific risk that peacekeepers, members of the military and security forces themselves may use their power to take advantage of women and girls situated within those camps. It has been found that aid workers, both international and those hired from within the host State, have abused their positions of authority in order to extort sexual services.²²⁹

Humanitarian aid workers have consistently identified the danger to refugee women who must venture far beyond the confines of the camp to search for firewood or other staples.²³⁰ Research undertaken more than ten years ago among refugees living in camps in Dadaab, Kenya, found that more than 90 per cent of reported rapes occurred under these circumstances.²³¹

Women are also at risk of rape in or near camps when the camps are poorly planned and/or administered. In a 1996 survey of Burundian refugee women displaced to a camp in Tanzania, more than one in four reported being raped during the prior three years of conflict, with two-thirds of these rapes occurring since displacement, either inside or close to the camp.²³² The majority of perpetrators were other refugees (59 per cent), followed by local Burundian residents (24 per cent), and then local Tanzanians, soldiers and police.²³³ A risk assessment carried out in 2004 in seven IDP camps in Montserrado County, Liberia, concluded that overcrowded conditions, insufficient lighting at night, the close proximity of male and female latrines and bathhouses, and poor or unequal access to resources all conspired to increase the likelihood of sexual violence against women and girls.²³⁴



Refugee girls may find themselves at particular risk of SGBV, given their level of dependence, their limited ability to protect themselves, and their limited participation in decision-making processes.²³⁵ Refugee girls are often powerless, and more easily exploited and coerced. In addition, depending on their level of development, refugee girls are unable to give informed consent, and may not even fully comprehend the sexual nature of certain behaviours.²³⁶

Refugee girls face specific forms of SGBV: harmful traditional practices, trafficking, child prostitution, sexual violence within the family and sexual exploitation, abuse and violence by persons having unhindered access to children.²³⁷ Certain groups of refugee girls are particularly at risk of SGBV. They are unaccompanied and separated girls, girls in detention, girl child soldiers, adolescents, girls with mental and physical disabilities, working girls, girl mothers, and girls born to survivors of rape.²³⁸

G. STATE RESPONSIBILITY FOR SGBV AGAINST WOMEN AND GIRLS IN REFUGEE CAMPS

In order to clarify States' obligations, the CEDAW Committee has adopted the human rights typology of layered obligations to: 'respect, protect, promote and fulfil' women's right to be free from gender-based violence.²³⁹ As set out in the International Protocol on the Documentation and Investigation of Sexual Violence in Conflict, the obligation to respect means that States must refrain from interfering with or curtailing the enjoyment of human rights; the obligation to protect requires States to protect individuals and groups against human rights abuses; and the obligation to fulfil means that States must take positive action to facilitate the enjoyment of human rights.²⁴⁰

In addition, a State may be perceived as providing tacit permission or encouragement to acts of SGBV against female refugees in camps if that State has failed to take all appropriate measures to prevent such acts when its authorities knew, or ought to have known, of the danger of SGBV.²⁴¹ The same is true of circumstances in which the State fails to investigate, prosecute and punish acts of SGBV, and if it fails to provide reparation to victims of such acts.²⁴² Such failures or omissions also constitute human rights violations.²⁴³

State responsibility in relation to the act of SGBV

In general, State responsibility in relation to acts of sexual violence is engaged when:

- State-agents commit these crimes;
- These crimes are committed by persons or groups of persons acting with the State's authorisation, acquiescence or support; and/or
- States fail to act with due diligence in preventing the commission of these crimes by non-State actors.²⁴⁴

These scenarios are now discussed in turn.



Crimes of SGBV committed by State-agents

State responsibility in relation to the act could include the following situations involving State-agents:²⁴⁵

- Rape;²⁴⁶
- Intrusive physical examinations;²⁴⁷
- Forced sterilisation.

A State is generally responsible for an act or omission attributable to it under international law where the conduct breaches an *international obligation of that State* and when an act of that State is not in conformity with what is required of it by that obligation, regardless of its origin or character.²⁴⁸

According to the International Law Commission, the key question is whether the relevant individual acted in an apparently official capacity or 'under the colour of authority'.²⁴⁹ Whether or not the individual was abusing their public power is irrelevant to this determination.²⁵⁰ It is also irrelevant that the act in question was unauthorised or *ultra vires*.²⁵¹ The necessary determination is whether conduct was of an 'official' or 'private' nature. However, if the individual's conduct was 'so removed from the scope of ... official functions that it should be assimilated to that private individuals', it will *not* be attributable to the State.²⁵²

Crimes of SGBV committed by persons or entities exercising elements of governmental responsibility or acting on the instructions or under the control of the State

State responsibility may arise where persons or entities exercising elements of governmental responsibility engage in an internationally wrongful act.²⁵³ For example, if a private security company has been employed by the State of refuge to provide security for a camp and an employee of that company commits crimes constituting SGBV against a female refugee, the State employing that company may be responsible under the ARSIWA. Alternatively, the wrongful conduct of a person or group of persons will be considered an act of the State if the person or group of persons was acting on the instructions of, or was under the control of the State.²⁵⁴

The State's failure to exercise due diligence in preventing crimes of SGBV committed by non-State actors

A State's international responsibility may be engaged if a SGBV crime was perpetrated by non-State actors *and* the State failed to act with due diligence to protect those female refugees under its jurisdiction.²⁵⁵ Non-State actors can include family members, militia groups, other refugee camp-inhabitants, and third parties. State responsibility may be engaged where State authorities failed to take steps to protect refugee women and girls *known* to be at risk of SGBV or because of a general environment which allowed such pattern of violence to happen.²⁵⁶



The duty of due diligence is widely recognised. It has been reiterated by the CEDAW Committee;²⁵⁷ in the Beijing Platform for Action;²⁵⁸ by the UN Human Rights Council;²⁵⁹ in the jurisprudence of the European Court of Human Rights²⁶⁰ and the Inter-American Court of Human Rights;²⁶¹ and in annual reports of the Special Rapporteur on Violence against Women.²⁶² In 2013, the Commission on the Status of Women reaffirmed that 'all States [...] must exercise due diligence to prevent, investigate, prosecute and punish the perpetrators of violence against women and girls and end impunity, and to provide protection as well as access to appropriate remedies for victims and survivors'.²⁶³

Under the obligation of due diligence, States Parties must adopt and implement diverse measures to tackle gender-based violence against women committed by non-State actors. They are required to have laws, institutions and a system in place to address such violence. Also, States Parties are obliged to ensure that these function effectively in practice, and are supported and diligently enforced by all State agents and bodies.²⁶⁴

Determining the measures which should be taken by States to meet the standard of due diligence is context-specific. The obligation to prevent acts of gender-based violence may be explained in the general terms of State responsibility for the commission of an internationally wrongful act as 'best effort obligations requiring States to take all reasonable or necessary measures to prevent a given event from occurring, but without warranting that the event will not occur'.²⁶⁵

A primary-level prevention strategy requires an informed assessment of risk of death or serious injury to particular incidents or individuals of which the authorities are or should be aware.²⁶⁶ The former would require an examination of the system-wide factors that incur the risk of violence against women in refugee camps, as well as the increased risk incurred by women made vulnerable by their circumstances (such as refugee women and girls). The latter would require attention to the special situation of the woman who has been brought to the attention of the authorities.²⁶⁷

As noted, the standard of due diligence is not one of strict liability but requires the State to act with the means at its disposal. Law enforcement officials must respond to violence against women with the same level of commitment to prevent, prosecute and punish all other crimes, whether committed by private actors or public officials. Violence against women must not be trivialised as 'domestic', 'private', or a waste of police time.²⁶⁸

State responsibility in relation to the response to SGBV crimes

The due diligence standard requires States to investigate, prosecute and punish sexual violence crimes (whether committed by government officials or non-State actors). Gender sensitive investigations must be carried out promptly and effectively, and judicial proceedings carried out within a reasonable time by a competent, independent and impartial tribunal established by law.²⁶⁹

In addition, States are obliged to ensure access to healthcare for the victim, including emergency sexual and reproductive health goods and services, in relation to the needs arising from sexual violence.²⁷⁰ States may be held responsible if they contribute to further victimisation of the victim during legal proceedings, or fail to provide information about the timeframe and progress of the investigation to victims or otherwise deny them their right to effectively participate in the investigation.²⁷¹



Individual-level responsibility requires flexibility, as procedures taken in these instances must reflect the needs and preferences of the individuals harmed. States can fulfil the individual due diligence obligation of protection by providing female refugees with services such as telephone hotlines, health care, counselling centres, legal assistance, shelters, restraining orders and financial aid.²⁷² There is an obligation placed on the State to assist victims in rebuilding their lives and moving forward; this can include monetary compensation.²⁷³

States' obligations to provide effective remedies at the individual level in the refugee camp context are likely to include the training of at least one (female) relief worker as a confidential agent so that women have someone to turn to in case they are harassed or suffer violence. It would also require the presence of female translators to convey their problems, since many victims are reluctant to relate their story to a man – especially when delicate matters like sexual abuse are concerned.

At a systemic level, States can meet their responsibility to protect, prevent and punish by, *inter alia*, adopting or modifying legislation; developing strategies, action plans and awareness-raising campaigns and providing services; reinforcing the capacities and power of police, prosecutors and judges; adequately resourcing transformative change initiatives; and holding accountable those who fail to protect and prevent, as well as those who perpetrate violations of human rights of women.²⁷⁴ In addition, States have to be involved more concretely in overall societal transformation to address structural and systemic gender inequality and discrimination.²⁷⁵

H. OBLIGATION TO PREVENT THE TRAFFICKING OF WOMEN AND GIRLS OUT OF REFUGEE CAMPS

This section of the report examines States' obligations under international law towards refugee women and girls who are at risk of being trafficked out of the relative safety of the camp, either to be transported within or outside of the relevant State's territory and jurisdiction.

Human trafficking is a widespread, criminal activity practised throughout the world. Virtually all States are affected by human trafficking.²⁷⁶ According to the UN Office on Drugs and Crime's *Global Report on Trafficking in Persons*, women make up 51 per cent of the total number of trafficked persons, whilst girls make up 20 per cent.²⁷⁷ Trafficking in persons is linked to sexual exploitation, labour exploitation, forced labour and slavery, and the removal of vital organs.²⁷⁸ Increasingly insidious are 'new forms of exploitation' facilitated by human trafficking. Examples given by the CEDAW Committee include:

sex tourism, the recruitment of domestic labour from developing countries to work in developed countries and organized marriages between women from developing countries and foreign nationals.²⁷⁹

Trafficking constitutes a principal threat to women and girls fleeing conflict.²⁸⁰ In her 2016 report, the Special Rapporteur on trafficking in persons noted that

[t]he journey of female migrants and unaccompanied children is particularly hazardous. Thousands of such women and children have disappeared, presumably abducted for purposes of trafficking related exploitation. Sudanese and Somalian refugees and asylum seekers fleeing conflict, including numerous unaccompanied children, have been kidnapped or lured from refugee camps or while travelling, sold and subsequently held captive in Libya or in the Sinai desert



for purposes of exploitation through extortion. ... Unaccompanied children from Afghanistan and the Sudan in refugee camps in Calais and Dunkirk in France are trafficked for sexual exploitation and forced to commit crimes, including stealing or selling drugs, by traffickers who promise them passage to the United Kingdom of Great Britain and Northern Ireland.²⁸¹

Indeed, women and girls living in refugee camps are no less vulnerable to trafficking.²⁸² This includes widowed women and women without male companions, and those with children in the camp; girls forced into marriage; women and girls subjected to partner and/or familial gender-based violence in the camp; illiterate and/or unemployed women and girls (especially those between the ages of 15 and 24); women and girls who suffer from drug addiction or who commit petty crimes; and girls who may be involved in some form of child labour (street vending, waste collection, organised begging).²⁸³

In 2016, the UN Security Council recognised the nexus between trafficking and sexual violence. It expressed its intention 'to consider targeted sanctions for individuals and entities involved in trafficking in persons in areas affected by armed conflict'.²⁸⁴ The CEDAW Committee has also identified poverty and unemployment as factors which 'increase opportunities for trafficking in women'.²⁸⁵ This is particularly important in the context of refugee camps. Women and girls who have fled conflict and reached a refugee camp are not beyond traffickers' reach. The terrible conditions in camps, such as overpopulation and lack of well-resourced services, increase the likelihood that inhabitants may take desperate measures to move away.²⁸⁶ Traffickers frequently exploit this desperation, approaching refugees in open camps and offering them assistance to relocate.²⁸⁷

International legal framework

The trafficking of refugee women and girls stems from their existing vulnerabilities in camps.²⁸⁸ Enshrined in the Trafficking Protocol is the general, positive obligation on States to *prevent* human trafficking through addressing such vulnerabilities. "Prevention" activities are those considered to address the root causes of trafficking.²⁸⁹ Key to this are two requirements, as prescribed by the Trafficking Protocol:

States Parties must establish comprehensive policies and measures to prevent and combat trafficking itself, and protect victims from "re-victimisation";²⁹⁰ and

States Parties must take steps to 'alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity'.²⁹¹

The establishment of policies and measures to prevent trafficking itself

The UN Security Council has encouraged Member States to develop and use early warning and early-screening frameworks of potential or imminent risk of trafficking, with special attention to women and children (especially those who are unaccompanied).²⁹² The Special Rapporteur on trafficking has deemed it essential for refugee camps to have 'a registry of all people living in the camp, to serve as a preventive measure against abduction'. She has also advocated for the establishment of 'reporting desks for missing persons' and 'the immediate commencement of investigations when someone is reported missing'.²⁹³



In the 2016 report of her country visit to Jordan, the Special Rapporteur on trafficking commended the prevention measures and practices employed by the Jordanian authorities in refugee camps. These measures included the registration of marriages and divorces in the camps by religious courts and civil registration authorities, at no cost to the refugees in question. This helped to reduce the risk of child and forced marriage, and marriages resulting in sexual exploitation. The Special Rapporteur also highlighted the effectiveness of Jordan's cooperation with the UNHCR in the management of the refugee camps, including the identification of trafficking risks and training of relevant personnel.²⁹⁴

The Special Rapporteur has further indicated that the potential or imminent risk of trafficking is 'systematically linked with conflict'. As mentioned above, it is crucial that States carry out a risk assessment to prevent gender-based violence.²⁹⁵ The Special Rapporteur has argued that States should recognise any imminent risk of trafficking as a form of conflict-related, gender-based violence. In such cases, the appropriate preventive measures should be automatically implemented.²⁹⁶ The necessary indicators would entail vulnerabilities to trafficking such as poverty, lack of income, the practice of transactional sex (including the exchange of sex for food) and the lack of access to services.²⁹⁷ Evidently, all such indicators frequently arise in refugee camps (as is further discussed below). Camps which have been established near conflict zones would be a particular target for human traffickers.

States cannot plead ignorance if they fail to implement the measures necessary to prevent trafficking of women and girls out of refugee camps. Human trafficking mostly involves non-State actors, and States' due diligence obligations are therefore all the more critical.²⁹⁸ According to the Special Rapporteur, the standard of due diligence should be triggered 'as soon as the State authorities know or ought to have known about trafficking taking place within its territory or jurisdiction, by either State or non-State actors, regardless of whether the State is party to any specific anti-trafficking convention'.²⁹⁹

Successful prevention of trafficking also requires the prosecution and punishment of perpetrators.³⁰⁰ Unfortunately, the worldwide number of trafficking-related prosecutions and convictions remains low. According to the U.S. Department of State, there were fewer than 10,000 convictions worldwide for human trafficking between 2016 and 2017.³⁰¹ It is even less likely that a State will successfully prosecute traffickers who prey on women and girls in refugee camps – especially if those camps are informally established or poorly resourced. Nevertheless, States must endeavour to implement measures which identify and combat traffickers and trafficking networks – including in relation to State agents and security forces that may be complicit in trafficking out of the camp.³⁰²

Measures alleviating the factors which make refugee women and girls vulnerable to trafficking, especially poverty and violence (including sexual violence)

The obligation on States Parties to the Trafficking Protocol 'to alleviate the factors that make persons, especially women and children, vulnerable to trafficking'³⁰³ should impose more heavily on States with the finances and resources to address such vulnerability 'in a meaningful way'.³⁰⁴ However, States Parties to the Protocol with fewer available resources are not freed from this obligation: it is simply more likely that the obligation will be a shared one,³⁰⁵ for example if the poorer State of refuge is offered assistance from other States. This report argues that an individual State's ability to prevent or reduce vulnerability for refugee women and girls in camps should guide expectations generated by the legal obligation.³⁰⁶



The latter obligation is reinforced by the UNTOC (to which the Trafficking Protocol attaches), requiring States to address adverse economic and social conditions which might contribute to people's desire to migrate and, in turn, increases their vulnerability to trafficking.³⁰⁷ This applies directly to the States in whose territory refugee camps are located.

There are myriad factors in the refugee camp which exacerbate women and girls' vulnerability to human trafficking. The threat – and, all too often, the reality – of sexual and gender-based violence is a long-term, structural vulnerability faced by a majority of women and girls in the camp. Poverty and unemployment also increases possibilities for trafficking of women and girls.³⁰⁸ In a post-conflict climate, this may be exacerbated by refugee women and girls' lack of access to resources, education and personal documentation.³⁰⁹ State authorities must therefore assess the vulnerability of refugee women and girls in camps, with their living conditions and physical security clearly in mind.

Note that both the UNTOC and the Trafficking Protocol specify education and awareness-raising as a primary component of States' efforts to address vulnerability to trafficking. Such measures could include the provision of advice to specific and vulnerable persons, and harnessing anti-trafficking support from local communities.³¹⁰ This is an example of a way of tackling a short-term, specific vulnerability.³¹¹

Poverty in the context of the refugee camp encompasses not only low or lack of income, but also questions of human dignity such as adequate clothing and shelter, avoidance of disease and premature death, and involvement with community life. A rights-based approach to poverty-reduction in refugee camps requires indiscriminate implementation of guarantees to economic and social rights (as outlined earlier in this report) *and* civil and political rights.³¹²

In relation to sexual exploitation and sexual violence, an absence of real choice often characterises refugee women and girls' vulnerability to certain forms of trafficking (especially trafficking for purposes of sexual exploitation).³¹³ In her 2018 report, the Special Rapporteur on trafficking noted that Syrian refugee women and girls have been trafficked not only by organised criminals, but also by their own families. The practice of "temporary" or forced marriages is viewed by some parents as a means of securing safety for their daughters.³¹⁴ However, once married, these women and girls are at great risk of sexual exploitation in the foreign country in which their spouse resides.³¹⁵

It is evident that some host States will not have the financial resources to establish sophisticated practical prevention measures, such as the establishment of a telephone crisis hotlines or well-equipped victim-support centres for women living in camps. Governments will also struggle to influence through legislation the culture of discrimination which might arise within the microcosm of the camp. This is especially the case in the context of "informal" refugee camps (such as the Za'atari camp in Jordan, or the now-abolished camp at Calais, France). Nevertheless, States are still required to uphold substantive review and assessment policies to ascertain whether they are taking appropriate measures to ensure the human rights of women and girls in refugee camps. This requirement is linked to due diligence, and is especially important when women and girls are at risk of being trafficked by organised criminals or family members.³¹⁶



Further, States with fewer resources cannot derogate from their human rights obligations to investigate and prosecute promptly complaints of violence (including sexual violence) perpetrated against women in refugee camps. States must also provide access to effective remedies for gender-based violence in such cases, and train their police and judicial officials in relevant contexts. These measures, though not a catch-all solution to female refugees' vulnerability to trafficking, should serve to render their living conditions and physical safety more secure in a significant way.

Addressing the special vulnerabilities of girls in refugee camps

Refugee girls are particularly vulnerable to trafficking because of their reliance on adults for security and well-being.³¹⁷ Countries in sub-Saharan Africa, Central America and the Caribbean have detected far more child victims than adult victims of trafficking: 64 per cent in sub-Saharan Africa and 62 per cent in Central America and the Caribbean in 2014.³¹⁸

The UN has recognised that unaccompanied or separated children outside their country of origin are particularly vulnerable to exploitation and abuse, including human trafficking. The Committee on the Rights of the Child has stated that:

trafficking of such a child ... is one of many dangers faced by unaccompanied or separated children. Trafficking in children is a threat to the fulfilment of their right to life, survival and development.³¹⁹

An "unaccompanied" girl is one who is not cared for by an adult who, by law or custom, is responsible for doing so.³²⁰ A "separated girl" is one who has been separated from her parents or primary carer, but who remains with other relatives.³²¹ In recognition of this, international law affords such girls special rights of care and protection. Importantly, the core human rights conventions – including the CRC – continue to apply alongside the Trafficking Protocol. It is beyond doubt that States have an obligation to address the specific vulnerabilities of girls in order to prevent their being trafficked out of refugee camps.

In order to meet their international legal obligation to address child-refugees' vulnerability, States must remain cognisant of the need to *improve* those children's circumstances within the camp, whilst accepting that children are not a homogenous group. Differences in age and gender are important factors in the extent of a child's vulnerability to trafficking and exploitation, specifically. Girls are particularly at risk of being trafficked for sexual exploitation.³²²

States must also take *specific* measures to reduce girls' vulnerability to trafficking, for example by creating a protective environment for them.³²³ The Council of Europe has specified that a "protective environment" has *eight* key components: protection of children's rights from adverse attitudes, traditions, customs, behaviour and practices; commitment from the relevant government to protect and realise children's rights; commitment from the government to engage with child-protection issues; the drafting and enforcement of protection legislation; officials coming into contact with children and families must have the capacity to protect children; the relevance of children's education; establishment of a system for monitoring and reporting cases of abuse; and the introduction of services to enable child victims of trafficking to recover and reintegrate with the community.³²⁴



States should rely on international legal instruments, policy documents and the recommendations of UN bodies and human rights mechanisms when seeking to ascertain the substantive content of this specific legal obligation.³²⁵ Where possible, the host State should take measures to ensure that as many refugee girls as possible possess relevant legal documentation.³²⁶ In relation to this, States should also seek to restrict travel and identity document regulations, so that it is difficult – if not impossible – for girls to travel either unaccompanied or accompanied by someone who is not an immediate family member if her parent/guardian has not expressly provided permission.³²⁷

For girls born to women living in a camp, States should ensure that processes are in place whereby the girl's parent can register her birth with the relevant authorities. The right to birth-registration is enshrined in the Convention of the Rights of the Child.³²⁸ It can reduce a refugee girl's vulnerability to human trafficking by giving her greater access to her rights.³²⁹

In addition, States must take steps to protect girls from violence – including sexual violence – perpetrated within the refugee camp or surrounding areas. Recourse to measures utilised to prevent sexual violence against adult female refugees would be appropriate in this instance (see above). Further, States should provide the refugee girl with information in a language which she understands,³³⁰ and bolster enforcement mechanisms with regard to border-crossing.³³¹



PART V: ACCESS TO JUSTICE

A. REFUGEE CAMP CONTEXT

The right of access to justice is recognised by States as essential to the realisation of all human rights and to constitute an integral component of the rule of law.³³² States have repeatedly acknowledged that the right extends to all persons, irrespective of legal status.³³³ As the Human Rights Committee has stressed, the right to access justice ‘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, who may find themselves in the territory or subject to the jurisdiction of the state party.’³³⁴ Yet, all too often, refugees and stateless persons are excluded from accessing justice systems in host States ‘owing to their administrative situation’.³³⁵ Restrictions on the freedom of movement that host States typically impose on refugees, not least those living in camps, means that many are *de facto* deprived of the right to access justice.³³⁶

For women and girls in refugee camps, accessing justice can be even more difficult. Restrictions that may be applicable to all refugees often have a gendered component that creates additional hurdles for women and girls attempting to access justice. Notwithstanding the obligation on States to eliminate obstacles which impair or restrict access to justice, including discrimination based on sex and gender, the failure on the part of States to address intersecting and multiple forms of discrimination confronted by women and girls deprives them from enjoying their right on a basis of equality.³³⁷ States regularly acknowledge that additional measures are needed to strengthen access to justice for refugee women and girls including ‘through the prompt investigation, prosecution and punishment of perpetrators of sexual and gender based violence, as well as reparations for victims as appropriate’.³³⁸ Likewise, the human rights mechanisms have frequently reminded States that the failure to ensure *de jure* and/or *de facto* access to justice to women and girls who have been victims of rights violations may constitute sex and gender-based discrimination.³³⁹

The obligation to ensure equal and effective access to justice for women and girls in camps require States to take specific measures to eliminate *de jure* and *de facto* discrimination and to guarantee substantive equality, some of which are considered below. Without access to justice, victims of rights violations would be precluded from seeking an adequate and effective remedy.



B. INTERNATIONAL OBLIGATION TO ENSURE EQUAL AND EFFECTIVE ACCESS TO JUSTICE

Access to justice is both a right in of itself and the means for restoring the exercise of rights that have been disregarded or violated.³⁴⁰ This means that the obligations on States are multifaceted and require States, at a minimum, to ensure equality before the law, equality in respect of the guarantees of the due process of law and an effective remedy. As a procedural guarantee, access to justice is inextricably linked to all other State obligations and has been described as ‘the individual’s gateway to the various institutional channels provided by States to resolve disputes.’³⁴¹

In General Recommendation 33, the CEDAW Committee describes the right of access to justice as “multidimensional”, and has usefully identified a number of indicators to help States comply with their obligations to respect, protect and fulfil human rights. Access to justice encompasses ‘justiciability, availability, accessibility, good-quality and accountability of justice systems and the provision of remedies for victims’.³⁴² Moreover, States must adopt a gender-sensitive analysis in respect of each of these elements to ensure *de jure* and *de facto* equality.

Access to justice requires norms to be justiciable. In other words, States must ensure that rights and correlative legal protections are recognised and incorporated into the law, since only then can victims claim their rights and legal entitlements.³⁴³ All too often, States fail to introduce legislation that captures adequately the different forms of violence against women and girls; failure to do so constitutes a denial of access to justice. Few States have expressly incorporated their obligations in respect of economic, social or cultural rights as set forth in the ICESCR into domestic law. The ESCR Committee has made it clear that States have an international obligation to ensure that the Covenant norms are ‘recognized in appropriate ways within the domestic legal order’ and that ‘appropriate means of redress, or remedies, must be available to any aggrieved individual or group, and appropriate means of ensuring governmental accountability must be put in place.’³⁴⁴

Access to justice is founded on equality before the law. This means that States have a positive obligation to ensure that domestic laws do not directly or indirectly discriminate against women and girls.³⁴⁵ In addition, States must ensure that judicial and quasi-judicial institutions apply the principle of substantive or *de facto* equality to ensure that women and girls enjoy substantive equality with men and boys in all areas of civil and criminal law. In particular, States have a duty to abolish discriminatory barriers to justice including, for example, guardianship laws or practices whereby permission must be secured from family or community members before beginning legal action; gender-stereotyping; different evidentiary or procedural rules between women and men; and the need for parental or spousal authorisation to access education and healthcare (including sexual and reproductive health).³⁴⁶

Access to justice is founded on the availability and accessibility of justice systems. It follows that States must ensure that women and girls are not *de facto* precluded from access to justice which may require additional measures to be taken. As the HR Committee has emphasised, attempts by a person to access the competent courts or tribunals which are systematically frustrated *de facto* will run counter to the guarantee of Article 14(1) ICCPR.³⁴⁷ Moreover, failure to address obstacles that prevent women and girls from accessing justice will constitute discrimination. States are required to remove financial and linguistic barriers that preclude a person’s right to access justice and to develop targeted outreach activities about available justice mechanisms in order not to discriminate *de facto* against certain groups, including women and girls in camps.³⁴⁸



C. INTERNATIONAL OBLIGATION TO PROVIDE A REMEDY FOR THE BREACH OF INTERNATIONAL HUMAN RIGHTS LAW

States have an international obligation to ensure that any person whose human rights are violated is provided with an effective remedy.³⁴⁹ This includes both direct and indirect victims of human rights violations and to citizens and non-citizens alike. As repeatedly reaffirmed in international and regional instruments, the right to an effective remedy must be interpreted and applied without discrimination.³⁵⁰

Remedies must be adequate, effective, promptly attributed, holistic and proportional to the gravity of harm suffered.³⁵¹ Moreover, the authority which reviews the remedy must be independent.³⁵² The obligation to provide a remedy is not limited only to situations when the State is legally responsible for the harm.

The Human Rights Committee has interpreted the obligation to provide an effective remedy pursuant to Article 2(3) of the ICCPR as necessarily including the obligation to provide reparation.³⁵³ Reparations can take the form of restitution (reinstatement); compensation (money, goods or services); rehabilitation (medical and psychological care and other services); measures of satisfaction such as public apologies, public memorials, guarantees of non-repetition (although such measures cannot be used as substituted for investigations into and prosecutions of perpetrators); and changes in relevant laws and practices (including for example, repealing discriminatory legislation, requiring institutional reform to combat gender-stereo-typing).³⁵⁴ Different forms of reparation are complementary and not alternative.³⁵⁵

What constitutes adequate and effective reparation depends on the concrete circumstances surrounding each case and the precise nature and scope of the injury.³⁵⁶ For example, reparation for women and girls who have been subjected to SGBV may, in addition to monetary compensation, require the provision of legal, social and health services including sexual, reproductive and mental health for recovery and satisfaction and guarantees of non-repetition.³⁵⁷ Likewise, for women and girls who have been trafficked, adequate and effective reparation may, in addition to the above, require regularisation of residency status. The need to involve survivors of such violations in designing, implementing and monitoring reparation programmes is necessary to guarantee the adequacy and effectiveness of the programme and also the transformative potential of reparations.³⁵⁸

The obligation to provide a remedy encompasses the obligation to investigate serious human rights violations, to combat impunity and to bring perpetrators to justice.³⁵⁹ Serious human rights violations include, but are not limited to, arbitrary killings, torture, rape and other forms of sexual violence, slavery and trafficking.³⁶⁰ States have repeatedly acknowledged 'responsibility 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'.³⁶¹ In discharging their obligations, States should take effective measures to protect women and girls against secondary victimisation in their interactions with law enforcement and judicial authorities.³⁶²



D. APPLICATION IN THE CONTEXT OF THE REFUGEE CAMP

Lack of knowledge and information about available host State justice mechanisms, procedures and remedies remains a significant obstacle to accessing justice for women and girls in refugee camps.³⁶³ Few would have experience of formal justice mechanisms in their State of origin, let alone familiarity with the procedural or substantive laws of the host State. In some cases, there may be no knowledge that a particular act is prohibited or, indeed, that a certain right or freedom is protected by law.³⁶⁴ For many, accessing justice is further hindered by language barriers. This is exacerbated by the fact that the illiteracy rate among women and girls can often be higher among some refugee populations.³⁶⁵ To comply fully with their obligations, States should develop targeted outreach activities (in 'safe' spaces), distribute information about available justice mechanisms, and provide independent and professional translation and interpretation services for women and girls in refugee camps.³⁶⁶

Often, women and girls do not assert their right to access justice as a result of pressure, intimidation, or even threats from family members and the wider refugee community. Research has shown that in many refugee camps, a complex social order, administered by the refugee population, exists within camps in parallel to the order administered by the entity formally charged with managing the camp – be it the host State or international organisation.³⁶⁷ While host States should be attentive to the internal social dynamics within camps and have due regard to different cultural and religious beliefs among the refugee population, this cannot absolve the State of its responsibility to protect the right of access to justice for women and girls residing there. The CEDAW Committee has on numerous occasions expounded the variety of measures that States should take to guarantee the right of access to women and girls to justice, including taking all appropriate measures to modify social and cultural patterns of conduct with a view to eliminating prejudices, as well as customary and all other practices that are based on the idea of the inferiority or superiority of either of the sexes.³⁶⁸

Women and girls in refugee camps personally experience not only rights violations, but also regularly suffer hardship as a consequence of the disappearance and/or arbitrary killing of a family member. This can happen in the course of flight, but also within a refugee camp environment. The fact that international human rights law recognises both direct and indirect victims of rights violations means that those who have lost loved one may have a remedy in law if the State fails to meet its due diligence obligations in respect of investigating the death or disappearance.³⁶⁹



States may not treat refugee camps as spaces in which State agents have limited obligations. Serious human rights violations perpetrated against women and girls in camps, whether allegedly committed by a non-State or a State-actor, within or outside the camp, prior to arrival or during the stay, *always* give rise to the obligation to investigate, prosecute and punish the perpetrator.³⁷⁰ A State that fails to do so is in breach of its obligation to secure access to justice for those women and girls. To ensure that women and girls are not disadvantaged, States should take additional measures and introduce, as some States have done, targeted legal assistance, SGBV training and awareness programmes for law enforcement officers, emergency support services and training and education programmes in camps.³⁷¹

The distance between refugee camps (which are often located in remote and rural areas) and legal institutions and services (which are usually based in district capitals and urban centres) often poses a serious disincentive for those seeking access to justice. Arranging transportation, often in another language, and lacking the ability to pay for it are barriers which are further compounded by the requirement, imposed by some host States, to apply for and obtain prior permission to leave the camp. The need to share information with camp authorities to secure such permission poses a significant deterrence, particularly in cases of SGBV crimes. In addition to these disincentives, women and girls face concerns over safety when travelling to and from the camp.³⁷² Although host States may restrict the freedom of movement of non-citizens, such restrictions should not constitute a barrier to the right to access justice. States should take additional measures to ensure that women and girls are not *de facto* excluded from accessing their right to justice by, for example, introducing mobile courts that regularly service those in camps, ensuring appropriate training for judicial staff, and facilitating accessible transportation where travel is essential to accessing justice.³⁷³

Women and girls are particularly at risk of sexual and gender-based violence in camps, including trafficking. States must ensure that reparations are specifically adapted to the needs, interests and priorities of women and girl survivors. Involving women and girls in the design, implementation and monitoring of reparation programmes is critical to ensuring that the measures taken are adequate and effective. This necessarily means that, in addition to the reparations listed above, States may be required to relocate the survivor (including members of her family) to an alternative location, including by regularising their legal status.



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¹⁶⁰ *ibid*, para. 46.

¹⁶¹ UNHCR, "UNHCR Handbook for the protection of women and girls", 2008, at 82.

¹⁶² ESCR Committee, General Comment No. 12: The Right to Adequate Food (Art. 11), 2000.

¹⁶³ Food and Agriculture Organisation, "Methodological Toolbox on the Right to Food – Guide on Legislating for the Right to Food", 2009.

¹⁶⁴ See note 162 above, para. 17.

¹⁶⁵ *ibid*, para. 37.

¹⁶⁶ *ibid*, para. 18.

¹⁶⁷ See Implementation of Article 21 of the Convention on the Elimination of All Forms of Discrimination Against Women: Report to the Committee on the Elimination of Discrimination Against Women on the Work of the World Health Organization in the Area of Women, Health and Development, U.N. GAOR, Comm. On the Elimination of Discrimination Against Women, Annex, 118, U.N. Doc. CEDAW/C/1996/3/Add.1 (1995).

¹⁶⁸ See note 147 above at 49.

¹⁶⁹ Judith Gardam and Hilary Charlesworth, "Protection of Women in Armed Conflict", 22(1) Human Rights Quarterly, 2000.

¹⁷⁰ UNHCR, "The State of the World's Refugees".

¹⁷¹ UNHCR, "Sexual Violence Against Refugees: Guidelines on prevention and response", 1995.

¹⁷² CEDAW, Article 12. UN world summits that reference the right to health include the Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights (Vienna), 14-15 June, 1993, esp. paras. 11, 18, 24, 31, and 41; the Programme of Action of the United Nations International Conference on Population and Development; and the Declaration and Programme of Action of the Fourth World Conference on Women. Three of the eight UN Millennium Development Goals (December 2000) directly relate to the right to health: reducing child mortality (4); improving maternal health (5) and combating HIV/AIDS, malaria and other diseases.

¹⁷³ See note 130 above, para. 43.

¹⁷⁴ *ibid*, para. 44.

¹⁷⁵ *ibid*, paras. 20-21.

¹⁷⁶ *ibid*, para. 49.

¹⁷⁷ *ibid*, para. 43.



¹⁷⁸ See note 169 above.

¹⁷⁹ Centre for Reproductive Law and Policy, "Displaced and disregarded: refugees and their reproductive rights", October 2001.

¹⁸⁰ UNFPA, "Preventing infection and promoting reproductive health", 2001, at 21.

¹⁸¹ See note 178 above.

¹⁸² See note 148 above.

¹⁸³ ESCR Committee, General Comment No 13, para 57, 8 December 1999, E/C.12/1999/10.

¹⁸⁴ *ibid*, para. 6.

¹⁸⁵ *ibid*, paras. 31-32.

¹⁸⁶ CEDAW, Article 10.

¹⁸⁷ *ibid*.

¹⁸⁸ UNESCO Convention against Discrimination in Education 1960, Preamble and Article 1.

¹⁸⁹ Convention against Discrimination in Education, Article 1(1). See also: UNESCO, "Education 2030: Protecting the right to education for refugees - Working papers on Education Policy", 2017.

¹⁹⁰ CRC Committee, General Comment No. 6, 2005.

¹⁹¹ Report of the Special Rapporteur on the Right to Education, "The Right to Education of Migrants, Refugees and Asylum-seekers" (A/HRC/14/25), 16 April, 2010, para. 17.

¹⁹² See note 109 above.

¹⁹³ UNHCR, "Left Behind: Refugee Education in Crisis", 2016.

¹⁹⁴ UNESCO, "Education 2030, Protecting the right to education for refugees".

¹⁹⁵ "Report of the Secretary-General – In safety and dignity: Addressing large movements of refugees and migrants – Report of the Secretary-General" (A/70/59), 21 April, 2016.

¹⁹⁶ UNHRC, "Secondary education for refugee adolescents: Issue Brief 6", 2015.

¹⁹⁷ Girls and women, representing 70% of the world's internally displaced population, tend to be out of school at higher rates and have lower literacy rates than boys and men of comparable ages. See "No more excuses: Provide education to all forcibly displaced people", 2016.

¹⁹⁸ CEDAW Committee, General Recommendation No. 36 on the right of girls and women to education, para. 50(b).

¹⁹⁹ UNHCR, "Her Turn: It's time to make refugee girls' education a priority", 2018.

²⁰⁰ Susan F. Martin, *Refugee Women*, Lexington Books, 2004, at 80.

²⁰¹ *ibid*.

²⁰² *ibid*.

²⁰³ Zeynep Kaya and Kyra Luchtenberg, "Displacement and Women's Economic Empowerment: Voices of Displaced Women in the Kurdistan Region of Iraq", LSE Centre for Women, Peace and Security, 2018.



- ²⁰⁴ Susan F. Martin, *Refugee Women*, Lexington Books, 2004, at 80.
- ²⁰⁵ UNHCR, "Sexual and Gender-Based Violence against Refugees, Returnees and Internally Displaced Persons: Guidelines for Prevention and Response", May 2003, at 10.
- ²⁰⁶ See note 90 above, para. 20; UNHCR, *ibid*, at 19.
- ²⁰⁷ See note 171 above, at 14.
- ²⁰⁸ CEDAW Committee, General Recommendation No. 19, para. 6.
- ²⁰⁹ Malinda Schmiechen, "Parallel Lives, Uneven Justice", at 484.
- ²¹⁰ *ibid*, at 483.
- ²¹¹ UNHCR, "Sexual Violence against Refugees", at 9.
- ²¹² *ibid*, at 10.
- ²¹³ UNHCR, "Refugee Protection and Sexual Violence No. 73 (XLIV)", 1993.
- ²¹⁴ Christine Chinkin, 'Addressing Violence against Women in the Commonwealth within States' obligations under international law', at 472 – 501; Report of the Special Rapporteur on violence against women, its causes and consequences, "Adequacy of international legal framework on violence against women" (A/72/134), 19 July 2017.
- ²¹⁵ The CEDAW Committee has stated that 'The *opinio juris* and State practice suggest that the prohibition of gender-based violence against women has evolved into a principle of customary international law.' See note 90 above, para. 2.
- ²¹⁶ See note 213 above.
- ²¹⁷ UNGA, "Declaration on the Human Rights of Individuals who are not Nationals of the Countries in Which They Live" (A/RES/40/144), 13 December 1985.
- ²¹⁸ CEDAW Committee, General Recommendation No. 19, para. 1.
- ²¹⁹ See note 90 above, para. 1.
- ²²⁰ CRC, Articles 19(1) and 34.
- ²²¹ The Declaration and Platform for Action of the Fourth World Conference on Women (Beijing, 1995) dedicated a whole section to the issue of violence against women, recognising that its eradication is essential for equality, development and world peace. The Platform also explicitly recognised that 'the human rights of women include their right to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence' (para. 96).
- ²²² This instrument expresses the political consensus concerning the States' obligations to prevent gender-based violence and to redress the wrongs caused to those women who are subjected to it. Although it did not clarify the content of the category of violence against women and did not define the range of States' obligations, the definition of violence at least specifies the contexts where it may occur.
- ²²³ Council of Europe, "The CSW 57 Agreed conclusions on the elimination and prevention of all forms of violence against women and girls uphold the holistic response of the Istanbul Convention and its progressive understanding of violence against women and States responsibilities", 2003.

²²⁴ See note 90 above.

²²⁵ Declaration and Programme of Action of the Fourth World Conference on Women, September 1995, paras. 114-116, available at: <http://www.un.org/womenwatch/daw/beijing/platform/>

²²⁶ Refugee Council (London) Vulnerable Women's Project, "The Vulnerable Women's Project, Refugee and Asylum Seeking Women Affected by Rape or Sexual Violence, Literature Review", 2009.

²²⁷ Alice Farmer, "Refugee responses, state-like behavior, and accountability for human rights violations: a case study of sexual violence in Guinea's refugee camps", 9(1) Yale Human Rights and Development Law Journal, 2006, at 44.

²²⁸ Elizabeth Holzer, "What happens to law in a refugee camp?", 47(4) *Law & Society Review*, 2013.

²²⁹ *ibid.* See also: Report of the Secretary-General on the Activities of the Office of Internal Oversight Services: Investigation into Sexual Exploitation of Refugees by Aid Workers in West Africa (A/57/465) 11 October 2002 (discussing sexual violence in refugee and IDP camps in Guinea, Liberia, Sierra Leone, and other parts of the West African sub-region); UNHCR/Save the Children (UK) Report, "Note for Implementing and Operational Partners on Sexual Violence and Exploitation..."; "Save the Children and IRC dragged into Oxfam abuse scandal", *The National*, February 2018, available at: <https://www.thenational.ae/world/europe/save-the-children-and-irc-dragged-into-oxfam-abuse-scandal-1.704713>

²³⁰ UNFPA, "Sexual Violence Against Women and Girls in War and Its Aftermath: Realities, Responses, and Required Resources", 2006.

²³¹ *ibid.*

²³² UNFPA, Press Release, "Survey of Sexual Violence in Burundi", 2005.

²³³ *ibid.*

²³⁴ See note 230 above.

²³⁵ UNHCR, "Sexual and Gender-Based Violence", Chapter 5.

²³⁶ *ibid.*

²³⁷ *ibid.*

²³⁸ *ibid.*

²³⁹ CEDAW Committee, General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the elimination of all forms of discrimination against women, "CEDAW/C/GC/28", 2010, para. 9. Other UN human rights treaty bodies also use this typology, e.g. the ESCR Committee, General Comment No. 12.



²⁴⁰ See: UK Foreign & Commonwealth Office, "International Protocol on the Documentation and Investigation of Sexual Violence in Conflict: Best Practice on the Documentation of Sexual Violence as a crime or violation of International Law", 2017, at 65.

²⁴¹ In this regard, the UNHCR Guidelines on the Protection of Refugee Women (1991) and the UNHCR Gender: Training Kit on Refugee Protection Handbook, Geneva (2002) should further inform the organisation of the camps and other refugee accommodations, as well as service delivery to prevent SGBV and to respond appropriately when SGBV occurs.

²⁴² See note 218 above, para. 9.

²⁴³ See note 90 above, para. 24.

²⁴⁴ See: UK Foreign & Commonwealth Office, "International Protocol on the Documentation and Investigation of Sexual Violence in Conflict: Best Practice on the Documentation of Sexual Violence as a crime or violation of International Law", 2017, at 66.

²⁴⁵ UK Foreign & Commonwealth Office, "International Protocol on the Documentation and Investigation of Sexual Violence in Conflict", at 67.

²⁴⁶ See, for example: *Raquel Martin de Mejia v. Peru*, Inter-American Commission on Human Rights, Case 10.970, Report No 5/96, 1 March, 1996 (rape of human rights defender's wife by military); *Rosendo Cantu v. Mexico*, Inter-American Court of Human Rights (Preliminary Objection, Merits, Reparations and Costs), 31 August, 2010 (rape of an indigenous girl by military in a militarised area); *Fatima Mehalli v. Algeria*, Human Rights Committee (CCPR/C/110/D/1900/2009) (rape with a stick by police of a women in detention during the Algerian civil war).

²⁴⁷ See, for example, *X v. Argentina*, Inter-American Commission on Human Rights, Case 10.506, Report No 38/96, 15 October, 1996 (vaginal inspection of female visitors to prison, X and her 13 years old daughter Y).

²⁴⁸ ARSIWA, Articles 2 and 12.

²⁴⁹ ARSIWA, *Commentary to Article 4*, (13).

²⁵⁰ *ibid.*

²⁵¹ *ibid.*

²⁵² ARSIWA, *Commentary to Article 7*, (7).

²⁵³ ARSIWA, *Commentary to Article 5*.

²⁵⁴ ARSIWA, Article 8.

²⁵⁵ See note 90 above, para. 24.

²⁵⁶ UK Foreign & Commonwealth Office, "International Protocol on the Documentation and Investigation of Sexual Violence in Conflict", at 67.

²⁵⁷ *Fatma Yildirim v Austria* (CEDAW/C/39/D/6/2005); *Goekce v Austria* (CEDAW/C/39/D/5/2005); *A.T. v Hungary*, CEDAW Communication No.2/2003 (26 January 2005); CEDAW Committee, General Recommendation No. 28.

²⁵⁸ Declaration and Programme of Action of the Fourth World Conference on Women, September 1995, para.124 (b).

- ²⁵⁹ HRC, “Accelerating efforts to eliminate all forms of violence against women: ensuring due diligence in protection” (A/HRC/17/L.6), 10 June 2011.
- ²⁶⁰ *Opuz v Turkey*, European Court of Human Rights (Application No.33401/02), Judgment of 9 June 2009.
- ²⁶¹ *Gonzalez et al (Cotton Field) v Mexico*, Inter-American Court of Human Rights (Preliminary Objection, Merits, Reparations and Costs), Judgment of 16 November, 2009.
- ²⁶² Report of the Special Rapporteur on violence against women, its causes and consequences: The due diligence standard as a tool for the elimination of violence against women (E/CN.4/2006/61) 20 January, 2006; Report of the Special Rapporteur on violence against women, its causes and consequences, “State responsibility for eliminating violence against women” (A/HRC/23/49), 14 May, 2013.
- ²⁶³ See note 223 above.
- ²⁶⁴ See note 90 above, para. 24(b).
- ²⁶⁵ ARSIWA, Article 14(3); Amy Barrow and Joy L. Chia, *Gender Violence and the State in Asia*, Routledge, 2016.
- ²⁶⁶ *ibid.*
- ²⁶⁷ Determining whether the authorities ‘knew or should have known’ of the danger of violence is context-specific. For an illustration, see *Fatma Yildirim v Austria* (CEDAW/C/39/D/6/2005).
- ²⁶⁸ Amy Barrow and Joy L. Chia, *Gender Violence and the State in Asia*, Routledge, 2016.
- ²⁶⁹ See, for example, *Egyptian Initiative for Personal Rights & Interights v. Egypt*, African Commission on Human and Peoples’ Rights, Communication 323/06, 16 December, 2011, 163 (failure to effectively investigate incidents of serious sexual assaults of female journalists by police and private individuals during protest).
- ²⁷⁰ UK Foreign & Commonwealth Office, “International Protocol on the Documentation and Investigation of Sexual Violence in Conflict”, at 66.
- ²⁷¹ *ibid.*
- ²⁷² Report of the Special Rapporteur on violence against women, 2013, para. 70.
- ²⁷³ *ibid.*
- ²⁷⁴ *ibid.*, para. 71.
- ²⁷⁵ *ibid.*, para. 71.
- ²⁷⁶ Tom Obokata, “A Human Rights Framework to Address Trafficking of Human Beings” 24 *Netherlands Quarterly of Human Rights*, 2006, at 379.
- ²⁷⁷ UNODC, “Global Report on Trafficking in Persons” (Sales No. E.16.IV.6) 2016.
- ²⁷⁸ Report of the Special Rapporteur on trafficking in persons, especially women and children (A/73/171), 17 July, 2018, para. 8.
- ²⁷⁹ See note 218 above, para. 14.
- ²⁸⁰ *ibid.*, para. 16.



- ²⁸¹ Report of the Special Rapporteur on trafficking in persons, especially women and children (UNGA A/71/303), 5 August 2016, paras. 22-23.
- ²⁸² See note 278 above, para. 36.
- ²⁸³ *ibid*, para. 48.
- ²⁸⁴ United Nations Security Council Res. No: S/RES/2331, 2016, para. 12.
- ²⁸⁵ See note 218 above, para. 14.
- ²⁸⁶ James Denselow, "The end of the refugee camp?", Al Jazeera, 20 May 2016, available at: <http://www.aljazeera.com/indepth/opinion/2016/05/refugee-camp-160517112016380.html>
- ²⁸⁷ Tom Obokata, "Smuggling of Human Beings from a Human Rights Perspective", at 394.
- ²⁸⁸ See note 278 above, para. 5.
- ²⁸⁹ OHCHR, "Human Rights and Human Trafficking", at 38-39.
- ²⁹⁰ See note 75 above, Article 9(1).
- ²⁹¹ See note 75 above, Article 9(4).
- ²⁹² UNSC Resolution 2388 (2017), para. 16.
- ²⁹³ See note 278 above, para. 37.
- ²⁹⁴ Report of the Special Rapporteur on trafficking in persons, especially women and children, on her mission to Jordan (A/HRC/32/41/Add.1), 8 June 2016, para. 71.
- ²⁹⁵ *Gonzalez et al (Cotton Field) v Mexico*, Inter-American Court of Human Rights (Preliminary Objection, Merits, Reparations and Costs), Judgment of 16 November 2009.
- ²⁹⁶ See note 278 above, para. 39.
- ²⁹⁷ *ibid*, para. 39.
- ²⁹⁸ *ibid*, para. 40.
- ²⁹⁹ *ibid*, para. 17.
- ³⁰⁰ *ibid*, para. 41.
- ³⁰¹ U.S. Department of State, "2017 Trafficking in Persons Report", available at: <https://www.state.gov/documents/organization/271339.pdf>
- ³⁰² See note 278 above, para. 41.
- ³⁰³ See note 75 above, Article 9(4).
- ³⁰⁴ Anne T. Gallagher, *The International Law of Human Trafficking*, at 418.
- ³⁰⁵ *ibid*.
- ³⁰⁶ *ibid*.



³⁰⁷ UNTOC, Article 31(7); UNODC, “Legislative Guide for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto”, at 296. See also: UNGA, “Trafficking in Persons, Especially Women and Children” (A/HRC/RES/11/3), 17 June 2009, para. 3; UNGA, “Trafficking in Women and Girls” (A/RES/63/156), 30 January 2009, Preamble, paras. 3-4.

³⁰⁸ See note 218 above.

³⁰⁹ See note 278 above, para. 25.

³¹⁰ See note 75 above, Article 31(5).

³¹¹ OHCHR, “Human Rights and Trafficking”, at 39.

³¹² *ibid*, at 17.

³¹³ See note 304 above.

³¹⁴ See note 278 above, para. 23.

³¹⁵ See note 294 above.

³¹⁶ See note 281 above, para. 18.

³¹⁷ See note 304 above, at 427.

³¹⁸ UNODC, “Global Report on Trafficking in Persons”, 2016, at 25 and 28.

³¹⁹ CRC Committee, General Comment 6, para. 52.

³²⁰ *ibid*, paras. 7-8.

³²¹ *ibid*, paras. 7-8

³²² *ibid*, para. 50.

³²³ See note 74 above, Article 5(5).

³²⁴ Council of Europe, Explanatory Report on the Convention on Action against Trafficking in Human Beings, para. 106, available at: <https://rm.coe.int/16800d3812> .

³²⁵ See note 304 above.

³²⁶ OHCHR, “Recommended Principles and Guidelines on Human Rights and Human Trafficking” (E/2002/68/Add. 1), Guideline 7.9.

³²⁷ See note 304 above.

³²⁸ CRC, Article 7(1).

³²⁹ See Plan International, “Count Every Child: The Right to Birth Registration”, 2009.

³³⁰ See generally, CRC Committee General Comment 6.

³³¹ *ibid*.

³³² Declaration of the High-level meeting of the General Assembly on the Rule of Law at the National and International Levels, 30 November 2012, A/RES/67/1, paras. 14-16.



- ³³³ Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, VII, para. 12, A/RES/60/147, 21 March 2006.
- ³³⁴ Human Rights Committee, General Comment 32 on the right to equality before courts and tribunals and to a fair trial (Article 14) 23 August 2007, CCPR/C/GC/32, para. 9.
- ³³⁵ Report of the Special Rapporteur on the independence of judges and lawyers, 13 May 2008, A/HRC/8/4, para. 52.
- ³³⁶ See joined cases C-443/14 & 444/14 *Waredndorf v Ibrahim, Alo v Region Hannover*, EU:C:2016:127 (2016) on whether and under what conditions States are permitted to introduce specific limitations on the freedom of movement in respect of refugees lawfully present pursuant to Article 26 of the 1951 Refugee Convention. Article 12(3) of the ICCPR allows States to restrict internal freedom of movement when necessary to protect national security, public order, public health or morals, or the right or freedoms of others, provided these restrictions are consistent with the other rights recognised in the Covenant. Of particular relevance is the prohibition on non-discrimination in Article 2(1) ICCPR.
- ³³⁷ See note 335 above, para 58. See also Security Council Resolution 2122, para 10, 18 October 2013, S/RES/2122 recognising that to address effectively the existing obstacles in women’s access to justice, gender-responsive legal, judicial and security sector reforms are needed.
- ³³⁸ Statement by the President of the Security Council pursuant to the “Women and peace and security” agenda, 28 October 2014, S/PRST/2014/21.
- ³³⁹ See note 335 above, para. 17.
- ³⁴⁰ *ibid*, para. 15.
- ³⁴¹ *ibid*, para. 58.
- ³⁴² CEDAW Committee, General Recommendation No. 33 on women’s access to justice, CEDAW/C/GC/33, 23 July 2015, para. 1.
- ³⁴³ *ibid*, para 15(a).
- ³⁴⁴ CESCR, General Comment 9 on the domestic application of the Covenant, E/C.12/1998/24, 3 December 1998. The Covenant is not the only source of ESC obligations. The CRC contains many details on ESC rights, although only applicable to persons under 18. The CEDAW and the CRPD contain several ESC provisions. Among the regional treaties that include ESC rights are the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador), the African Charter on Human and Peoples’ Rights (ACHPR), the African Charter on the Rights and Welfare of the Child, the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (Maputo Protocol) and the European Social Charter.
- ³⁴⁵ Article 7 UDHR; Article 2 CEDAW. General Recommendation 28, para. 9.
- ³⁴⁶ See note 342 above, para. 25.
- ³⁴⁷ Human Rights Committee, General Comment 32 on the right to equality before courts and tribunals and to a fair trial (Article 14) 23 August 2007, CCPR/C/GC/32, para 9.



³⁴⁸ See note 335 above, paras 24-25, 29-30; CEDAW Committee, General recommendation 33 on women's access to justice, CEDAW/C/GC/33, 23 July 2015 para 17. Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, VII, para 12, A/RES/60/147, 21 March 2006.

³⁴⁹ ICCPR, Article 2(3). Article 2 (3) ICCPR; Article 13 CAT; Article 6 CERD; Article 8 UDHR; Articles 9 and 13 Declaration on the Protection of All Persons from Enforced Disappearance; Principles 4 and 16 of the UN Principles on Extra-legal Executions; Principles 4-7 of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power; Article 27 of the Vienna Declaration and Programme of Action; Articles 13, 160-162, 165 of the Programme of Action of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance; Article 9 of the Declaration on Human Rights Defenders; Article 13 ECHR; Article 47 of the Charter of Fundamental Rights of the European Union; Articles 7 (1) (a) and 25 ACHR; Article XVIII of the American Declaration of the Rights and Duties of Man; Article III (1) of the Inter-American Convention on Forced Disappearance of Persons; Article 8 (1) of the Inter-American Convention to Prevent and Punish Torture; Article 7 (1) (a) ACHPR; and Article 9 Arab Charter on Human Rights.

³⁵⁰ UNGA, Basic Principles and Guidelines on the Right to a Remedy and Reparation (2014) UN Doc. A/HRC/26/18, para. 25; CEDAW, Article 15.

³⁵¹ Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, VII, paras. 11 and 15 A/RES/60/147, 21 March 2006; CEDAW Committee, General Recommendation 33 on women's access to justice, CEDAW/C/GC/33, 23 July 2015, para. 19. HRC: General Comment No 31 on the Nature of the General Legal Obligation Imposed on States Parties to the Covenant, 26 May 2004, CCPR/C/21/Rev.1/Add.13, para. 15; IACtHR: Advisory Opinion OC-9/87, Judicial Guarantees in States of Emergency, 6 October 1987, Series A No 9, para. 24; ACHPR, Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, Principle C, African Union Doc. DOC/OS (XXX) 247; Case *The Social and Economic Rights Action Center and the Center for Economic and Social Rights v Nigeria*, Communication 155/96 (30th Ordinary Session, Oct 2001), para. 61, in which the Commission considered that the State had to ensure 'legal remedies'; ECtHR: *Cas3Airey v Ireland*, Judgment of 9 October 1979, Series A No. 32, para. 33.

³⁵² General Comment No 31 on the Nature of the General Legal Obligation Imposed on States Parties to the Covenant, 26 May 2004, CCPR/C/21/Rev.1/Add.13, para 15; ECtHR: Case *Keenan v the United Kingdom*, Judgment of 3 April 2001, Reports 2001-III, para. 122; IACtHR: Advisory Opinion OC-9/87, *Judicial Guarantees in States of Emergency*, 6 October 1987, Series A No 9, para. 24.



- ³⁵³ General Comment 31 on the Nature of the General Legal Obligation Imposed on States Parties to the Covenant, 26 May 2004, CCPR/C/21/Rev.1/Add.13, para. 16. Regional human rights treaties distinguish between the two obligations (remedy and reparation) on the basis that the former is a procedural obligation while reparation refers to the obligation to provide compensation, satisfaction, restitution and rehabilitation (for example, see Articles 13 and 41, ECHR; Articles 25 and 63 ACHR.) See also "An evaluation of the obligation to take steps to the maximum of available resources under an optional protocol to the Covenant", ESCR Committee, 10 May 2007, E/C.12/2007/1.
- ³⁵⁴ General Comment 31 on the Nature of the General Legal Obligation Imposed on States Parties to the Covenant, 26 May 2004, CCPR/C/21/Rev.1/Add.13, para. 16; CEDAW Committee, General Recommendation 33 on women's access to justice, CEDAW/C/GC/33, 23 July 2015, para. 19.
- ³⁵⁵ ARSIWA, Article 34.
- ³⁵⁶ *Avena and other Mexican National (Mexico v USA)* Judgment of 31 March 2004, para. 119.
- ³⁵⁷ CEDAW Committee, General Recommendation 33 on women's access to justice, CEDAW/C/GC/33, 23 July 2015, para. 46. See also Guidance Note of the Secretary-General, Reparations for Conflict-Related Sexual Violence, 2014, available at: <http://www.unwomen.org/en/docs/2014/6/reparations-for-conflict-related-sexual-violence>. Nairobi Declaration on Women's and Girls' Rights to a Remedy and Reparation, available at https://www.fidh.org/IMG/pdf/NAIROBI_DECLARATIONeng.pdf. Oxford Pro Bono Publico, 'A Report on Reparations and Remedies for Victims of Sexual and Gender-Based Violence', January 2016, available at: <http://ohrh.law.ox.ac.uk/wordpress/wp-content/uploads/2016/01/REDRESS-Project-on-Reparations-and-Remedies-for-SGB-Victims-FINAL-28-January-20166.pdf>
- ³⁵⁸ See note 278 above, para. 66, A/73/171
- ³⁵⁹ Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, VII, para. 4, A/RES/60/147, 21 March 2006; Article 12, Convention against Torture; UN Principles of Investigation of Torture, A/RES/55/89, 4 December 2000. Article 13 Declaration on the Protection of All Persons from Enforced Disappearance. Principle 9 UN Principles on Extra-legal Executions. HRC General Comment 6 on Article 6 ICCPR, 30 April 1982, HRI/GEN/1/Rev7, para 4; General Comment 20 on Article 7, 13 March 1992, HRI/GEN/1/Rev7, para. 14.
- ³⁶⁰ Report of the Special Rapporteur on Extrajudicial, Summary and Arbitrary Executions, 7 December 1993, E/CN.4/1994/7, paras. 688 and 711. Inter-American Commission on Human Rights: Report No 36/96, Case 10.843 (Chile), 15 October 1996, para. 77; Report No 34/96, Cases 11.228 *et al* (Chile), 15 October 1996, para. 76; Report No 25/98, Cases 11.505 *et al* (Chile), 7 April 1998, para. 50; Inter-American Court of Human Rights, Case *Garrido y Baigorria v Argentina (Reparations)*, Judgment of 27 August 1998, Series C No 39, para. 72.
- ³⁶¹ For example, Security Council resolution 1325 on women and peace and security, 31 October 2000, S/RES/1325 (2000) para. 11; Resolution 1820, 19 June 2008 S/RES/1820 (2008), para. 4; Resolution 1888, 30 September 2009, S/RES/1888 (2009), preamble; S/RES/1889 (2009) 5 October 2009, para. 3.



³⁶² See note 342 above, para. 51.

³⁶³ UNHCR's Dialogues with Refugee Women, UNCHR, 2013, Part IV, available at: <http://www.unhcr.org/511d160d9.pdf>

³⁶⁴ For example, female genital mutilation or forced and child marriage; see also Rosa da Costa, 'The Administration of Justice in Refugee Camps: A Study of Practice', UNHCR March 2006, at 28.

³⁶⁵ Translators without Borders, "New language guidance to promote women's rights in Rohingya refugee camps", 3 October, 2018, available at: <https://translatorswithoutborders.org/new-language-guidance-to-promote-womens-rights-in-rohingya-refugee-camps/>

³⁶⁶ See generally recommendations to states, CEDAW Committee, General recommendation 33 on women's access to justice, CEDAW/C/GC/33, 23 July 2015.

³⁶⁷ See note 364 above, Section 2, available at: <http://www.unhcr.org/protect/PROTECTION/44183b7e2.pdf>. The study found that many refugee camps have a 'complex system of administration of justice with multiple and varies sources of law and other obligations, codes or rules regulating (and sanctioning) certain types of behaviour'. The report notes, '[t]he justice systems in place and the dynamics of how they relate to each other will often be determined by the specific needs and constraints of the camp, the type of issue or violation committed, as well as the beliefs, values and customs of the different refugee groups that might reside together within a single camp.'

³⁶⁸ See note 342 above, para. 31.

³⁶⁹ Article 5(2) ACHR and Article 3 ECHR. See also https://www.ohchr.org/Documents/Issues/Migration/36_42/TheLastRightsProject.pdf

³⁷⁰ See, for example, *Fatma Yildirim (deceased) v Austria*, Communication No 6/2005 (6 August 2007) CEDAW/C/39/D/2005, para. 12.1.2.

³⁷¹ UNHCR's Dialogues with Refugee Women, UNCHR, 2013, Part IV <http://www.unhcr.org/511d160d9.pdf>

³⁷² See note 342 above, para. 13: 'the centralization of courts and quasi-judicial bodies in the main cities, their non-availability in rural and remote region, the time and money need to access them, the complexity of proceedings, the physical barriers for women with disabilities, the lack of access to quality, gender-competent legal advice, including legal aid, as well as the deficiencies often noted in the quality of justice systems (gender-insensitive judgements/decisions due to the lack of training, delays and excessive length of proceedings, corruption, etc) all prevent women from accessing justice'.

³⁷³ For good practice, see for example, Zambia, Uganda, Jordan and India; UNHCR's Dialogues with Refugee Women, UNCHR, 2013, Part IV.



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