Women Rights in Conflict Zones: A Focus on India

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The condition faced by women in conflict zones are of immense significance in the current scenario where one finds increased sites of conflict. The sites of conflict would not only include war zones but also areas of internal unrest due to self determination issues, communal conflicts, Environmental disasters etc. It is often seen that in the larger framework of addressing these issues, women’s concern take a backseat. Consequently their needs and issues get buried within larger scheme of things. It is submitted that conflict situations puts additional strain on women who get doubly marginalized as well as vulnerable to attacks from the aggressive opposition as women are most often symbolize the honour of the family. Violation of the bodily integrity of the women, displacement, Issues relating domestic violence, Denial of Properly rights etc are some of the major issues which remain hidden.

Through this handbook we are trying look at the existing legal framework available for addressing the issues relating to Rights of women in conflict zones. There are various international legislation which would address the issue. There is no specific legislation within the Domestic sphere addressing issues of Women with the conflict zones but the regular laws applicable in peacetime can be used as a remedial measure. This book aims at harmonizing the international legislations and the domestic legislation to provide effective relief.

Sandhya Raju
Director HRLN
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1 Introduction

In connection with the increased attention of the international community to women rights in the last decades, the international society has become aware of the specific challenges women have to face in times of conflict. A number of studies in this field have been undertaken by humanitarian and human rights organizations, such as the International Committee of the Red Cross (ICRC) or the United Nations Development Fund for Women. Through these studies it has been shown how often the plight of women and the impact of war on their lives had been ignored. Women are, owing to their position in the society, affected by wars differently than men. Their problems resulting from situations of conflict are however very often neglected. It is important therefore to bring attention to these issues and create awareness of the rights women have in these circumstances as well as present possible means to improve their situation.

1.1 Defining conflict zones

Although international and internal conflicts may differ in various aspects, their impacts on women’s lives are similar. Thus, when talking about conflict zones, it is necessary to understand this expression as including internal conflicts as well. It is also essential to interpret the term ‘internal conflicts’ in its broad sense, encompassing situations that are not officially recognized by the respective States, nevertheless which due to their characteristics could be acknowledged as such. In fact, in many cases of internal armed conflict, governments refuse to admit the existence of a conflict situation to avoid the recognition of armed groups in fear of granting these groups legitimacy.¹

Based on the common article 3 of the 1949 Geneva Conventions and article 1 of the Additional Protocol II, the ICRC defines internal conflicts as “protracted armed confrontations occurring between governmental armed forces and the forces of one or more armed groups, or between such groups arising on the territory of a State [party to the Geneva Conventions]. The armed confrontation must reach a minimum level of intensity and the parties involved in the conflict must show a minimum of organization.”² With a solid amount of certainty it is possible to apply this definition to the case of a number of armed confrontations happening in India. Although India does not declare officially any of its zones of violence as conflict zones, it is fighting armed groups for decades in many of its States (see map on next page).³

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Currently, the three major areas of conflict in India are in Jammu and Kashmir, in the Northeastern states and in central and eastern India where Maoist rebels operate. A large number of armed groups have been fighting either for independence, integrating into Pakistan or simply for more autonomy in Jammu and Kashmir since 1989. It is estimated that 47 – 77 000 people have fallen victim to the conflict during this time. Northern-eastern states (especially Assam, Manipur, Mizoram and Nagaland) have also experienced separatist groups’ insurgency. More than 40 000 people have been killed in the fightings since 1979. The attempts of the Maoist insurgents to take over power in the eastern and central Indian States resulted in at least 6000 deaths.4

Despite these alarming numbers and wide powers of the military in these States (owing to special acts that have been introduced to help defeat the insurgents, such as the Armed Forces Special Powers Act), India refrains from proclaiming the regions as conflict zones and thus denies the affected population the protection of the Geneva Conventions.

1.2 Why the need for special protection of women rights in conflicts?

Women in India, as well as elsewhere, are affected by conflicts in various ways due to their role in society. Discrimination, that women often have to face in times of peace, gets reinforced in war as the community becomes militarized. Militarism and masculinist values, such as domination, aggression and assertiveness, are closely interwinned. In patriarchic societies men enjoy control over women’s productive power, reproduction, sexuality and/or mobility as well as over property and other economic resources.\(^5\) It is very common that women are restricted to their homes and have to ask for permission to leave their house. They are also frequently denied ownership and inheritance of property. In fact, women themselves are commonly seen as the property of men.\(^6\) The control of men over women’s lives becomes even higher in times of conflict due to the symbolic value afforded to womanhood.

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“The role and status of Kashmiri women combine the ideas of women under Islamic laws with those of a special Kashmiri tradition of Sufism... Men are privileged from birth, while women are seen as a burden... This discrimination follows women through every aspect of life... Despite constitutional guarantees, women are not considered equal citizens. One instance was the attempt by the Jammu & Kashmir legislature to pass the Jammu and Kashmir Permanent Residence Status (Disqualification) Bill, 2004. This Bill bars a Kashmiri women from inheriting, passing on the inheritance, selling or alienating property if she married an 'outsider' (non-Kashmir). No such law is applicable to men.”

Chenoy, Anuradha M. Resources of Symbols? Women and Armed Conflicts in India. 2007.

“The more egalitarian, largely tribal culture of the North East region does give the women of the region greater visibility and mobility. Women also enjoy some amount of economic autonomy but despite all this women’s role in decision-making is minimal. None of the traditional institutions of governance accept women as an integral part. Even where women have managed to get into these institutions, the roles assigned are either peripheral or figurative. In many areas in the north-east, traditional customary laws and practices are strictly adhered to. In some areas these laws sanction polygamy and child marriages; in others, land, property rights and custody of children are strictly given only to the males, and in yet others women are debarred from participating in the political decision making... With women playing a subsidiary role and without any decision-making powers in the traditional institutions, the impact of the conflict on women has been great.”


In patriarchic societies, men are expected to be strong and powerful, whereas women are valued in terms of their chastity and obedience. They have little independent status, as they are viewed by the communities only in connection with their fathers or husbands. Women are defined as the wives of men and mothers of children. They are perceived as symbols of honour. The symbolic understanding of women, together with seeing them as the property of men, renders them very vulnerable during conflicts. Women are often targeted by hostile groups to dishonour the community as a whole. Rape is commonly used as a weapon of war. Rape in wars has in most cases little to do with sexual satisfaction. It is perceived as an achievement of power and thus used to humiliate the enemy. Men incapable of defending their women are viewed as effeminate and inferior.

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The symbolic perception of women strenghtens with growing nationalism in times of conflict. This is manifested by the restrictions imposed on clothing of women in many communities. In Manipur, schoolgirls and schoolteachers were ordered to wear the traditional phanek (sarong) instead of salwar or sari. In Kashmir, women were pushed to cover their heads and wear burkas (veils). There have even been cases of girls shot at by ‘suspected militants’ for wearing jeans.\(^9\)

Although urban Kashmiri women have managed to resist the threats of militants and defend their right to remain unveiled, in other parts of Kashmir this has not been the case. In 2002 in border districts of Rajouri and Poonch Taliban-style militants have even issued deadlines for a burqa code threatening the non-complying women with mutilation and death.\(^10\)

Next to the direct effects of conflicts on women, such as rape and other forms of violence, womens’ lives are seriously threatened and affected also by assaults on the members of their families. As women are dependent on their husbands or fathers; death, disappearance or detainment of these men has often serious consequences for them. Widowhood is socially stigmatized in South Asia and becoming a widow means possible isolation, loss of dignity and individual identity as well as autonomy, since widows become dependent on their relatives. They are frequently denied inheritance and property rights and are sexually harassed.\(^11\)

Even worse than the fate of widows is that of ‘half-widows’ – wives of men who have disappeared or have gone missing. According to the Association of Parents of Disappeared Persons (APDP) in Kashmir more than 10 000 people have been subject to enforced disappearance by state agencies. These women are frequently left without land, homes, inheritance, social assistance and pensions. They are equally vulnerable to harassment from men.\(^12\)

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Notwithstanding the troubles men have to go through in armed conflicts, it is clear that women face specific issues in these situations. Their problems have been however largely ignored by the community since they are often seen as less important in times of crisis than other matters of concern. In fact, the troubles of women are very closely linked with their position in the society in peace times. If even then it is discriminatory and yet still not addressed, it is hardly expectable that women rights will be dealt with in the same community in conflict situations when other ‘bigger’ issues arise.

It is necessary therefore to bring more attention to the plight of women in conflict situations and encourage discussion about possible remedies. This booklet presents some of the main impacts of conflicts on the lives of women. Firstly, the legal framework pertaining to the rights of women and to situations of conflicts is presented. A separate section deals with the specific framework in India. Secondly, we concentrate on particular problems and discuss the rights that women currently have in these circumstances. In conclusion, we present measures which could possibly bring improvements to the troubles of women based on the best practices that have been adopted in the past to deal with these situations.

It is commendable that a number of studies have been undertaken on the subject in the recent past. The relevant documents of organizations such as the International Committee of the Red Cross, Amnesty International, UNIFEM or US AID were our main and very helpful sources in describing the general issues. For looking at the specific plight of Indian women, the A. Rao’s and A.D.Shrestra & R. Thapa’s volumes, among others, were very rich on information.

We hope that this booklet, which summarizes the current knowledge of the subject and focuses on the state of affairs in India, will be a helpful guide for those seeking information on the topic and for women in India willing to learn more about their rights in conflict situations.

“The Indian government does not provide any relief to half-widows before the expiry of seven years from the date of disappearance. And even after the completion of seven years from the date of disappearance, they get either a one-time grant ranging from US$1,000 and US$2,000 or a monthly pension of US$10. Further, a half-widow cannot remarry until the expiration of seven years from the date of disappearance of her husband whose whereabouts must not be known in these seven years. In the meantime, the right to her husband’s property are often threatened. Some widows, who intend to remarry, largely do not find men who are willing to marry them.”

2 Legal framework

No binding international convention on the protection of women in armed conflicts exists despite the specific issues and problems that women in conflict situations have to face. Some provisions specifically dealing with women can be found in general human rights law as well as in several conventions addressing particular issues. Similarly, international humanitarian law which applies in cases of armed conflicts contains a number of provisions for the protection of women.

2.1 General human rights law

Fundamental human rights are embodied in the Universal Declaration of Human Rights (see Annex 6.1) and two binding covenants - the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESC). The Declaration as well as the Covenants concede the complete set of human rights to both sexes without discrimination. These basic human rights must be respected at all times with the sole exception of ‘public emergencies’, i.e. cases “which threaten the life of the nation and the existence of which is officially proclaimed.” (ICCPR Art. 4) However, even in these situations, which may comprise both internal and external armed conflicts, certain rights e.g. the right to life, freedom from torture or freedom from slavery, remain non-derogable. Furthermore, state measures derogating from the provisions of the ICCPR and ICESC have to be limited “to the extent strictly required by the exigencies of the situation” and must not entail any forms of discrimination, including discrimination based on sex. This means that the most fundamental human rights and standards must remain untouched even in times of conflict. The Covenants however include only a few provisions directly mentioning the rights of women (see Annex 6.2 and 6.3).

A number of other international human rights instruments cover various areas of people’s lives and thus also cover different aspects of problems women have to deal with, among these are e.g. the Convention on the Prevention and Punishment of the Crime of Genocide, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention relating to the Status of Refugees, the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Convention on the Rights of the Child.

2.2 International humanitarian law

During armed conflicts, the four Geneva Conventions and two additional Protocols come to effect. The Conventions are applicable in their majority to international conflicts; internal
conflicts are addressed only by the common Article 3 of the Conventions (see Annex 6.5) and the 1977 Additional Protocol II (see Annex 6.4). However, even in internal conflicts other rules of humanitarian law apply, as they form part of customary international law. Women should be therefore protected by these provisions in internal conflicts as well (see Annex 6.6 for the explanation in a recent study of the ICRC on customary humanitarian law). Although the body of humanitarian law contains 43 provisions specifically intended for the protection of women (for those comprised in the Convention relative to the Protection of Civilian Persons in Time of War (IV) see Annex 6.5), it has to be said that for various reasons the Conventions and Protocols do not sufficiently address the problems women face in conflict situations. The fundamental problem is that the Conventions are written solely from the male perspective, ignoring specific issues of women. Although women are accorded special protection, it is mostly connected to their reproductive and sexual roles. A large part of these stipulations are in fact aimed at protecting children, by providing advantages to pregnant or nursing women. Differences in the effects of conflicts on the life of men and women are not taken into consideration. Violations of women rights are not treated seriously enough, e.g. rape is not considered a ‘grave breach’ of international law and is regarded only as an attack on the victim’s honour. This illustrates the masculinist approach of the Conventions: women are protected as mothers or as representatives of the community’s honour. Rape is seen in terms of losing chastity and honour instead of understanding it as a major physical and psychological violation and serious crime.¹³ In addition, humanitarian law does not concern itself with the long-term effects of conflicts which usually have a much bigger impact on the lives of women, as they constitute the majority of displaced people and many of them lose their husbands, families as well as sources of livelihood.¹⁴

2.3 International documents relating to women rights

Next to the conventions that concede protection to different groups of people in general, several instruments have been adopted which concentrate solely on the problems of women. The most comprehensive document on the basic human rights of women is the 1979 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW, see Annex 6.7) ratified by 185 countries (by August 2009). It guarantees women equal rights in the political, civil, cultural, economic as well as social life. Nevertheless, it does not protect them from different forms of abuses such as rape or spousal abuse. CEDAW’s 1999 Optional Protocol enables individual and group complaints to the UN Committee for CEDAW in cases of violations of CEDAW by party States which ratified the Protocol. Under the Protocol the Committee may

also itself initiate inquiries into situations of grave violations of women rights and in response request States to take specific measures.

Sexual abuse of women and further specific women rights violations have been the subject of several UN declarations and resolutions. The 1974 UN General Assembly Declaration on the Protection of Women and Children in Emergencies and Armed Conflicts (see Annex 6.8) recognized “the need to provide special protection of women and children belonging to the civilian population” for they are “too often the victims of inhuman acts and consequently suffer serious harm”. It prohibited “all forms of repression and cruel and inhuman treatment of women and children, including imprisonment, torture, shooting, mass arrests, collective punishment, destruction of dwellings and forcible eviction” (Art. 5), condemned attacks and bombings on the civilian population and called for respect of basic human rights and humanitarian law in all cases.

The 1993 Declaration against Violence against Women adopted by the UN General Assembly (see Annex 6.9) signified an important step in defining violence women as “any act of gender-based violence that results in, or is likely to result in, physical, sexual or mental harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.” (Art. 1) This definition comprises not only violence committed by the general community, but also by the State and by family members. It also recognized in its preamble that women in situations of armed conflict are especially vulnerable to violence.

The Resolution on Women, Peace and Security 1325 adopted by the UN Security Council in 2000 (see Annex 6.10) requested the inclusion of women in peacebuilding and peacekeeping operations and decision-making bodies. It also called for the respect of human rights of women and urged States to refrain from granting impunity to people who have committed genocide, war crimes and crimes against humanity, including those relating to sexual violence against women. Further Security Council Resolutions have reiterated the topic, such as Resolution 1820 (2008), Resolution 1888 (2009), both of which concentrated mainly on condemning sexual violence during conflicts, and Resolution 1889 (2009).

The establishment of the International Criminal Court and adoption of the Rome Statute of the International Criminal Court represents a major breakthrough in the understanding and prosecution of sexual crimes committed during conflicts, since many serious crimes were given recognition for the first time as crimes against humanity and war crimes. They include rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization as well as other forms of sexual violence (see Annex 6.11). Further advancements in this direction were also
made through the work of the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Tribunal for Rwanda (ICTR) (see next chapter).

It is clear that the biggest progress in the subject of women rights has been made in the issue of sexual violence against women. Many women activists however emphasize there are other areas which still remain insufficiently treated and urge governments for more action. The 1993 Vienna Declaration and Programme of Action, adopted by the United Nations World Conference on Human Rights, stated that “violations of the human rights of women in situations of armed conflict are violations of the fundamental principles of human rights and humanitarian law” (Art. 38). It “urges the full and equal enjoyment by women of all human rights and that this be a priority for Governments and for the United Nations.” (Art. 36)

Similarly, the Fourth UN World Conference on Women, held in Beijing in 1995, called attention to the need to combat discrimination against women in 12 critical areas, including health, power and decision-making, violence, media and also armed conflict situations. The Beijing Platform for Action sets six strategic objectives to be taken by governments and intergovernmental organizations to improve the situation of women in armed conflict, it urges them to: (1) Increase the participation of women in conflict resolution at decision-making levels and protect women living in situations of armed and other conflicts or under foreign occupation; (2) Reduce excessive military expenditures and control the availability of armaments; (3) Promote non-violent forms of conflict resolution and reduce the incidence of human rights abuse in conflict situations; (4) Promote women’s contribution to fostering a culture of peace; (5) Provide protection, assistance and training to refugee women, other displaced women in need of international protection and internally displaced women and (6) Provide assistance to the women of the colonies and non-self-governing territories.

2.4 International case law

Important international cases concerning issues faced by women in conflicts deal mostly with sexual violence. It is in fact in this particular problem that most progress has been made. A milestone in the prosecution of sexual violence was the establishment of the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR). Both these tribunals were empowered to prosecute grave breaches of the Geneva Conventions, other war crimes, crimes against humanity and genocide. Rape was listed in their statutes as an act which may constitute a crime against humanity. Several significant rulings concerning sexual violence have been passed by these tribunals.

In the **Celebici case**, rape and sexual assaults have been recognized as torture by the ICTY. Hazim Delic, a Bosnian Muslim deputy camp commander, was found guilty of a grave breach of the Geneva Conventions for the rapes of Bosnian Serb women prisoners he had committed.

In the **Furundzija decision**, rape has been recognized as a violation of the laws or customs of war by the ICTY. Anto Furundzija, a Bosnian Croat military commander was found guilty of war crimes for providing assistance, encouragement or moral support to his subordinate who raped a Bosnian Muslim woman in front of other soldiers while Furundzija was interrogating her.

In the **Akayesu case** rape has been recognized as a crime against humanity and prosecuted as genocide by the ICTR. Jean-Paul Akayesu, the mayor of the Taba Commune, was found guilty of crimes against humanity and genocide for having witnessed and encouraged rapes of Tutsi women on massive scale while he was a communal leader.

In the Akayesu case rape was defined under international law for the first time. The definition of rape in paragraph 596, 597 and 598 of the judgment reads: *The Chamber must define rape, as there is no commonly accepted definition of this term in international law. While rape has been defined in certain national jurisdictions as non-consensual intercourse, variations on the act of rape may include acts which involve the insertion of objects and/or the use of bodily orifices not considered to be intrinsically sexual. The Chamber considers that rape is a form of aggression and that the central elements of the crime of rape cannot be captured in a mechanical description of objects and body parts.... The Chamber defines rape as a physical invasion of a sexual nature, committed on a person under circumstances, which are coercive. Sexual violence which includes rape, is considered to be any act of a sexual nature which is committed on a person under circumstances which are coercive.*


It was observed that forced pregnancy and rape can constitute an element of genocide.\(^\text{16}\)

\begin{quote}
“In light of all the evidence before it, the Chamber is satisfied that the acts of rape and sexual violence described above were committed solely against Tutsi women, many of whom were subjected to the worst public humiliation, mutilated and raped several times, often in public, in the Bureau Communal premises or in other public places, and often by more than one assailant. These rapes resulted in physical and psychological destruction of Tutsi women, their families and their communities. Sexual violence was an integral part of the process of destruction, specifically targeting Tutsi women and specifically contributing to their destruction and to the destruction of the Tutsi group as a whole.”
\end{quote}


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The Statute of the ICTR criminalizes sexual violence also in internal armed conflicts. For that reason Akayesu was at first also charged with rape as a war crime, but was later acquitted as it wasn’t proved that he was a member of the armed forces or charged with military duties.\textsuperscript{17}

Regional courts, such as the Inter-American Commission on Human Rights and the European Court of Human Rights, have treated also other issues of women rights in conflict situations.

The \textbf{Raquel Martí de Mejía v. Peru case} concerned the use of antiterrorist legislation and committing murder and rape during counterinsurgency operations against a human rights activist and his wife by the state of Peru. The Inter-American Commission on Human Rights concluded that the Peruvian State is responsible for the violation of their human rights and recommended investigation in the matter as well the abolishment of a discriminatory article of law.\textsuperscript{18}

Cases of custodial violence were treated by the European Court of Human Rights. In the \textbf{Aydin v. Turkey case}, regarding the alleged rape and ill-treatment of a female detainee and failure of authorities to conduct an effective investigation into her complaint that she was tortured in this way, the Court decided that Turkey has violated the Convention for the Protection of Human Rights and Fundamental Freedoms and must therefore compensate the applicant financially.\textsuperscript{19} The same decision was made in the \textbf{Algür v. Turkey case} which concerned physical and psychological torture of a woman detained for allegedly being part of an illegal terrorist organization.\textsuperscript{20}

A number of other decisions have been made on the international level, not directly connected to situations of conflict, however treating the same issues women in conflicts have to face. Many of these have dealt with cases of domestic violence. In the \textbf{María da Penha Maia Fernandes v. Brazil case} the Inter-American Commission on Human Rights concluded that by

\begin{itemize}
  \item \textsuperscript{17} Ibid.
  \item \textsuperscript{18} \textit{Raquel Martí de Mejía v. Peru}, Inter-American Commission on Human Rights, Case 10.970, 1996. Dr. Mejía Egocheaga was a lawyer, journalist and political activist who concentrated on defending the rights to land of the most disadvantaged groups in Peru. In June 1989 after some soldiers were killed in a town close to his home, a group of military personnel entered his home and took him away, while his wife was repeatedly raped. His body showing signs of torture was found days later. After several unsuccessful attempts to press on the state to investigate the matter, Ms. Raquel Martí de Mejía filed a petition at the Inter-American Commission on Human Rights invoking the American Convention on Human Rights. The Commission concluded that the the Peruvian State is responsible for violating the right to humane treatment, the right to protection of one's honor and dignity, the right to a fair trial and the right to judicial protection guaranteed, respectively, in Articles 5, 11, 8 and 25 of the American Convention. It recommended to the Peruvian State that it conduct a thorough, rapid and impartial investigation into the events in the kidnapping, torture and subsequent murder of Fernando Mejía and the sexual abuse of Raquel Mejía was the victim and that it abolish or amend Article 13 of Decree Law 25.475, so that it guarantees everyone's right to a fair trial.
  \item \textsuperscript{19} \textit{Aydin v. Turkey}, European Court of Human Rights, 23178/94, 1997.
  \item \textsuperscript{20} \textit{Algür v. Turkey}, European Court of Human Rights, 32574/96, 2002.
\end{itemize}
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failing to take effective measures to prosecute and punish the perpetrator of domestic violence for 15 years, the State violated the petitioner’s right to a fair trial and judicial protection. It recommended exhaustive investigation in the matter as well as effective compensation for the victim together with the adoption of corresponding measures on the national level.\(^\text{21}\) Similarly, the Committee on the Elimination of Discrimination against Women considered the lack of legislation to combat domestic violence and sexual abuses a violation of human rights in the \textit{AT v. Hungary} case.\(^\text{22}\) An analogous decision was made by the European Court of Human Rights in the \textit{X and Y v. the Netherlands} case as the State failed to provide appropriate protection in its Penal Code for sexual abuse of mentally handicapped persons.\(^\text{23}\)

2.5 Indian law

The legal protection of women in India is rather unsatisfactory. India has still not signed or ratified a number of international human rights instruments. It is party to the two binding documents: the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESC). Nevertheless it has not signed the optional protocol to the ICCPR which enables individuals to complain to the Human Rights Committee about violations of the Covenant. Its fulfillment of the rights embodied in the Covenants can be criticized.

“\textit{Several of the vital provisions of the binding conventions have been overlooked consistently.} 
Article 4 of the \textit{ICCPR} forbids the Govt of India, including its Constitutional creature - the apex court and the judiciary, to deprive of life of persons and citizens even in the most formidable situation of public emergency. 

\textit{Public emergency has not been officially proclaimed as required by the binding conventions in the NE region for half a century; accountability of all the state agencies to the Parliament for all the acts and omissions in the region conducted during the officially proclaimed public emergency has been abdicated unlawfully, and the United Nations has not been notified for the Govt actions.”} 


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While ratifying the Conventions India expressed its reservation to Article 9 of the ICCPR relating to preventive detention. Fulfillment of other rights embodied in Article 12, 19(3), 21 and 22 of the ICCPR (the right to freedom of movement, the rights permissible curbs on freedom of speech, the right to assembly and association), is also restricted. Furthermore, India has not signed other important international documents, such as the 1994 UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment or the Convention on the Status of Refugees and the Protocol relating to the Status of Refugees. It is party to the 1949 Geneva Conventions but not the 1977 Additional Protocols therefore the Additional Protocol II concerning internal conflicts is not applicable in India. This situation together with the fact that India does not recognize its conflict zones officially makes it difficult for humanitarian organizations to operate.

“While both India and Pakistan eventually acknowledged the applicability of the four Geneva Conventions to their 1965 and 1971 conflicts with reasonably good grace, they did nothing to open up the region to humanitarian organizations during all the periods of tension between the "official” international armed conflicts. Access was not granted until 1995, when visits began to certain places of detention in the Indian part of Kashmir. They were and are, moreover, of benefit only to the detainees, and not to the civilian population as such. This situation certainly restricted the ICRC’s ability to act during the summer 1999 Kargil clashes.”


„Francois Stamm, regional delegation head in South Asia, said that ICRC is playing an active role in India. Since 1995, the ICRC is visiting detainees in Jammu and Kashmir. The ICRC is also supporting the local branches of the Indian Red Cross Society in Assam, Chhattisgarh and Gadchiroli in Maharashtra, he said.

"But there are limitations. Since India does not declare them as conflict zones, we cannot perform our role beyond a point. ICRC has always been a sponsor of Geneva Conventions for the protection of the wounded and also respect for humans and dignity of civilians. In these conventions, we request the parties in conflict not to hurt those who are not involved in the conflict, especially, women and children,” said Stamm. But as of now, it is not happening in India.“


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24 South Asia Human Rights Documentation Centre. Human Rights & Human Rights Instruments in India.
India has neither ratified the 1998 Rome Statute of the International Criminal Court. In fact, it signed a bilateral non-extradition treaty with the USA regarding the International Criminal Court.\textsuperscript{25}

An important point of concern in the Indian legislation is the existence of several anti-terrorism and preventive detention laws which have been widely criticized for violating the fundamental rights and liberties of the Indian people. There has been a whole range of preventive detention acts accepted since independence.\textsuperscript{26} Unlike the Prevention of Terrorist Activities Act (2001) which has been repealed after widespread criticism, the Armed Forces Special Powers Act (1958) is still applicable in many areas.

As for the legislation directly concentrating on the rights of women, India has signed and in 1993 ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). However when signing, India also made a declaration that it will only abide by the provisions in Articles 5(a) and 16(1) “in conformity with its policy of non-interference in the personal affairs of any community without its initiative and consent.”\textsuperscript{27} Again India is not party to the Optional Protocol to CEDAW which enables individual complaints on its violations.

Articles 14 and 15(1) of the Constitution of India read as follows: “The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India... The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.” According to the article 51 A: “It shall be the duty of every citizen of India - (e) ...; to renounce practices derogatory to the dignity of women.”

\begin{quote}
\textit{The Constitution of India, adopted in November 1949, contains several articles mandating equality and non-discrimination on the grounds of sex, however several laws that violate this principle continue to exist, particularly in the area of family law and personal law. So far there have been minor reforms in Hindu personal law, however, these changes have been motivated by political expediency and have resulted in the denial of womens’ equal rights.}

\textit{While some reforms have been introduced in the criminal laws to deal with the issue of violence against women (rape and dowry laws), they have never been effectively implemented. There is also a complete absence of laws dealing with women workers, most of whom are employed in the unorganized rural sector.}

South Asia Human Rights Documentation Centre. \textit{Human Rights & Human Rights Instruments in India.}
\end{quote}

\textsuperscript{26} Such as the the Preventive Detention Act passed in 1950, the Defence of India Act (1962), the Maintenance of Internal Security Act (1971), the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act (1974), the National Security Act (1980) or the Terrorist and Disruptive Activities (Prevention) Act (1985).
\textsuperscript{27} South Asia Human Rights Documentation Centre. \textit{Human Rights & Human Rights Instruments in India.}
Women Rights in Conflict Zones

Legal framework

A number of laws for the promotion of welfare and empowerment of women have been enacted by the Parliament and respective state legislatures, the Domestic Violence (Protection) Act, 2005, is among the most recent. Committees for development of women have been founded and some government work projects have been planned. The Eleventh five year plan concretely mentions the need to help women in conflict zones. Despite these provisions the implementation is lacking and a number of discriminating laws are still in place.

3 Issues

3.1 Violence against women

In times of conflict the level of violence against women commonly increases since the breakdown of law and order enables the explosion of all forms of violence. The proliferation of small weapons gives men many powers often never held before. This is particularly troubling if the society accepts violence against women as normal even in times of peace, since their vulnerability in conflicts rapidly grows. Next to the general consequences of militarization of the society, women are also specifically targeted for sexual assaults used as a weapon of war – to dishonour and bring harm to the hostile community (see Introduction).

In most cases women remain unarmed and unprotected in conflicts. Often it is thought that the social position and gender of women will protect them against assaults. Women are thus left behind while others flee, to take care for the property and livelihood, to care for other members of the family or to visit members of their families in detention. However usually this strategy works badly for women. Women are assaulted specifically because they are women and for the symbolic value their humiliation can bring to the community.

Sexual violence is regrettably a very common part of armed conflicts. In fact earlier it was seen as a normal by-product of war and it was only with the establishment of the criminal tribunals that proper apprehension was given to it. Women are often assaulted as a means of punishing the members of their families. Forced impregnation, forced termination of pregnancy or forced sterilization have been used with the intention of ‘ethnically cleansing’ an area. The consequences of rape can be very critical for the victim. Next to the physical and psychological injuries caused by the act itself, it can mean a breaking point in the lives of women. In many societies, which put high importance to the chastity of women, admitting that a woman was

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raped could mean she would be ostracized, not considered worthy of marriage, rejected by her husband and family or even accused of adultery, prostitution or bringing dishonour to the family and consequently severely punished.31

“With its strong Muslim tradition, Kosovar society highly values female virginity and fidelity. For a woman to admit that she has been raped would bring shame on her family. The UNFPA report states that women are also concerned about the risk of divorce should their husbands learn of their rape. Although not the norm, some husbands have told reporters that they will not touch their wives if they suspect she has been raped. The trauma and stigma of the rapes lead some of the women to describe themselves as being "forever dead" to their families.”


“A study done by Medecins Sans Frontieres in mid 2005 reveals that Kashmiri women are among the worst sufferers of sexual violence in the world. It further mentions that since the beginning of the armed struggle in Kashmir in 1989, sexual violence has been routinely perpetrated on Kashmiri women, with 11.6 per cent of respondents saying they were victims of sexual abuse. Interestingly, the figure is much higher than that of Sierra Leone, Sri Lanka and Chechnya. The state home department has no specific data in this regard for the last 17 years.”

“In Kunan Poshpora, a small village in Kashmir, the soldiers of fourth Rajputana Rifles allegedly raped about 30 women on the night of February 23, 1991, during a search operation while men were taken away from their homes and interrogated. The ages of women raped ranged from 13 to 80 years.

According to newspaper reports, on June 17, 1994, troops of Rashtriya Rifles accompanied by two officers Major Ramesh and Major Rajkumar entered into village Hyhama and allegedly raped and molested seven women.

In another incident, troops raped a mentally ill old woman in her house in Barbarshah in Srinagar on January 5, 1991. Medical reports confirmed rape and locals lodged an FIR with the concerned police station, but the police did no investigation. She later died in 1998 while the FIR still awaits action from the state government.

In another gruesome incident, an army Major in Badra, Handwara, raped Aisha, a 29-year-old woman and her 10-year-old daughter, Shabnum. These being just a few examples, incidents like these are plenty in Kashmir and ironically pass unheeded for. Due to immunity of troops from prosecution and their own court martial proceedings, which are far from being unbiased, they are left free to do as they please.”


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It is no wonder that most rape cases pass unnoticed and unreported, since women would just put themselves in more danger. Reporting rape is often also seen as useless, since investigations are often denied and even if they are undertaken, the perpetrators are very commonly not punished. “For instance, based on statistics of courts martial provided by the army itself, in the last one decade, the army got 1,426 complaints, they court-martialled 50 men, dismissed 17 in the North-East, and punished 61 soldiers in Kashmir.”

Rape is not the only form of violence women have to face in conflicts. The Declaration on the Elimination of Violence against Women (DEVAW) defines violence against women as "any act of gender-based violence that results in, or is likely to result in, physical, sexual or mental harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life." Violence against women is understood as encompassing but not limited to the following:

“(a) Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female 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, wherever it occurs.”

With the militarization of society, domestic violence may increase with the graduating frustration of men due to the circumstances resulting from conflict.

“Domestic violence has assumed terrifying proportions in India. Government statistics show a phenomenal rise in crimes against women. It is also recognized that these statistics represent the tip of the iceberg since most cases of violent crime against women go unreported... In 1993 there were 11,242 rapes and 5,817 dowry deaths.”

SAHRDC. Human Rights & Human Rights Instruments in India.

As normal protective measures and structures often cease to work in such occasions, women are also further exposed to dangers of **trafficking and sexual slavery**. In India, trafficking is highest in the states of Punjab, Maharashtra, Andhra Pradesh and Bihar, in which it has been described as an organized crime. In 2005 up to 6 000 cases of trafficking were officially registered in India, however according to activists the real number is much higher.33

Women are often caught in between violence from all sides – next to domestic violence they frequently have to face **custodial violence** as well as threats and **mistreatment from militants**. The abuse of anti-terrorism legislation and impunity of military forces is infamous.

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and 20 injuries resulting from indiscriminate shootings of non-combatants by Indian army and security force personnel. Eighty percent of these violations occurred during the visit or in the ten days preceding it.  

In the report, Asia Watch & PHR enumerate and describe a number of cases of women raped during search operations, as a form of retaliation against civilians believed to be sympathetic to or directly attached to the militants. No reliable statistics of numbers of rape by security forces exist, as the State prefers to overlook them, rarely takes up their investigation and even in fewer times actually punishes the perpetrators.

“While the government has claimed that inquiries have been ordered into reports of rape and action taken against the guilty, the Indian authorities have not made public any prosecutions or punishments of security personnel in any of these cases. To our knowledge, the prosecution of two soldiers for the rape of a Canadian tourist in October 1990 is the only case of criminal prosecution which the Indian government has made public. The soldiers were sentenced to prison terms, but as of April 1993, the soldiers remained in barracks and the case was on appeal.”

“Even when investigations are ordered, they do not result in prosecutions. A magisterial inquiry was ordered in the case of five women reportedly raped near Anantnag on December 5, 1991, but the magistrate’s report has never been submitted. According to the Kashmir Times of January 14, 1993, the state government has ordered inquiries into 87 incidents of killings, rape and arson. None has resulted in criminal prosecutions. In seven courts-martial held between April 1990 and July 1991 involving incidents of rape, deaths in custody, illegal detention and indiscriminate firing on civilians by army soldiers, only one officer has been dismissed. The most severe punishment for the remaining officers was either a suspended promotion, or marks of “severe displeasure” in their files.”


However, acts of sexual violence against women have been committed by both parties of the conflict. There are stories of the „pro-people sensibility of the militants“ in Jammu, according to which they would alter their miliary operations to avoid civilian casualties, organize subsidized food distribution or deliver on-the-spot justice.  

Nevertheless in reality, it is more often the case that women also have to face violence from the insurgents themselves. There are about twelve major organizations in Kashmir fighting either for independence or accession to Pakistan. Women are caught not only in between the fighting of the state with the insurgents but also in between these different rival organisations. There have been cases of abduction and rape of women relatives to the militants belonging to rival organisation and women suspected of being informers.

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A significant progress has been made in the recent years in international law regarding the criminalization of sexual violence. As described in chapter 2 (Legal framework), the following major documents and cases confer rights to victims of sexual violence:

**Humanitarian law:**
- The Geneva Conventions and Additional Protocols
  - Article 27 of the Fourth Geneva Convention and Article 76 of Additional Protocol for international armed conflicts
  - Article 3 common to the Conventions and Additional Protocol II for internal conflicts

**Statutes and jurisprudence of the ad hoc Tribunals and of the International Criminal Court**
- Statute of the International Criminal Tribunal for the former Yugoslavia
- Statute of the International Criminal Tribunal for Rwanda
  - Both consider rape as a crime against humanity
- Statute of the International Criminal Court - lists sexual violence among war crimes
- The ICTR Akayesu case (sexual violence as a crime against humanity and genocide)
- The ICTY Furundzija case (sexual violence as war crime)
- The ICTY Celebici case (sexual violence as torture)

**Human rights instruments dealing with violence in general:**
- The Declaration on the Elimination of Violence against Women
- The Declaration on the Protection of Women and Children in Emergency and Armed Conflict
- UN Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment
- The Convention on the Prevention and Punishment of Genocide
  - Includes “imposing measures intended to prevent births within a group” among acts which may constitute genocide

**UN Security Council resolutions condemning sexual violence against women**
- Resolution on Women, Peace and Security 1325
- Resolution 1820
- Resolution 1888

Sources: Lindsey, Ch. Women facing war. ICRC, 2001; Rehn, E. –Sirleaf, E. J. Women, war, peace. UNIFEM. 2002.
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intended to protect women’s modesty. When deciding whether rape was committed, it is crucial to evaluate the consent of the women to the sexual act. This seemingly simple action has in the past often resulted in acquitting the rapists, due to the existence of Section 155 (4) of the Indian Evidence Act. According to it, the character of the victim plays a role in taking this decision. The moral character of the victim and/or lack of or insufficient physical injury have often led courts to assume the woman’s consent to the act. Although women’s modesty should be protected, the term ‘modesty’ or means of evaluating her moral character are not defined by the code. The definition of modesty and the decision of its violation in concrete cases are therefore left to the subjective and often very strict interpretation of the courts.\(^{36}\) It is thus clear that with the social stigma that admitting rape brings to the victims and especially when it is not sure that justice will be achieved, a large number of rapes go unreported. “The Institute of Development and Communication, Chandigarh found in its study on torture and atrocities on the women conducted in 2000, that where one news of rape is reported, 68 such cases go unnoticed. Similarly in comparison to one report of women's molestation, 374 cases are unreported.”\(^{37}\)

Concerning sexual violence in custody, relatively high punishments are envisioned for officers who commit such crimes. The Section 376 (1) of the IPC charges a minimum term of seven years imprisonment for rape. The Criminal Law (Amendment) Act of 1983 imposes a mandatory 10 years of imprisonment for police officers as well as commissioned officers of the paramilitary and military forces who rape a woman in their custody, with the possibility of extending the sentence to life. Nevertheless, many activists criticize the enforcement of these laws, which has been seriously lacking. Members of military forces suspected of committing rape and who are tried at military courts have been allegedly enjoying the protection of the courts rather than receiving punishment, and thus many have escaped justice.\(^{38}\)

Trafficking and sexual slavery are closely interrelated with sexual violence. In India, the following acts treat trafficking of women: The Immoral Traffic (Prevention) Act, 1956 (ITPA); The Juvenile Justice (Care and Protection of Children) Act, 2000 (JJ Act 2000); The Goa Children’s Act, 2003 (applicable only in the state of Goa); The Indian Penal Code, 1860; Procedural laws (Criminal Procedure Code i.e. CrPC, The Indian Evidence Act, etc) and Preventive Sections of CrPC.\(^{39}\) The comprehensive Immoral Traffic (Prevention) Act was amended twice, in 1986 and 1978 as the Suppression of Immoral Traffic in Women and Girls (Amendment) Act. Trafficking is also condemned in the Constitution. Article 23 (1) states:


\(^{39}\) Nair, P.M. Trafficking Women and Children for Sexual Exploitation. UNIFEM. Handbook for Law Enforcement Agencies in India. 2007.
“Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable with law.” Article 21 states: “No person shall be deprived of his life or personal liberty except according to procedure established by law.” It is in fact not only the violation of the right to life or to personal liberty that trafficking brings along, since commonly a large number of human rights violations take place, such as “the deprivation of the right to security, deprivation of dignity, deprivation of the right to access to justice and redressal of grievances, denial of access to health services, denial of right to self determination (e.g. when the victim is retrafficked), denial of right to return to own community...”

On the international level, trafficking is prohibited by the following documents:

### Humanitarian law:
- The Geneva Conventions and Additional Protocols – slavery and enforced prostitution is prohibited
- Statute of the International Criminal Court - sexual slavery may constitute a crime against humanity

### Human rights instruments:
- Universal Declaration of Human Rights – prohibits slavery and slave trade, recognizes the right of persons to freedom of movement and residence
- International Covenant on Civil and Political Rights – article 8 prohibits forced labour and slavery
- The Declaration on the Elimination of Violence against Women - includes trafficking in women and forced prostitution in the definition of violence against women
- The Convention on the Elimination of All Forms of Discrimination Against Women – urges States to prevent and suppress all forms of women trafficking

### Specific international and regional instruments:
- The Convention for the Suppression of Traffic in Persons and of the Exploitation of the Prostitution of Others – States are requested to punish people involved in trafficking
- The UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the UN Convention against Transnational Organized Crime – defines trafficking, urges states to criminalize trafficking
- Recommended Principles and Guidelines on Human Rights and Human Trafficking – developed by the UN High Commission for Human Rights
- The Bangkok Accord and Plan of Action to Combat Trafficking in Women in the Asian and Pacific Region
- The SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution - legally binding for the party states, including India, defines trafficking and promotes cooperation among member states for its suppression

**Sources:** Lindsey, Ch. Women facing war. ICRC, 2001; Rehn, E. – Sirleaf, E. J. Women, war, peace. UNIFEM. 2002.

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As for domestic violence, which is perpetrated by private actors and happening in the private realm, it was long believed that it does not fall among violations of international human rights law. Although the rights to life and to bodily integrity have always been protected as fundamental human rights, their violations inside families were generally seen as private matters, not concerning the responsibilities of states. However, lately an opinion began to prevail that the state should be responsible in certain cases: when it does not act with due diligence and fails to fulfill its responsibilities, when it does not afford its citizens equal protection and for failing to prevent torture - if domestic violence is understood as such.

Recent international instruments and case law seem to support this view. In several judgments, such as the Maria da Penha Maia Fernandes v. Brazil case or AT v. Hungary case (see chapter 2 Legal framework), the respective states were held accountable for failing to punish or prevent domestic abuse by not interfering effectively against the perpetrator or by omitting to enact proper legislation. The following international instruments are relevant to domestic violence:

**General human rights instruments:**
- The Universal Declaration of Human Rights
- The International Covenant on Civil and Political Rights
- The International Covenant on Economic, Social and Cultural Rights
  - Do not explicitly treat domestic violence but express the state's duty to protect the fundamental human rights which are often violated in these cases
- The Convention on the Elimination of All Forms of Discrimination Against Women
  - also repeats the state's duty to protect these fundamental human rights

**Documents specifically related to domestic violence:**
- General Recommendation No. 19 of the Committee on the Elimination of Discrimination Against Women - articulates the states’ responsibility if they fail to fulfill their duty to prevent or punish these violations in cases of domestic violence
- The Declaration on the Elimination of Violence against Women
  - acknowledges the responsibility of States to protect women against violence and advises member states on measures to suppress domestic violence
- The Vienna Declaration and Programme of Action
  - acknowledges the responsibility of States to protect women against violence
- The Beijing Platform of Action – identifies domestic violence as a human rights violation


In India, until 2005 domestic violence was treated mainly only by the Indian Penal Code in Section 498-A which dealt with cruelty by a husband or his family towards a married woman.

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42 The IPC recognized four types of cruelty: Conduct that is likely to drive a woman to suicide; Conduct that is likely to cause grave injury to life, limb or health of the woman; Harassment with the purpose of forcing the woman or her relatives to give some property; Harassment because the woman or her relatives is unable to yield to demands
The Sections 304 B and 406 of IPC and Section 113-A of Indian Evidence Act also aim at protecting women from domestic violence. Nevertheless, these provisions do not offer remedies for the victims of violence and furthermore only apply to married women.43 In 2005 the Protection of Women from Domestic Violence Act was enacted. It recognizes various forms of domestic violence: physical, sexual, mental, verbal as well as economic abuse. It is not restricted to married women and allows the victim to seek protection under the law even in cases of single acts of harm.44 Importantly, it also provides for several protective measures:

- “It provides courts with the power to pass protection orders to prevent an abuser from aiding or committing an act of domestic violence.
- The court can also restrain the abuser from entering a workplace or any other place visited by the victim and prevents the former from attempting to communicate with the victim.
- The Act provides for a woman’s right to reside in the matrimonial or shared household, whether or not she has any title or rights in the household.
- The Act also allows for authorization of NGOs and other agencies to assist the victims of domestic violence”
- “The Act provides for a breach of protection order or interim protection order by the respondent as a cognizable and non-bailable offence. This offence is punishable with imprisonment for a term which may extend to one year or with fine which may extend to twenty thousand rupees or with both.”

Indian Laws and the Problem of Domestic Violence. Law is Greek. 21 May 2010.

Even though custodial torture is not expressly prohibited by law in India, the law contains safeguards and provisions aimed at preventing it. First of all, it is important to mention that the basic fundamental rights of a person in custody cannot be alienated although they might be restricted to some limited extent. Secondly, articles 19, 20, 21, 22, 32 and 226 of the Constitution of India offer further protection – protecting people from having to be witness against themselves, protecting their life and personal liberty and providing them with basic rights with respect to conviction (including “being informed of the grounds of arrest, to be defended by a legal practitioner of one’s choice, [restrictions on] preventive detention laws, and production before the nearest Magistrate within 24 hours of arrest of the person”).45 According to Section 24 and 25 of the Evidence Act proof collected by confessions which were forced by threats or torture, cannot be used in courts. Section 54 of the Code of Criminal Procedure requires examinations of people in custody when they assert ill-treatment. When a person dies in custody a mandatory magisterial inquiry should take place according to Section 176. Police officers may be dismissed, penalized or suspended when they do not fulfil their

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43 Indian Laws and the Problem of Domestic Violence. Law is Greek. 21 May 2010.
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duties according to Sections 7 and 29 of the Indian Police Act.\textsuperscript{46} Section 376 of the Indian Penal Code puts down charges for custodial rape committed by police officers. Sections 220, 330 and 331 also penalise illegal police behaviour: up to 7 years imprisonment for illegal confinement by a public official or for torture in police or public custody for extorting confession or information on a crime and up to 10 years imprisonment for torture resulting in grievous injury. Nevertheless, these provisions do not offer any remedies to the victim.\textsuperscript{47} The Parliament is just in the process of passing a new Prevention of Torture Bill which is supposed to fill in for the missing legislation. It has, however, attracted criticism for being only a mean to satisfy the public while securing the status quo, as it has been felt that the new Bill does not meet important requirements to serve as a trustworthy prevention against custodial violence.\textsuperscript{48}

The Supreme Court also played an important role in dealing with custodial violence. It has in the past afforded victims and their families the right to compensation for custodial deaths and torture. More importantly, it formulated guidelines for arresting people and their stay in custody which were aimed at preventing custodial violence, especially against women. In the case of Sheela Barse v. State of Maharashtra it was stated there should be separate detention places for women suspects. The interrogations were supposed to be only carried out in the presence of lady police officers.\textsuperscript{49} The Magistrate was to inform all arrested persons of their rights. In the D.K. Basu v. State of West Bengal the Court held the detained must be medically examined every 48 hours by an approved doctor and can meet his lawyer during interrogation.\textsuperscript{50} Although in the Mathura rape case 1974 it was first decided that policemen should take a lady constable along while arresting women, the instruction was loosened by stating that this doesn’t have to be followed when there is a delay in arresting or when it might be impractical.

Despite these provisions, the rate of custodial torture and deaths remains alarming:

"The state of Maharashtra has registered the highest number of custodial deaths i.e. 316, followed by Uttar Pradesh (255) and BJP-ruled Gujarat (190) in the last 16 years. According to the National Human Rights Commission, there are 2318 cases of custody deaths across the country, all of which have been committed by policemen, since October 1993."

\textit{Custodial Horror for Women in India}. Law is Greek. 5 May 2010.

\textsuperscript{48} See e.g. Kranti Kumara. \textit{India’s government tables loophole-filled anti-torture law}. May 20, 2010.  
\textsuperscript{49} \textit{Custodial Horror for Women in India}. Law is Greek. 5 May 2010.  
The following international instruments afford protection against custodial violence. A major document, the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, still awaits for its ratification by India, although it has been signed by India already 13 years ago:

- **The Universal Declaration of Human Rights** – art. 5 states that no person shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.
- **The International Covenant on Civil and Political Rights**
  - guarantees the right to life and right to a fair trial, prohibits torture and arbitrary arrest and detention as well as retroactive criminal measures
  - Article 7 states: *No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.*
- **The UN Declaration on the Protection of all Persons from being subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**
- **The UN Convention Against Torture** – not ratified by India
  - defines torture and requires party States to take effective measures to prevent torture
  - Article 2 states: 1. *Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.* 2. *No exceptional circumstances whatsoever, whether a state of war or a threat or war, internal political instability or any other public emergency, may be invoked as a justification of torture.* 3. *An order from a superior officer or a public authority may not be invoked as a justification of torture.*
  - Article 14 states: *Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependents shall be entitled to compensation.*
- **The Statute of the International Criminal Court**
  - defines torture as intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused
  - considers torture a crime against humanity when committed as part of a widespread or systematic attack directed against any civilian population
- **The Declaration on the Elimination of Violence against Women**
  - recognizes women in detention as well as women in situations of armed conflict as especially vulnerable to violence
  - includes violence perpetuated or condoned by the State in the definition of violence against women
  - requires States to take effective measures to prevent violence

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3.2 Health

The health of women is affected by conflict in a number of ways. Firstly, it is clear that in conflicts women and men get injured or ill as a direct consequence of general violence. However, women’s health often faces further burdens due to their biology and social status. Women have special needs owing to their sexual and reproductive roles. In conflicts, they become more exposed to sexual violence and as a result to sexually transmitted diseases. They often do not receive sufficient level of pre- and post-natal care or have access to emergency obstetric care, all of these being however crucial for the health of the mother and child. Also cultural restrictions and discrimination of women can pose serious problems in attaining health care. Cultural restraints which allow women to travel only with a male relative or being medically treated only by women can prevent them from receiving adequate care.51

There are many reasons for discrimination in health care, the International Committee of the Red Cross lists these that prevent women from receiving rehabilitation and prosthetic assistance: “because they are not as visible outside the home as their male counterparts; because their families do not see the need to seek prosthetic assistance for women (who will remain in the home); because only men work in the facilities providing such care and, for cultural or religious reasons, women cannot go where men who are not members of their family are present; because childcare responsibilities preclude their seeking assistance; because they cannot afford the transport, accommodation and treatment costs involved in being fitted with a prosthesis and the care it necessitates; and/or because men, as military casualties, receive such care and assistance through military hospitals and organizations that target war casualties, whereas women’s access to such services is restricted.”52

Although women are commonly deprived of health care, at the same time it is expected from them to take care of others who are ill, hurt or traumatized. It is not only the physical health of women that comes to harm in conflicts, but the large amount of stress and suffering has serious impact on their mental health.

In Kashmir: “The stress of responsibility, widowhood, the trauma of losing the loved ones have left many women suffering from mental disorders, insomnia, poor physical health. Widowhood has brought a drastic change in nutrition levels since the former is often accompanied by poverty. Many of the women affected by conflict complain of poor menstrual cycles thus impacting their reproductive life. Problems are acute as medical help is absent particularly in the inaccessible regions. Many women are maimed when caught in cross firing between militants and security forces or due to mine fields. Finally, there are a large number of young women and widows with very little hope of a marital relationship since there is a paucity of eligible males. A generation has been wiped out by the armed conflict.”


‟With killings, torture, rapes, molestations, disappearances and detentions becoming the order of the day in Kashmir, psychiatric disorders have seen a sharp increase post-1989. In 1989, about 1,700 patients visited the valley’s lone psychiatric hospital and by the year 2003, the number had gone up to 48,000. Before the onset of the armed struggle, certain disorders that were not known to Kashmiris started showing a significant presence amongst the civilian population. The Post Traumatic Stress Disorder (PSTD), one of the psychiatric diseases, which was completely unrecognised before 1990 has witnessed a major upsurge. Major Depressive Disorder (MDO) follows this. There are other mental diseases like bipolar disorder, panic, phobia; general anxiety and sleep disorders that have also shown four-fold increase as told by Dr Arshad of the Psychiatric Diseases Hospital in Srinagar. Substance Use Disorder or drug addiction and suicidal tendencies has been another repercussion of the ongoing conflict in Kashmir. Dr Arshad further added that the patients who come to seek help are largely in the productive age group of 25-30 years [15]. Dr Mushtaq Marghoob, a leading psychiatrist of the valley states that women bear the brunt of every tragedy. They have to support the family after the death of their husbands, fathers, sons or brothers. Dr Arshad further adds that women form a major part of the patients who are suffering from PSTD (almost 50 per cent). For women whose husbands have died, psychotherapy has failed to produce desired results.”

Saeed ur Rehman Siddiqui. Wailing woes of Kashmiri women.
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Relating law

Although health is not explicitly recognized by the Constitution of India as a fundamental right, it can be understood as falling under the right to protection of life and personal liberty and the right to equality and freedom. Article 47 of the Constitution lists the raising of the level of nutrition and the standard of living of its people and the improvement of public health among the primary duties of the State. Furthermore, India has to pay regard to the following international instruments:

### Binding documents
- The Geneva Conventions and Additional Protocols
  - provide for medical assistance to people in need in times of conflicts
  - contain a number of preferential measures aimed specifically at women, especially expectant mothers and mothers of young children
- The International Covenant on Economic, Social and Cultural Rights
  - recognizes ‘the right of everyone to the enjoyment of the highest attainable standard of physical and mental health’
- The Convention on Elimination of All Forms of Discrimination against Women
  - requests States to take measures to ensure to women, ‘on a basis of equality of men and women, access to health care services, including those related to family planning’, as well as ‘appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary’

### Declarations
- The Universal Declaration of Human Rights - Article 25 (1) states that everyone has a right to a standard of living adequate for the health of himself and his family, including food, clothing, housing and medical care and necessary social services
- The Declaration of Alma-Ata on Primary Health Care - recognizes health as a fundamental right and the right of everyone to primary health care
- The Declaration on the Elimination of Violence against Women
  - recognizes the right of women ‘to the highest standard attainable of physical and mental health’
  - urges States to condemn violence against women and not invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination

### International conferences
- The International Conference on Population and Development Programme of Action
- The Beijing Platform for Action
- The World Conference for Human Rights 1993
  - all recognize health as a basic right and present guiding principles for States for its protection


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3.3 Sustaining livelihoods: access to work, land and property

Sustaining livelihoods in situations of conflict may be a close to impossible task for many women. With men engaged in fightings, women are left alone to care for the household and have to take on new roles, as they must also fulfill tasks previously done by men. Women need access to farming resources, including financial loans, which they might not be able to get. Besides, accessing land can be hazardous in conflicts with the imminent danger of attack or unexploded mines. However, very serious problems arise for women whose male relatives — fathers or husbands — die or go missing. Due to the inferior position of women in many societies, they are deprived of inheriting land and property. Thus for unmarried daughters, widows or wives of the missing, the loss of their father or husband can easily equal loss of their livelihood, becoming homeless or dependent on the help of others. 

“The traditional system of land rights, which is still followed in the rural areas despite all the legal provisions granting women equal rights, gives women only sustenance, or at best custodial rights in favour of minor sons, not ownership rights.”

“The most common ruse for denying land rights being adopted by families against widows appears to be denial of right to cultivate the land. Male members of the marital family taking over the cultivation of the widow’s share of the land is a common occurrence.”

“In Vidarbha, while the process of ‘nuclearisation’ of farming families has happened at a rapid pace at the ground level, with informal agreements between brothers about property division in place, land records are very often a generation, and in fewer cases, two generations behind the ground situation. In all the above-mentioned cases, the land is not registered in the name of the deceased farmer but in his father’s. This makes the process of proving and claiming rights very complicated for the farmer’s widow, while making it easier for the marital family to resort to all sorts of delaying tactics to retain control of the land.”

“Corruption among the ranks of the revenue officials does not help things. According to Maharashtra government regulations, a woman can register herself with the patwari (village level land records official) as co-owner or heir (in case of widowhood) of her husband’s land. But it is not uncommon for families and officials to form a nexus against the widow.”

“But the biggest deterrent to getting a clear title on land is the prohibitive cost of registration. This part can be so intimidating that even women whose land is registered in their husband’s names prefer to get the title in their son’s names instead of their own.”

“When talked to, (. .) women admit that such a step will make their own claims insecure when their sons are grown up. But partly due to cultural attitudes and partly due to lack of knowledge of legal options, they feel ‘compelled’ to take the steps they are taking.”

Pallavi, Aparna. Land titles don’t come easy for farm widows. 1 Jun 2007.

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Instead of the by the wives of the deceased, the land or property is often inherited by the male members of the family. This often happens even in societies where law enables women to inherit, but the traditional customs are stronger.

Moreover, a large part of the population may naturally lose the source of their livelihoods in conflicts, as some job opportunities become non-existent. Women are particularly concerned, especially when they lose their husbands and are left without support. “Often they are not receiving pensions or social assistance for various reasons: because the structures providing such assistance have broken down; because there are no resources to give to them; because they are not recognized by the authorities as eligible (unresolved cases of missing people, husbands in detention for acts committed in connection with the armed conflict or for supporting the opposing faction); or because they do not know about the assistance available and how to apply for it.”

“Many of the able-bodied men and boys in the villages have been lured into terrorism and killed. An entire generation is practically lost. Women traditionally worked in the fields in Kashmir, but the men were the prime agents to garner agricultural inputs, access markets for the surplus production etc. For many of the women impacted by armed conflict, working in the fields is neither lucrative nor safe. Added to this is voluntary and involuntary displacement. Many women particularly in the far-flung villages on the borders prefer to leave their homes and fields and migrate to the cities to prevent their young sons from being sucked into terrorism. This breach in the rural women’s participation in agriculture has resulted in low productivity and therefore declining food security. There is a loss of traditional occupations like embroidery and carpet weaving, since the armed conflicts have annihilated a once lucrative market. Since demands have depleted, profits have shrunk, women are paid a pittance for months of eye-straining back-breaking work. They are in no position to refuse since there are plenty willing to work for chicken feed. Added to this is the drying up of any new employment opportunities, since investment into the State is a million-dollar risk. Finally, there are a large number of widows and quasi-widows, illiterate, unskilled, burdened with large number of very young children. They are neither a part of the conflict nor do they have an active role in the various dimensions of the conflict. Very often they have no clue to the activities their men are involved in. But they become routinely pregnant on the furtive nocturnal visits of their men, and finally they are left to struggle for a decent life for themselves and their children.”


Relating law

Article 39 (a) of the Indian Constitution states: “The State shall, in particular, direct its policy towards securing – (a) that the citizens, men and women equally, have the right to an adequate means of livelihood.” Although women in India enjoy equal status with men under the Constitution, when it comes to reality, the opposite is very often the case.

“87 percent of women in the country are engaged in agriculture but only 36 percent have possession of land, the rest are farm labours. 71 per cent are women in the field of working force engaged in animal husbandry. Despite their marvelous role in agriculture and animal husbandry they are in receipt of only 5 per cent of rural financial loan. The main reason for this is lack of possession of land and homes in their names. Some years back, amendment has been made in the Indian Succession Act, 1925 by which daughters have been put on par with sons in paternal property, but the actual translation of this Act into real practice is worth nothing. Indian society, in this context, is mainly a conservative society where only males have rights in succession of paternal property. Women/daughters have been virtually deprived from this important right. The bad effect of educational backwardness and social inequality is visible more on employment scenario of women. Despite all the loud slogans and pious declarations of women's empowerment, there has been registered a very nominal increase at the level of work participation. The percentage of working women in 1991 was 22.3, it could only reach to 25.7 in 2001 because of undergrowth. Thus women are not successful in the field of employment. The main reason behind this is the lack of equal opportunities, although the Constitution expresses deep commitments for equal opportunity of the sexes.”


Even though there are provisions in Indian law protecting the right of women to property, they are often not enforced and what’s more, do not reach all the women. For example, the 2005 Hindu Succession (Amendment) Act improved the position of women as it “includes all daughters, particularly married daughters as coparceners in family property with the same birth rights as sons, (...) gives daughters (married or not) the same rights as sons to stay in their homes and demand partition, (...) enhances a woman’s security as she can return to her home by right and not be treated as a dependent by her male siblings or relatives,” (...) gives a Hindu woman a better social position in her marital family” and “enables widows of predeceased sons with the right to inherit the property of the deceased, if they remarried.” Daughters have thus bettered their positions, but at the same time in practice the rights of women in the role of widows remain less clear. In reality this can bring clashes of interests and even can be used against women-widows.

56 Hindu Women Become 'Equals'… Law is Greek, 29 Jan 2010.
57 Pallavi, Aparna. Land titles don’t come easy for farm widows. 1 Jun 2007.
Cultural practices still play a major and often deciding role in the actual application of women’s inheritance rights. “It is (...) an unspoken fact that in most families, the daughters are ‘persuaded’ to give up their share for the sake of family honor and maintaining family ties. This deprives them of their rights when they become widows and it forces them to be dependent on others and lead poor lives.” In addition, in some parts of India marriages are often not registered despite the requirements of the law. Then if the husband dies, the widow has no evidence of the marriage and her inheritance rights. It is clear that with the social stigma which widowhood brings, enforcing even clear and undisputable rights can be difficult. The social prejudice that widows face can grow to enormous amounts and lead to terrible crimes, as the continuing practice of branding widows illustrates.

G. Menon writes about women’s inheritance rights in India: “A woman’s ability to realize her inheritance rights depends on a variety of factors including her awareness of her rights, her community’s acknowledgement of her rights, her access to institutional (government and legal), and the extent to which she can be independent of the support system provided by her family, particularly those who might contest her claim.”

Although the Indian Constitution affords women equality with men, the same cannot be said about the personal laws functional in India, be it Hindu, Muslim or Christian law. Muslim women have inheritance rights to immovable property based on the pre-Independence Muslim Personal Law (Shariat) Application Act of 1937, however only in some States amendments have been taken to include agricultural land under this term. Also, the Muslim Women’s (Protection of Rights Upon Divorce) Act hinders the Muslim women’s right to ask for maintenance from their ex-husbands. Christian women have for decades unsuccessfully lobbied for the passage of the Christian Marriage and Matrimonial Causes Bill, which would give them equal rights of divorce and succession.

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58 Indian Constitution Laws and Social Justice For Widows. Law is Greek, 5 Apr 2010.
59 Ibid.
60 Menon, Gayatri. Women’s Access, Control and Tenure of Land and Settlements in India. 1995.
61 Ibid.
International law contains several safeguards for sustaining women livelihoods in conflict situations as well as in times of peace:

**Humanitarian law**
- The Geneva Conventions and Additional Protocols
  - do not explicitly treat the right of access to land, but address the issue through the prohibition on starvation of the civilian population as a method of warfare and the destruction of objects indispensable to the latter's survival, including agricultural areas for the production of foodstuff, crops and livestock
  - prohibit the destruction of real or personal property and guarantee the freedom of movement although these safeguards may be limited in times of conflict
- The Statute of the International Criminal Court – criminalizes pillage and destroying or seizing the property of an adversary

**Human rights law**
- The Universal Declaration of Human Rights - Article 17 states: “everyone has the right to own property alone as well as in association with others” and “no one shall be arbitrarily deprived of his property”
- The International Covenant on Economic, Social and Cultural Rights – silent on the right to property; contains the right to work
- The Convention on the Elimination of Discrimination Against Women – Article 16 (h) guarantees “the same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration”
  - Article 11 guarantees women the right to work and the right to same employment opportunities as men

**Regional instruments**
- Protocol No.1 to the European Convention on Human Rights
- The African Charter on Human and Peoples’ Rights
  - both include the right to peaceful enjoyment of one’s possessions without discrimination based on sex
  - guarantees the right to work without discrimination based on sex
- Additional Protocol to the American Convention on Human Rights - guarantees the right to work discrimination based on sex

**Other instruments containing the right to property**
- Convention relating to the Status of Refugees
- Convention relating to the Status of Stateless Persons
  - contain several provisions concerning the rights to property
- The International Convention on the Elimination of All Forms of Racial Discrimination
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
- Convention on the Rights of Persons with Disabilities
- The International Labour Organization Convention No. 169 concerning Indigenous and Tribal Peoples
  - clearly spell out the right to property

3.4 Displacement

Up to 80% of the displaced populations in the world are women and children. These women are extremely vulnerable and exposed to abuses and dangers already mentioned. When women flee their homes, they have habitually lost the protection of their male relatives, have left behind the sources of their livelihoods and many of them carry children they have to take care of. In such a defenseless position they heavily depend on arrangements protecting their security. If these aren’t provided, they become easy targets of sexual violence, as frequently they are forced to buy their way to their destination through sexual favours. However, even reaching displacement camps doesn’t by itself mean reaching safety, as in these camps they are often violated by the same people who are meant to protect them and who take advantage of their vulnerability. Further dangers arise, if the camps authorities fail to address specific women needs. Simple facts, such as the location of washing and bathing facilities or of latrines, can play a major role in the protection of women against rape and other assaults. Women also have specific health requirements that must be met. Pregnant women are especially at risk without appropriate support services. With increased exposure to sexual violence and unhygienic conditions, women are more in danger of getting infected by HIV or other diseases. In addition, many of them are forced by circumstances to become single heads of households and for these women sustaining their livelihood can be especially difficult in the camps. Since habitually they are not considered to be (and are themselves not used to being) part of the ‘public’ life, they can be and often are discriminated against in food distribution and access to welfare services.

Although no official statistics exist, it is estimated that there are at least 500,000 conflict-induced IDPs in India. “This figure includes those people displaced since 1990 by separatist violence targeting the Hindu minority in Jammu and Kashmir, and by shelling between Indian and Pakistani forces along Kashmir’s "line of control"; those displaced in states of the north-east by conflicts ongoing since 1947 between state and ethnic or secessionist groups, and by inter-ethnic and intra-ethnic violence; victims of the conflict between Naxalite insurgents and government security forces and armed vigilantes in Chhattisgarh State; victims of communal violence between the majority Hindu populations in Gujarat and Orissa States and the States’ respective Muslim and Christian minorities; and people displaced in West Bengal by violence related to a proposed development project. In 2009, people were newly displaced by armed conflict and violence in the north-east (Manipur, Assam, and Mizoram States) and in Orissa State.”

Internal Displacement Monitoring Centre (IDMC), Internal Displacement: Global Overview of Trends and Developments in 2009 - India. 17 May 2010.

Relating law

As the internally displaced persons (IDPs) have not crossed any international border, they are not referred to as refugees and receive limited protection from international law. 64 The IDPs in India are instead often addressed as migrants as they are not recognized under the national laws. There is no national policy that would protect conflict induced IDPs in India. The state authorities are expected to protect them; however they very often fail to do so. “The lack of a policy has meant that most programs to address the needs of IDPs have been inadequate.”65 Despite the guarantees of the basic rights to life, food and shelter in the Indian Constitution, the protection, food provisions and medical aid to IDPs have been insufficient.66

“Over 200,000 IDPs now live in 78 relief camps in Kokrajhar and Bongaigaon districts of Assam. Conditions are very poor. Shelters consist of rows of temporary sheds made of polythene and aluminium sheets. People sleep on the ground on makeshift beds of bamboo; and there is a lack of clean drinking water; and diseases such as malaria, jaundice, dysentery, diarrhoea and influenza pose a serious threat. Groups of five to six people are forced to share essentials. To supplement food rations, which are adequate for at most 10 days a month, they are compelled to consume snails, insects and wild plants. Pregnant women, children, and the elderly suffer the highest health risks in the camps. Over the past couple years, camps have been attacked repeatedly, leaving several dead and dozens injured.”

“In Mizoram fearing persecution from the ethnic majority Mizos, 15,000 to 50,000 Reang tribals have fled their homes since 1997 and found shelter in north Tripura, border villages of Assam and the Chittagong Hill Tracts of Bangladesh. In order to accelerate the repatriation process, the Tripura government discontinued food rations and medical services in some camps, causing at least 16 people to starve to death. At least 260 IDPs died as a result of inadequate shelter and unclean water, and around 1,400 reportedly became seriously ill.”

“Displaced Kashmiri Pandits receive a monthly allowance, food aid, semi-permanent housing, medical and educational facilities, and many former government workers are still paid their full salaries. Nevertheless living conditions are poor; the dwellings are mere ‘cardboard rooms’ lacking proper drainage systems and other basic amenities.”


64 Sircar, Oishik. Can the Women Flee?..., 2006.
They have also been very inconsistent, as various groups of IDPs receive very different amount of aid.

“On 20 August 2007, ACHR filed two separate applications under the Right to Information Act, 2005 with the Ministry of Home Affairs (MHA) seeking information on the relief and rehabilitation being provided to the Kashmiri Pandits and over 35,000 Reang/Bru IDPs who were displaced from Mizoram State and moved to six relief camps in Tripura State. While the relief being provided to Kashmiri Pandits is not satisfactory, their treatment seem generous in comparison to the displaced Brus of Mizoram.

In addition to basic dry rations, Kashmiri Pandits have been given Rupees 1,000/- per head per month (subject to a maximum of Rs 4,000/- per family per month) in both the Jammu and Delhi relief camps. Meanwhile in Tripura, a displaced Bru adult is given Rs 87 per month and a minor Rs 43.5 per month. In addition a Bru adult is given 450 grams of rice a day. The allowance drops to 225 grams of rice for a minor.

On housing, provision again appears discriminatory in favour of Kashmir Pandits. For the Kashmiri Pandits 5,242 two-room tenements are being constructed at a cost of Rs 270 crore under the Prime Minister’s Reconstruction Plan for IDPs in the Jammu region of the state of Jammu and Kashmir. Rs 20 crores have been approved by Government of India for construction of 200 two bedroom flats at Sheikpora in Budgam district. Rs 10 crores has been provided to the State of Jammu and Kashmir for reconstruction and renovation of houses and shrines at Kheer Bhavani and Mattan. Another 18 three-room flats have been constructed at Mattan for temporary stay of Kashmiri migrants untill they are able to return to their houses in the Valley while the construction of 100 one-room houses has also been completed. In Delhi, the Delhi Development Authority has launched a Housing Scheme in July 2001 whereby expandable flats at subsidized rates have been made available to the migrants. About 234 families have availed the said scheme.

The Central government and the State government of Mizoram provided nothing to the displaced Brus.”


The differences between the benefits offered to Kashmiri Pandit IDPs and the Brus do not concern only varying amounts of food and cash rations and access to housing, but also access to education and the protection of properties left behind.  

The inconsistence and inadequacy of the aid provided to Indian IDPs has been the reason for many NGOs calling for the enactment of a nation wide framework, which would protect IDPs, and which would ideally be founded on the existing UN Guiding Principles on Internal

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Displacement which are based on significant international treaties. These Principles also contain important provisions that address the specific needs of women. Below are some of the provisions of the Guidelines together with other documents relating to the protection of displaced persons:

**Humanitarian law**
- The Geneva Conventions and Additional Protocols
  - prohibits parties in both international and internal conflicts from forcibly moving civilian populations
  - sets forward basic conditions for evacuations, e.g. the requirement for proper accommodation during displacement
  - evacuated persons must be transferred back to their homes as soon as the fights end
- The Statute of the International Criminal Court – criminalizes unlawful transports or deportations of protected persons

**Human rights law**
- displaced persons enjoy the full range of human rights
- The International Covenant on Civil and Political Rights
  - guarantees the right to freedom of movement and choice of residence (although this right can be derogated in times of national emergency)
- Refugee Convention
  - sets down rights of refugees, including access to courts, right to gain property and access to employment
- The UN Guiding Principles on Internal Displacement – selected provisions relating to women:
  - 3 (1.) National authorities have the primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction.
  - 4 (1.) These Principles shall be applied without discrimination of any kind... 2. Certain internally displaced persons, such as (…), expectant mothers, mothers with young children, female heads of household (...), shall be entitled to protection and assistance required by their condition and to treatment which takes into account their special needs.
  - 11 (2.) Internally displaced persons, whether or not their liberty has been restricted, shall be protected in particular against:
    - Rape, mutilation, torture, cruel, inhuman or degrading treatment or punishment, and other outrages upon personal dignity, such as acts of gender-specific violence, forced prostitution and any form of indecent assault;
    - Slavery or any contemporary form of slavery, such as sale into marriage, sexual exploitation, or forced labour of children;
  - 12 (1.) Every human being has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention.
  - 18 (1.) All internally displaced persons have the right to an adequate standard of living. (…)
  - 3. Special efforts should be made to ensure the full participation of women in the planning and distribution of (these) basic supplies.
  - 19 (2.) Special attention should be paid to the health needs of women, including access to female health care providers and services, such as reproductive health care, as well as appropriate counselling for victims of sexual and other abuses.
  - 20 (1.) Every human being has the right to recognition everywhere as a person before the law. (...)
  - 3. Women and men shall have equal rights to obtain (such) necessary documents and shall have the right to have such documentation issued in their own names.
  - 23 (1.) Every human being has the right to education. 3. Special efforts should be made to ensure the full and equal participation of women and girls in educational programmes.
  - 4. Education and training facilities shall be made available to internally displaced persons, in particular adolescents and women, whether or not living in camps, as soon as conditions permit.

3.5 Access to Justice

Despite the continuing violations of women rights, especially in situations in conflict when the traditional order breaks down, too many cases still pass unreported and/or unpunished. Women whose rights have been violated sadly very often do not report the crimes at all. There are many reasons for this, as women face a large number of obstacles preventing them from doing so. A great part of the causes stem from the inferior position of women in the society: women may be restricted to their homes and have very limited access to the ‘public’ areas of life, legal issues are often seen as the domain of the male members of the family and the widespread lack of literacy skills of women bars them from learning about their rights and approaching public authorities. Many of them are expected to care for the households and children and thus do not have the time to travel long distances if the police or legal offices are far. Besides, they might fear reprisals or other disapproving reactions of their community.

The problem lays in the system itself as well, since it is highly dominated by men. Women are under-represented in judicial processes which also explains why these processes are so often gender biased. Female lawyers may be inaccessible and often no support services are available to women. The system reflects the general climate, which considers sexual violence against women as natural and too often grants impunity to perpetrators of these crimes.

The Brussels Working Group on Violence against Women in Conflict lists the following obstacles to women’s access to justice which are linked to their general inferior status in many societies:

<table>
<thead>
<tr>
<th>Legal Obstacles</th>
</tr>
</thead>
<tbody>
<tr>
<td>Discrimination in the law and existence of legal systems unfairly biased in favour of men (e.g. the absence of prohibition of serious offences such as marital rape)</td>
</tr>
<tr>
<td>Lack of implementation</td>
</tr>
<tr>
<td>Criminalisation of victims and fear of prosecution (e.g. victims of rape may be prosecuted for illegal sexual intercourse or adultery)</td>
</tr>
<tr>
<td>Lack of reparation programs</td>
</tr>
<tr>
<td>Lack of consent as an element of proof in cases of rape</td>
</tr>
<tr>
<td>Legally sanctioned impunity (in peacetime, through amicable settlements (financial agreement or marriage) provided for in the law, or in conflict situations through amnesty)</td>
</tr>
<tr>
<td>Disproportionate and non-deterring penalties (e.g. in some countries the minimum penalties for rape are lower than those for theft)</td>
</tr>
</tbody>
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70 UN Development Fund for Women (UNIFEM) Portal on Women, War, Peace.
Women Rights in Conflict Zones

Issues

Relating law

With the establishment of the International Criminal Tribunal for the former Yugoslavia (ICTY), the International Criminal Tribunal for Rwanda and the International Criminal Court, long awaited steps and progress in punishing crimes against women have been taken.

The importance of these courts and their jurisprudence for the rights of women, especially concerning protection against sexual violence, cannot be overestimated. However it must be noted that crimes against women continue to be committed in large numbers every day and for these women it is important that more easily reached institutions, such as national courts and support services, work properly, help them and punish the violations of their rights. Yet accessing justice at national courts in post-conflict situations can be difficult due to discrimination against women, lack of technical capacities or lack of legal personnel.\(^{71}\)

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\(^{71}\) UN Development Fund for Women (UNIFEM) Portal on Women, War, Peace.
Women Rights in Conflict Zones

Issues

Therefore at many places traditional justice systems have been used to complement for the deficiencies of national judicial processes.

In some countries truth and reconciliation commissions have been organized to provide forums for victims of war crimes, gather their testimonies and evidence against perpetrators of the crimes.\(^72\) As the Truth and Reconciliation Commission of South Africa proves, such forums, when the participation is restricted to women only, can be used to easier gather proof on crimes against women.\(^73\)

Also, compensation mechanisms have been set up under the Rome Statute of the International Criminal Court (ICC). “The ICC can make a reparations order, either against the accused directly, or through a Trust Fund established under Article 79 of the Rome Statute and funded by voluntary donations and all money and property collected by the Court through fines and forfeitures.”\(^74\) It is important that women victims receive compensation and rehabilitation as a part of the recognition of the crimes committed against them.

Access to justice and remedies for the victims of crimes are treated by the international instruments listed on the next page. In addition to these, according to the Brussels Working Group on Violence against Women in Conflict, the requirement included in international law that ‘due process as well as the right to access to justice, must be guaranteed to everyone without discrimination of any kind’ implies that:

- “There is a legal obligation to carry out a prompt, effective, thorough, independent and impartial investigation into cases of gender-based violence, the result of which must be made public.
- Effective access to police and complaint mechanisms must be guaranteed in all cases to ensure that no woman is deprived of her right to claim justice.
- The case must be heard by a competent, impartial and independent judicial body.
- The remedies must be effective and adequate.
- The punishment should be proportionate to the gravity of the violation.
- The remedies must be adequate and duly enforced by the competent authorities.
- Although most international human rights treaties do not specify how a violation of a legal obligation should be remedied, they impose on States the duty to ensure that women obtain effective reparation, including rehabilitation.”\(^75\)

\(^72\) Ibid.
\(^74\) UN Development Fund for Women (UNIFEM) Portal on Women, War, Peace.
Humanitarian law
- The Geneva Conventions and Additional Protocols
- The 1907 Hague Regulations - prohibit declaring “abolished, suspended, or inadmissible in a court of law the rights and actions of the nationals of the hostile party”

Jurisprudence of the special courts and tribunals and of the International Criminal Court
- International Criminal Tribunal for the former Yugoslavia
- International Criminal Tribunal for Rwanda
- Special Court for Sierra Leone
- International Criminal Court

Human rights law
- The International Covenant on Civil and Political Rights
  - Article 2(3) requires States:
    "(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
    (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
    (c) To ensure that the competent authorities shall enforce such remedies when granted.”
  - the Human Rights Committee issues opinions on violations of the Covenant by party States

Regional treaties - require States to provide effective remedies for violations of the rights and the right to a fair and public hearing before an independent and impartial tribunal
- African Charter on Human and Peoples’ Rights
- American Convention on Human Rights
- European Convention for the Protection of Human Rights and Fundamental Freedoms

Regional courts - consider and/or award compensations to victims
- African Commission on Human and Peoples’ Rights
- Inter-American Court of Human Rights
- European Court of Human Rights

Conclusion: recommendations

4 Conclusion: recommendations

From the presentation of the issues which women in conflict zones have to face, it is clear that lots of work needs to be done to improve the situation. The studies we used concur on a number of recommendations on steps to be made to achieve this objective. According to these, States and societies should:

On violence

- Criminalise all forms of violence against women (custodial, domestic, sexual violence and trafficking) under national laws with strong punitive measures;
- Exclude crimes of sexual violence from amnesty accords;
- Sensitize law enforcement officials, including judges, police and armed forces, about crimes against women;
- Emphasize the prohibition of sexual violence in military codes and training manuals of police officers, military and paramilitary groups and peacekeeping forces;
- Carry out fast and effective investigations of rape, prosecute all security personnel in civilian courts and give punishments not lower than under civilian law;
- Protect medical workers examining victims of sexual and custodial violence;
- Regarding custodial violence in India, always apply rules established by the Supreme Court concerning arrest and detention of women suspects;

On health

- Provide victims of violence with rapid and appropriate health care, trauma counseling and rehabilitation programmes including reintegration into the community, while giving special emphasis to the needs of women;
- Make available a sufficient number of trained female medical personnel;
- Always provide basic reproductive health services accessible to women;

On work, land and property rights

- Provide training and agricultural and work assistance programmes to women, especially those who are displaced or have become single heads of households;

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Women Rights in Conflict Zones: A Focus on India

Conclusion: recommendations

On displacement

- Engage women in the process of planning of displacement camps, take into account their needs and adopt practical measures for their safety (for example: “involving female security officers in the patrolling of camps; appropriate fencing and lighting to deter night raids; appropriate location of sanitary facilities limiting women’s exposure to abuse; provision of food which needs limited cooking; and types of heating and cooking stoves which reduce the need to collect firewood outside the camps, so reducing the risk of injury or attack”77);
- Train and sensitize personnel in displacement camps to special women needs;
- Incorporate the UN Guiding Principles on Internal Displacement into national laws;

On access to justice

- Train and make available special, preferably female, police staff for approaching women victims of violence;
- Organize Commissions in the nature of truth and reconciliation commissions to enable victims of violence to speak up and gather evidence of crimes committed against them;
- Ensure that witnesses are protected and prevent re-victimization of women by insensitive practices of law-enforcement officials;
- Provide reparation programmes to victims of violence including compensation and re-integration into their communities;

The ICRC gives the following suggestions based on their experience to encourage women victims of sexual violence to speak up about their experience:

“Programmes should avoid branding women who participate in activities as “rape victims”. As an alternative approach, destitute women in the community were encouraged to come together to engage in activities such as knitting and sewing. Humanitarian workers went into the villages that had been attacked and met with women who may have suffered sexual violence and directed them to these centres. This doubled as a protective mechanism, as women who would otherwise have been vulnerable to isolation or to violence were invited to participate in the activities conducted by the centre. The benefit was that these community centres consisted of a mixture of women who had and had not been exposed to violence. In this way, there was no stigma designating participants as “rape victims” in the eyes of their community.”


UNIFEM suggests the example of Sierra Leone for encouraging women to report crimes through special police units:

“The Sierra Leone Police (SLP), for example, have established Family Support Units (FSU) with specially trained male and female officers dedicated to working with victims of rape, sexual abuse, domestic violence and trafficking. Located in the main police stations across the country, the FSUs are supposed to provide compassionate, humane, and appropriate assistance. The FSUs also have established referral services for free medical care and legal assistance. The FSU also engages in extensive public awareness-raising efforts, especially on the topics of sexual violence, domestic violence, HIV/AIDS, trafficking and female genital mutilation.

In the past, women rarely reported such crimes to the SLP. The FSUs, however, have been effective in enabling women to report cases of gender based violence. In 2003, FSUs received and investigated 3121 reports of sexual and physical violence, a significant increase over reporting in previous years. This rise in the number of reported cases is seen as a result of increased public awareness and public confidence in the FSUs. Furthermore, a UNICEF assessment of the FSUs found that the stigma associated with sexual exploitation and abuse has diminished, and people are more aware of the support services available.”

For spreading awareness among women about their rights UNIFEM recommends using radio and theatre:

“Radio has proved to be an effective communication method for reaching women, especially among illiterate audiences. In Nepal, for example, Equal Access, in partnership with General Welfare Prathistan, trained rural women as community radio reporters. As reporters, these women collected stories from other rural women to create a radio program entitled ‘Changing our World.’ This program, which reached two million listeners, covered issues relating to women’s human rights, peace-building, and violence against women. Importantly, 60 community listener groups were set up to encourage grass-roots leadership and changes in attitudes and behavior. The project succeeded not only in increasing the awareness of community members regarding violence against women, but also served as a catalyst for actual changes in attitudes and behaviors. For example, there was a reduction of incidents of domestic violence in the communities and an increased reporting of incidents of violence to authorities. The project also created a pool of qualified and motivated women reporters.

Similarly, supported by the International Women’s Development Agency, Women’s Action for Change (WAC) in Fiji uses theatre as a tool in challenging sexist attitudes and violence against women, against the backdrop of ethnic tensions of Fiji.”

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Conclusion: recommendations

In general

- Spread awareness among women about their rights, provide them with literacy programmes, legal and support services;
- Spread awareness of the rights of women in the society – for example through radio and theatre;
- Support women groups as means for dissemination of knowledge on women rights and an important part of rehabilitation programmes for victims of violence;
- Involve men in programming activities to secure their support, promote community based programmes;
- Ratify important international human rights treaties, such as the Convention against Torture, the Refugee Convention, Additional Protocols to the Geneva Conventions and Protocols to the International Covenant on Civil and Political Rights and the Convention on the Elimination of all forms of Discrimination against Women, as well as the Rome Statute of the International Criminal Court.

As the problems faced by women in conflict situations are very closely intertwined with their position in times of peace, it is essential that the latter is addressed simultaneously. The social status of women must be uplifted not only in law but mainly in daily life. Efforts must be made to bring more attention to the heinous crimes committed against them and to the available remedies. Most importantly, awareness must be raised among them as well as in the society about their rights and their needs.
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UNDP. *Gender Approaches in Conflict and Post-Conflict Situations.* October 2002.


Pictures on the front page:

Upper: Security personnel with the body of a suspected female Maoist after the June 16 encounter in the Ranjha forests near Lalgarh.


Lower: Adivasi women in Bengal.

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6 Annex

6.1 Universal Declaration of Human Rights

UNIVERSAL DECLARATION OF HUMAN RIGHTS

Preamble
Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,
Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage during marriage and at its dissolution.
2. Marriage shall be entered into only with the free and full consent of the intending spouses.
3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.
2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

6.2 International Covenant on Economic, Social and Cultural Rights

INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Article 2
The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, politcs or other opinion, national or social origin, property, birth or other status.

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

The States Parties to the present Covenant recognize that:
1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and educate of dependent children. Marriage must be entered into with the free consent of the intending spouses.
2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.
3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.
2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:
   a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;
6.3 International Covenant on Civil and Political Rights

**INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS**

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, politics or other opinion, national or social origin property, birth or other status.

   **Article 3**

   The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

   **Article 14**

   1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a compact, independent and impartial tribunal established by law. The Press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

   Everyone shall have the right to recognition everywhere as a person before the law.

   **Article 18**

   1. Everyone shall have the right to freedom of thought, conscience and religion....
   4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

   **Article 23**

   1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.
   2. The right of men and women of marriageable age to marry and to found a family shall be recognized.
   3. No marriage shall be entered into without the free and full consent of the intending spouses.
   4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

   **Article 24**

   1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.
   2. Every child shall be registered immediately after birth and shall have a name.
   3. Every child has the right to acquire nationality.

   **Article 26**

   All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

6.4 Protocol Additional to the Geneva Conventions (Protocol II)

**Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977**

Preamble

The High Contracting Parties, Recalling that the humanitarian principles enshrined in Article 3 common to the Geneva Conventions of 12 August 1949, constitute the foundation of respect for the human person in cases of armed conflict not of an international character,

Recalling furthermore that international instruments relating to human rights offer a basic protection to the human person,

Emphasizing the need to ensure a better protection for the victims of those armed conflicts,

Recalling that, in cases not covered by the law in force, the human person remains under the protection of the principles of humanity and the dictates of the public conscience,

Have agreed on the following:
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Part I. Scope of this Protocol

Art 1. Material field of application

1. This Protocol, which develops and supplements Article 3 common to the Geneva Conventions of 12 August 1949 without modifying its existing conditions of application, shall apply to all armed conflicts which are not covered by Article 1 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) and which take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol.

2. This Protocol shall not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature, as not being armed conflicts.

Art 2. Personal field of application

1. This Protocol shall be applied without any adverse distinction founded on race, colour, sex, language, religion or belief, political or other opinion, national or social origin, wealth, birth or other status, or on any other similar criteria (hereinafter referred to as "adverse distinction") to all persons affected by an armed conflict as defined in Article 1.

2. At the end of the armed conflict, all the persons who have been deprived of their liberty or whose liberty has been restricted for reasons related to such conflict, as well as those deprived of their liberty or whose liberty is restricted after the conflict for the same reasons, shall enjoy the protection of Articles 5 and 6 until the end of such deprivation or restriction of liberty.

Art 3. Non-intervention

1. Nothing in this Protocol shall be invoked for the purpose of affecting the sovereignty of a State or the responsibility of the government, by all legitimate means, to maintain or re-establish law and order in the State or to defend the national unity and territorial integrity of the State.

2. Nothing in this Protocol shall be invoked as a justification for intervening, directly or indirectly, for any reason whatever, in the armed conflict or in the internal or external affairs of the High Contracting Party in the territory of which that conflict occurs.

Part II. Humane Treatment

Art 4 Fundamental guarantees

1. All persons who do not take a direct part or who have ceased to take part in hostilities, whether or not their liberty has been restricted, are entitled to respect for their person, honour and convictions and religious practices. They shall in all circumstances be treated humanely, without any adverse distinction. It is prohibited to order that there shall be no survivors.

2. Without prejudice to the generality of the foregoing, the following acts against the persons referred to in paragraph I are and shall remain prohibited at any time and in any place whatsoever:
   (e) violence to the life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment;
   (f) collective punishments;
   (g) taking of hostages;
   (h) acts of terrorism;
   (i) outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form or indecent assault;
   (j) slavery and the slave trade in all their forms;
   (k) pillage;
   (l) threats to commit any or the foregoing acts.

3. Children shall be provided with the care and aid they require, and in particular:
   (a) they shall receive an education, including religious and moral education, in keeping with the wishes of their parents, or in the absence of parents, of those responsible for their care;
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(b) all appropriate steps shall be taken to facilitate the reunion of families temporarily separated;
(c) children who have not attained the age of fifteen years shall neither be recruited in the armed forces or groups nor
allowed to take part in hostilities;
(d) the special protection provided by this Article to children who have not attained the age of fifteen years shall remain
applicable to them if they take a direct part in hostilities despite the provisions of subparagraph (c) and are captured;
(e) measures shall be taken, if necessary, and whenever possible with the consent of their parents or persons who by law
or custom are primarily responsible for their care, to remove children temporarily from the area in which hostilities
are taking place to a safer area within the country and ensure that they are accompanied by persons responsible for
their safety and well-being.

Art 5. Persons whose liberty has been restricted

1. In addition to the provisions of Article 4 the following provisions shall be respected as a minimum with regard to persons
deprived of their liberty for reasons related to the armed conflict, whether they are interned or detained;
   (a) the wounded and the sick shall be treated in accordance with Article 7;
   (b) the persons referred to in this paragraph shall, to the same extent as the local civilian population, be provided
with food and drinking water and be afforded safeguards as regards health and hygiene and protection against the rigours
of the climate and the dangers of the armed conflict;
   (c) they shall be allowed to receive individual or collective relief;
   (d) they shall be allowed to practise their religion and, if requested and appropriate, to receive spiritual assistance from
persons, such as chaplains, performing religious functions;
   (e) they shall, if made to work, have the benefit of working conditions and safeguards similar to those enjoyed by the
local civilian population.

2. Those who are responsible for the internment or detention of the persons referred to in paragraph 1 shall also, within the
limits of their capabilities, respect the following provisions relating to such persons:
   (a) except when men and women of a family are accommodated together, women shall be held in quarters separated
from those of men and shall be under the immediate supervision of women;
   (b) they shall be allowed to send and receive letters and cards, the number of which may be limited by competent
authority if it deems necessary;
   (c) places of internment and detention shall not be located close to the combat zone. The persons referred to in
paragraph 1 shall be evacuated when the places where they are interned or detained become particularly exposed to
danger arising out of the armed conflict, if their evacuation can be carried out under adequate conditions of safety;
   (d) they shall have the benefit of medical examinations;
   (e) their physical or mental health and integrity shall not be endangered by any unjustified act or omission. Accordingly, it
is prohibited to subject the persons described in this Article to any medical procedure which is not indicated by the
state of health of the person concerned, and which is not consistent with the generally accepted medical standards
applied to free persons under similar medical circumstances.

3. Persons who are not covered by paragraph 1 but whose liberty has been restricted in any way whatsoever for reasons
related to the armed conflict shall be treated humanely in accordance with Article 4 and with paragraphs 1 (a), (c) and (d), and 2
(b) of this Article.

4. If it is decided to release persons deprived of their liberty, necessary measures to ensure their safety shall be taken by those
so deciding.

Art 6. Penal prosecutions

1. This Article applies to the prosecution and punishment of criminal offences related to the armed conflict.

2. No sentence shall be passed and no penalty shall be executed on a person found guilty of an offence except pursuant to a
conviction pronounced by a court offering the essential guarantees of independence and impartiality.

In particular:

(a) the procedure shall provide for an accused to be informed without delay of the particulars of the offence alleged against him
and shall afford the accused before and during his trial all necessary rights and means of defence;
(b) no one shall be convicted of an offence except on the basis of individual penal responsibility;
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(c) no one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under the law, at the time when it was committed; nor shall a heavier penalty be imposed than that which was applicable at the time when the criminal offence was committed; if, after the commission of the offence, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby;

(d) anyone charged with an offence is presumed innocent until proved guilty according to law;

(e) anyone charged with an offence shall have the right to be tried in his presence;

(f) no one shall be compelled to testify against himself or to confess guilt.

3. A convicted person shall be advised on conviction of his judicial and other remedies and of the time-limits within which they may be exercised.

4. The death penalty shall not be pronounced on persons who were under the age of eighteen years at the time of the offence and shall not be carried out on pregnant women or mothers of young children.

5. At the end of hostilities, the authorities in power shall endeavour to grant the broadest possible amnesty to persons who have participated in the armed conflict, or those deprived of their liberty for reasons related to the armed conflict, whether they are interned or detained.

Part III. Wounded, Sick and Shipwrecked

Art 7. Protection and care

1. All the wounded, sick and shipwrecked, whether or not they have taken part in the armed conflict, shall be respected and protected.

2. In all circumstances they shall be treated humanely and shall receive to the fullest extent practicable and with the least possible delay, the medical care and attention required by their condition. There shall be no distinction among them founded on any grounds other than medical ones.

Art 8. Search

Whenever circumstances permit and particularly after an engagement, all possible measures shall be taken, without delay, to search for and collect the wounded, sick and shipwrecked, to protect them against pillage and ill-treatment, to ensure their adequate care, and to search for the dead, prevent their being despoiled, and decently dispose of them.

Art 9. Protection of medical and religious personnel

1. Medical and religious personnel shall be respected and protected and shall be granted all available help for the performance of their duties. They shall not be compelled to carry out tasks which are not compatible with their humanitarian mission.

2. In the performance of their duties medical personnel may not be required to give priority to any person except on medical grounds.

Art 10. General protection of medical duties

1. Under no circumstances shall any person be punished for having carried out medical activities compatible with medical ethics, regardless of the person benefiting there from.

2. Persons engaged in medical activities shall neither be compelled to perform acts or to carry out work contrary to, nor be compelled to refrain from acts required by, the rules of medical ethics or other rules designed for the benefit of the wounded and sick, or this Protocol.

3. The professional obligations of persons engaged in medical activities regarding information which they may acquire concerning the wounded and sick under their care shall, subject to national law, be respected.

4. Subject to national law, no person engaged in medical activities may be penalized in any way for refusing or failing to give information concerning the wounded and sick who are, or who have been, under his care.
Art 11. Protection of medical units and transports

1. Medical units and transports shall be respected and protected at all times and shall not be the object of attack.

2. The protection to which medical units and transports are entitled shall not cease unless they are used to commit hostile acts, outside their humanitarian function. Protection may, however, cease only after a warning has been given, setting, whenever appropriate, a reasonable time-limit, and after such warning has remained unheeded.

Art 12. The distinctive emblem

Under the direction of the competent authority concerned, the distinctive emblem of the red cross, red crescent or red lion and sun on a white ground shall be displayed by medical and religious personnel and medical units, and on medical transports. It shall be respected in all circumstances. It shall not be used improperly.

Part IV. Civilian Population

Art 13. Protection of the civilian population

1. The civilian population and individual civilians shall enjoy general protection against the dangers arising from military operations. To give effect to this protection, the following rules shall be observed in all circumstances.

2. The civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited.

3. Civilians shall enjoy the protection afforded by this part, unless and for such time as they take a direct part in hostilities.

Art 14. Protection of objects indispensable to the survival of the civilian population

Starvation of civilians as a method of combat is prohibited. It is therefore prohibited to attack, destroy, remove or render useless for that purpose, objects indispensable to the survival of the civilian population such as food-stuffs, agricultural areas for the production of food-stuffs, crops, livestock, drinking water installations and supplies and irrigation works.

Art 15. Protection of works and installations containing dangerous forces

Works or installations containing dangerous forces, namely dams, dykes and nuclear electrical generating stations, shall not be made the object of attack, even where these objects are military objectives, if such attack may cause the release of dangerous forces and consequent severe losses among the civilian population.

Art 16. Protection of cultural objects and of places of worship

Without prejudice to the provisions of the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict of 14 May 1954, it is prohibited to commit any acts of hostility directed against historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples, and to use them in support of the military effort.

Art 17. Prohibition of forced movement of civilians

1. The displacement of the civilian population shall not be ordered for reasons related to the conflict unless the security of the civilians involved or imperative military reasons so demand. Should such displacements have to be carried out, all possible measures shall be taken in order that the civilian population may be received under satisfactory conditions of shelter, hygiene, health, safety and nutrition.

2. Civilians shall not be compelled to leave their own territory for reasons connected with the conflict.

Art 18. Relief societies and relief actions

1. Relief societies located in the territory of the High Contracting Party, such as Red Cross (Red Crescent, Red Lion and Sun) organizations may offer their services for the performance of their traditional functions in relation to the victims of the armed conflict. The civilian population may, even on its own initiative, offer to collect and care for the wounded, sick and shipwrecked.
2. If the civilian population is suffering undue hardship owing to a lack of the supplies essential for its survival, such as foodstuffs and medical supplies, relief actions for the civilian population which are of an exclusively humanitarian and impartial nature and which are conducted without any adverse distinction shall be undertaken subject to the consent of the High Contracting Party concerned.

Part V. Final Provisions

Art 19. Dissemination

This Protocol shall be disseminated as widely as possible.

Art 20. Signature

This Protocol shall be open for signature by the Parties to the Conventions six months after the signing of the Final Act and will remain open for a period of twelve months.

Art 21. Ratification

This Protocol shall be ratified as soon as possible. The instruments of ratification shall be deposited with the Swiss Federal Council, depositary of the Conventions.

Art 22. Accession

This Protocol shall be open for accession by any Party to the Conventions which has not signed it. The instruments of accession shall be deposited with the depositary.

Art 23. Entry into force

1. This Protocol shall enter into force six months after two instruments of ratification or accession have been deposited.

2. For each Party to the Conventions thereafter ratifying or acceding to this Protocol, it shall enter into force six months after the deposit by such Party of its instrument of ratification or accession.

Art 24. Amendment

1. Any High Contracting Party may propose amendments to this Protocol. The text of any proposed amendment shall be communicated to the depositary which shall decide, after consultation with all the High Contracting Parties and the International Committee of the Red Cross, whether a conference should be convened to consider the proposed amendment.

2. The depositary shall invite to that conference all the High Contracting Parties as well as the Parties to the Conventions, whether or not they are signatories of this Protocol.

Art 25. Denunciation

1. In case a High Contracting Party should denounce this Protocol, the denunciation shall only take effect six months after receipt of the instrument of denunciation. If, however, on the expiry of six months, the denouncing Party is engaged in the situation referred to in Article 1, the denunciation shall not take effect before the end of the armed conflict. Persons who have been deprived of liberty, or whose liberty has been restricted, for reasons related to the conflict shall nevertheless continue to benefit from the provisions of this Protocol until their final release.

2. The denunciation shall be notified in writing to the depositary, which shall transmit it to all the High Contracting Parties.

Art 26. Notifications

The depositary shall inform the High Contracting Parties as well as the Parties to the Conventions, whether or not they are signatories of this Protocol, of:

(a) signatures affixed to this Protocol and the deposit of instruments of ratification and accession under Articles 21 and 22;
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(b) the date of entry into force of this Protocol under Article 23; and

(c) communications and declarations received under Article 24.

Art 27. Registration

1. After its entry into force, this Protocol shall be transmitted by the depositary to the Secretariat of the United Nations for registration and publication, in accordance with Article 102 of the Charter of the United Nations.

2. The depositary shall also inform the Secretariat of the United Nations of all ratifications, accessions and denunciations received by it with respect to this Protocol.

Art 28. - Authentic texts

The original of this Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the depositary, which shall transmit certified true copies thereof to all the Parties to the Conventions.

6.5 Geneva Convention (IV)

Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949

Article 3

Conflicts not of an international character,- In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each party to the conflict shall be bound to apply, as a minimum, the following provisions:

(1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:
(a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
(b) taking of hostages;
(c) outrages upon personal dignity, in particular humiliating and degrading treatment.
(d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

(2) The wounded and sick shall be collected and cared for.

An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.

The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.

The application of the preceding provisions shall not effect the legal status of the Parties to the conflict.

Art. 14. In time of peace, the High Contracting Parties and, after the outbreak of hostilities, the Parties thereto, may establish in their own territory and, if the need arises, in occupied areas, hospital and safety zones and localities so organized as to protect from the effects of war, wounded, sick and aged persons, children under fifteen, expectant mothers and mothers of children under seven.
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Art. 16. The wounded and sick, as well as the infirm, and expectant mothers, shall be the object of particular protection and respect.

Art. 23. Each High Contracting Party shall allow the free passage of all consignments of medical and hospital stores and objects necessary for religious worship intended only for civilians of another High Contracting Party, even if the latter is its adversary. It shall likewise permit the free passage of all consignments of essential foodstuffs, clothing and tonics intended for children under fifteen, expectant mothers and maternity cases.

Art. 27. Protected persons are entitled, in all circumstances, to respect for their persons, their honour, their family rights, their religious convictions and practices, and their manners and customs. They shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof and against insults and public curiosity. Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault.

Without prejudice to the provisions relating to their state of health, age and sex, all protected persons shall be treated with the same consideration by the Party to the conflict in whose power they are, without any adverse distinction based, in particular, on race, religion or political opinion.

Art. 38 5) children under fifteen years, pregnant women and mothers of children under seven years shall benefit by any preferential treatment to the same extent as the nationals of the State concerned.

Art. 50. The Occupying Power shall not hinder the application of any preferential measures in regard to food, medical care and protection against the effects of war which may have been adopted prior to the occupation in favour of children under fifteen years, expectant mothers, and mothers of children under seven years.

Art. 76. Women shall be confined in separate quarters and shall be under the direct supervision of women.

Art. 85. Whenever it is necessary, as an exceptional and temporary measure, to accommodate women internees who are not members of a family unit in the same place of internment as men, the provision of separate sleeping quarters and sanitary conveniences for the use of such women internees shall be obligatory.

Art. 89. Expectant and nursing mothers and children under fifteen years of age, shall be given additional food, in proportion to their physiological needs.

Art. 97. A woman internee shall not be searched except by a woman.

Art. 98. The amount of allowances granted by the Power to which they owe allegiance shall be the same for each category of internees (infirm, sick, pregnant women, etc.) but may not be allocated by that Power or distributed by the Detaining Power on the basis of discriminations between internees which are prohibited by Article 27 of the present Convention.

Art. 124. Women internees undergoing disciplinary punishment shall be confined in separate quarters from male internees and shall be under the immediate supervision of women.

Art. 132. The Parties to the conflict shall, moreover, endeavour during the course of hostilities, to conclude agreements for the release, the repatriation, the return to places of residence or the accommodation in a neutral country of certain classes of internees, in particular children, pregnant women and mothers with infants and young children, wounded and sick, and internees who have been detained for a long time.
6.6 Women and customary international law

Rule 134. Women

**Rule 134.** The specific protection, health and assistance needs of women affected by armed conflict must be respected.

*Note:* International humanitarian law affords women the same protection as men — be they combatants, civilians or persons hors de combat. All the rules set out in the present study therefore apply equally to men and women without discrimination. However, recognizing their specific needs and vulnerabilities, international humanitarian law grants women a number of further specific protections and rights. The present rule identifies certain of these additional protections and rights.[1]

**Summary**

State practice establishes this rule as a norm of customary international law applicable in both international and non-international armed conflicts. The practice collected with regard to the specific needs of women is reinforced by and should be viewed in the light of the specific practice relating to the prohibition of sexual violence (see Rule 99) and the obligation to separate women deprived of their liberty from men (see Rule 119), as well as the prominent place of women’s rights in human rights law.

**International armed conflicts**

The rule that the specific needs of women affected by armed conflict must be respected flows from provisions found in each of the four Geneva Conventions.[2] The First Geneva Convention, for example, requires that “women shall be treated with all consideration due to their sex”. Additional Protocol I provides that “women shall be the object of special respect”.[3] Numerous military manuals refer to the obligation to respect the specific needs of women affected by armed conflict. Violation of this obligation is an offence under the legislation of some States.[5] This obligation is also supported by official statements.[6] Inspired by the terminology used in the Geneva Conventions and Additional Protocol I, this practice is often phrased in terms of special protection or special respect to be granted to women, or in terms of treatment to be accorded “with due regard to their sex” or “with all consideration due to their sex” or other similar expressions. The formulation used in the present rule, namely that the specific needs of women must be respected, is based on the meaning of these phrases.

**Non-international armed conflicts**

While common Article 3 of the Geneva Conventions and Additional Protocol II do not contain a general rule stating that the specific needs of women must be respected, they refer to specific aspects of this rule by requiring respect for the person and honour of each, prohibiting violence to life, health and physical and mental well-being, prohibiting outrages upon personal dignity, including humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault, and requiring the separation of women and men in detention.[7] These specific rules indicate a similar concern for the fate of women in non-international armed conflicts.

The requirement to respect the specific needs of women is included in several military manuals which are applicable in or have been applied in non-international armed conflicts.[8] Violation of this obligation is an offence under the legislation of some States.[9] In addition, the requirement of special respect for women is contained in other instruments pertaining also to non-international armed conflicts.[10]

The UN Security Council, ECOSOC and the UN Commission on Human Rights do not distinguish between international and non-international armed conflicts with respect to the protection of women in armed conflicts.[11] The UN Security Council, for example, has called for respect for the specific needs of women in the context of particular conflicts, such as in Afghanistan, but also in general.[12] In a resolution adopted in 2000 on protection of civilians in armed conflicts, the UN Security Council expressed its grave concern at the “particular impact that armed conflict has on women” and reaffirmed “the importance of fully addressing their special protection and assistance needs”. The UN Secretary-General’s Bulletin on observance by United Nations forces of international humanitarian law provides that “women shall be especially protected against any attack”. [14] The UN Special Rapporteur on Violence against Women, its Causes and Consequences and the Committee on the
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Elimination of Discrimination against Women have expressed concern at the violation of women’s rights in international and non-international armed conflicts.\[15\] In 1992, the Committee stated that gender-based violence impairs or nullifies “the right to equal protection according to humanitarian norms in time of international or internal armed conflict”.\[16\] The Plan of Action for the years 2000–2003, adopted by the 27th International Conference of the Red Cross and Red Crescent in 1999, called for “particular protective measures for women and girls”.\[17\]

Interpretation

The specific needs of women may differ according to the situation in which they find themselves – at home, in detention or displaced as a result of the conflict – but they must be respected in all situations. Practice contains numerous references to the specific need of women to be protected against all forms of sexual violence, including through separation from men while deprived of liberty (see Rule 119). While the prohibition of sexual violence applies equally to men and women, in practice women are much more affected by sexual violence during armed conflicts (see also commentary to Rule 93). The 26th International Conference of the Red Cross and Red Crescent indicated other specific needs when it called for measures “to ensure that women victims of conflict receive medical, psychological and social assistance”.\[18\] Similarly, in 1999, in a report to the UN General Assembly, the Committee on the Elimination of Discrimination against Women required States to ensure that “adequate protection and health services, including trauma treatment and counselling, are provided for women in especially difficult circumstances, such as those trapped in situations of armed conflict”.\[19\]

Particular care for pregnant women and mothers of young children

One specific example of respect for the specific needs of women is the requirement that pregnant women and mothers of young children, in particular nursing mothers, be treated with particular care. This requirement is found throughout the Fourth Geneva Convention, as well as in Additional Protocol I.\[20\] These provisions require special care for pregnant women and mothers of young children with regard to the provision of food, clothing, medical assistance, evacuation and transportation. Such requirements are set forth in many military manuals.\[21\] They are also found in the legislation of some States.\[22\] Additional Protocol I provides that the protection and care due to the wounded and sick is also due to maternity cases and “other persons who may be in need of immediate medical assistance or care, such as … expectant mothers”.\[23\] Such persons are thus entitled to the rights identified in Chapter 34, including adequate medical care and priority in treatment based on medical grounds (see Rule 110).

Death penalty on pregnant women and mothers of young children

Additional Protocol I requires that parties to a conflict endeavour, to the maximum extent feasible, to avoid the pronouncement of the death penalty on pregnant women or mothers having dependent infants for an offence related to the armed conflict. Furthermore, the death penalty for such offences may not be executed on such women.\[24\] Additional Protocol II prohibits altogether the imposition of the death penalty on pregnant women or mothers of young children.\[25\] These rules are also set forth in some military manuals.\[26\]

The prohibition on carrying out the death penalty on pregnant women is also set forth in the International Covenant on Civil and Political Rights and the American Convention on Human Rights.\[27\] "


\[1\] For an exhaustive study of the impact of armed conflict on women, see Charlotte Lindsey, Women Facing War, ICRC, Geneva, 2001.
\[2\] First Geneva Convention, Article 12, fourth paragraph (cited in Vol. II, Ch. 39, § 1); Second Geneva Convention, Article 12, fourth paragraph (ibid., § 1); Third Geneva Convention, Article 14, second paragraph (ibid., § 2); Fourth Geneva Convention, Article 27, second paragraph (ibid., § 3).
\[3\] Additional Protocol I, Article 76(1) (adopted by consensus) (ibid., § 5).
\[4\] See, e.g., the military manuals of Argentina (ibid., § 15), Australia (ibid., §§ 16–17), Benin (ibid., § 18), Canada (ibid., § 20), Ecuador (ibid., § 21), El Salvador (ibid., §§ 22–23), France (ibid., § 24), India (ibid., § 25), Indonesia (ibid., § 26), Madagascar (ibid., § 27), Morocco (ibid., § 28),
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Netherlands (ibid., § 29), New Zealand (ibid., § 30), Nigeria (ibid., § 31), Philippines (ibid., § 32), Spain (ibid., § 33), Sweden (ibid., § 34), Switzerland (ibid., § 35), Togo (ibid., § 36), United Kingdom (ibid., § 37), United States (ibid., §§ 38–40) and Yugoslavia (ibid., § 41).

[5] See, e.g., the legislation of Azerbaijan (ibid., § 43), Bangladesh (ibid., § 44), Ireland (ibid., § 45), Norway (ibid., § 46) and Venezuela (ibid., § 47); see also the draft legislation of Argentina (ibid., § 42).


[8] See, e.g., the military manuals of Australia (cited in Vol. II, Ch. 39, § 16), Benin (ibid., § 18), Ecuador (ibid., § 21), El Salvador (ibid., §§ 22–23), India (ibid., § 25), Madagascar (ibid., § 27), Philippines (ibid., § 32), Togo (ibid., § 36) and Yugoslavia (ibid., § 41).

[9] See, e.g., the legislation of Azerbaijan (ibid., § 43) and Venezuela (ibid., § 47); see also the draft legislation of Argentina (ibid., § 42).

[10] See, e.g., Memorandum of Understanding on the Application of IHL between Croatia and the Socialist Federal Republic of Yugoslavia, § 4 (ibid., § 12); Agreement on the Application of IHL between the Parties to the Conflict in Bosnia and Herzegovina, § 2.3(2) (ibid., § 13).


[12] See, e.g., UN Security Council, Res. 1076 (ibid., § 51), Res. 1193 and 1214 (ibid., § 52), Res. 1261 (ibid., § 53), Res. 1333 (ibid., § 56) and Statement by the President (ibid., § 57).


[14] UN Secretary-General’s Bulletin, Section 7.3 (ibid., § 14).


[18] 26th International Conference of the Red Cross and Red Crescent, Res. II (ibid., § 66).


[20] See Fourth Geneva Convention, Articles 16–18, 21–23, 38, 50, 89, 91 and 127 (ibid., §§ 76–80); Additional Protocol I, Article 70(1) (adopted by consensus) (ibid., § 81) and Article 76(2) (adopted by consensus) (ibid., § 82).

[21] See, e.g., the military manuals of Argentina (ibid., §§ 86–87), Australia (ibid., § 88), Canada (ibid., § 90), Colombia (ibid., § 91), France (ibid., §§ 92–93), Germany (ibid., § 94), Kenya (ibid., § 95), Madagascar (ibid., § 96), Netherlands (ibid., § 97), New Zealand (ibid., § 98), Nigeria (ibid., §§ 99–100), Spain (ibid., § 101), Switzerland (ibid., § 102), United Kingdom (ibid., §§ 103–104) and United States (ibid., §§ 105–106).

[22] See, e.g., the legislation of Azerbaijan (ibid., § 107), Bangladesh (ibid., § 108), Ireland (ibid., § 109), Norway (ibid., § 110) and Philippines (ibid., § 111).


[26] See, e.g., the military manuals of Argentina (ibid., § 124), Canada (ibid., § 125), New Zealand (ibid., § 126), Nigeria (ibid., § 127) and Spain (ibid., § 128).

[27] International Covenant on Civil and Political Rights, Article 6(5) (ibid., § 118); American Convention on Human Rights, Article 4(5) (ibid., § 119).

6.7 Convention on the Elimination of All Forms of Discrimination Against Women

The States Parties to the present Convention,

Noting that the Charter of the United Nations reaffirms faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women,

Noting that the Universal Declaration of Human Rights affirms the principle of the inadmissibility of discrimination and proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, including distinction based on sex,

Noting that the States Parties to the International Covenants on Human Rights have the obligation to ensure the equal rights of men and women to enjoy all economic, social, cultural, civil and political rights,

Considering the international conventions concluded under the auspices of the United Nations and the specialized agencies promoting equality of rights of men and women,

Noting also the resolutions, declarations and recommendations adopted by the United Nations and the specialized agencies promoting equality of rights of men and women,
Concerned, however, that despite these various instruments extensive discrimination against women continues to exist,

Recalling that discrimination against women violates the principles of equality of rights and respect for human dignity, is an obstacle to the participation of women, on equal terms with men, in the political, social, economic and cultural life of their countries, hampers the growth of the prosperity of society and the family and makes more difficult the full development of the potentialities of women in the service of their countries and of humanity,

Concerned that in situations of poverty women have the least access to food, health, education, training and opportunities for employment and other needs,

Convinced that the establishment of the new international economic order based on equity and justice will contribute significantly towards the promotion of equality between men and women,

Emphasizing that the eradication of apartheid, all forms of racism, racial discrimination, colonialism, neo-colonialism, aggression, foreign occupation and domination and interference in the internal affairs of States is essential to the full enjoyment of the rights of men and women,

Affirming that the strengthening of international peace and security, the relaxation of international tension, mutual cooperation among all States irrespective of their social and economic systems, general and complete disarmament, in particular nuclear disarmament under strict and effective international control, the affirmation of the principles of justice, equality and mutual benefit in relations among countries and the realization of the right of peoples under alien and colonial domination and foreign occupation to self-determination and independence, as well as respect for national sovereignty and territorial integrity, will promote social progress and development and as a consequence will contribute to the attainment of full equality between men and women,

Convinced that the full and complete development of a country, the welfare of the world and the cause of peace require the maximum participation of women on equal terms with men in all fields,

Bearing in mind the great contribution of women to the welfare of the family and to the development of society, so far not fully recognized, the social significance of maternity and the role of both parents in the family and in the upbringing of children, and aware that the role of women in procreation should not be a basis for discrimination but that the upbringing of children requires a sharing of responsibility between men and women and society as a whole,

Aware that a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality between men and women,

Determined to implement the principles set forth in the Declaration on the Elimination of Discrimination against Women and, for that purpose, to adopt the measures required for the elimination of such discrimination in all its forms and manifestations,

Have agreed on the following:

PART I

Article 1

For the purposes of the present Convention, the term “discrimination against women” shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

Article 2

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

(a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;
(b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;

(c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;

(d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;

(e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;

(f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;

(g) To repeal all national penal provisions which constitute discrimination against women.

Article 3
States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

Article 4
1. Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.

2. Adoption by States Parties of special measures, including those measures contained in the present Convention, aimed at protecting maternity shall not be considered discriminatory.

Article 5
States Parties shall take all appropriate measures:

(a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;

(b) To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.

Article 6
States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.

PART II

Article 7
States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:

(a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;

(b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;
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(c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.

Article 8

States Parties shall take all appropriate measures to ensure to women, on equal terms with men and without any discrimination, the opportunity to represent their Governments at the international level and to participate in the work of international organizations.

Article 9

1. States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.

2. States Parties shall grant women equal rights with men with respect to the nationality of their children.

PART III

Article 10

States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women:

(a) The same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality shall be ensured in pre-school, general, technical, professional and higher technical education, as well as in all types of vocational training;

(b) Access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality;

(c) The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods;

(d) The same opportunities to benefit from scholarships and other study grants;

(e) The same opportunities for access to programmes of continuing education, including adult and functional literacy programmes, particularly those aimed at reducing, at the earliest possible time, any gap in education existing between men and women;

(f) The reduction of female student drop-out rates and the organization of programmes for girls and women who have left school prematurely;

(g) The same opportunities to participate actively in sports and physical education;

(h) Access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.

Article 11

States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:

(a) The right to work as an inalienable right of all human beings;

(b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;

(c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;
(d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;

(e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;

(f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

2. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:

a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;

(b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;

(c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;

(d) To provide special protection to women during pregnancy in types of work proved to be harmful to them.

3. Protective legislation relating to matters covered in this article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised, repealed or extended as necessary.

Article 12

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

2. Notwithstanding the provisions of paragraph 1 of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

Article 13

States Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular:

(a) The right to family benefits;

(b) The right to bank loans, mortgages and other forms of financial credit;

(c) The right to participate in recreational activities, sports and all aspects of cultural life.

Article 14

1. States Parties shall take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families, including their work in the non-monetized sectors of the economy, and shall take all appropriate measures to ensure the application of the provisions of the present Convention to women in rural areas.

2. States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right:
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(a) To participate in the elaboration and implementation of development planning at all levels;

(b) To have access to adequate health care facilities, including information, counselling and services in family planning;

(c) To benefit directly from social security programmes;

(d) To obtain all types of training and education, formal and non-formal, including that relating to functional literacy, as well as, inter alia, the benefit of all community and extension services, in order to increase their technical proficiency;

(e) To organize self-help groups and co-operatives in order to obtain equal access to economic opportunities through employment or self employment;

(f) To participate in all community activities;

(g) To have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes;

(h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.

PART IV

Article 15

1. States Parties shall accord to women equality with men before the law.

2. States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.

3. States Parties agree that all contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void.

4. States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.

Article 16

States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:

(a) The same right to enter into marriage;

(b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;

(c) The same rights and responsibilities during marriage and at its dissolution;

(d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;

(e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;

(f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;
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(g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;

(h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.

2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

PART V

Article 17

1. For the purpose of considering the progress made in the implementation of the present Convention, there shall be established a Committee on the Elimination of Discrimination against Women (hereinafter referred to as the Committee) consisting, at the time of entry into force of the Convention, of eighteen and, after ratification of or accession to the Convention by the thirty-fifth State Party, of twenty-three experts of high moral standing and competence in the field covered by the Convention. The experts shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution and to the representation of the different forms of civilization as well as the principal legal systems.

2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.

3. The initial election shall be held six months after the date of the entry into force of the present Convention. At least three months before the date of each election the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within two months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.

4. Elections of the members of the Committee shall be held at a meeting of States Parties convened by the Secretary-General at United Nations Headquarters. At that meeting, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

5. The members of the Committee shall be elected for a term of four years. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these nine members shall be chosen by lot by the Chairman of the Committee.

6. The election of the five additional members of the Committee shall be held in accordance with the provisions of paragraphs 2, 3 and 4 of this article, following the thirty-fifth ratification or accession. The terms of two of the additional members elected on this occasion shall expire at the end of two years, the names of these two members having been chosen by lot by the Chairman of the Committee.

7. For the filling of casual vacancies, the State Party whose expert has ceased to function as a member of the Committee shall appoint another expert from among its nationals, subject to the approval of the Committee.

8. The members of the Committee shall, with the approval of the General Assembly, receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide, having regard to the importance of the Committee's responsibilities.

9. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.

Article 18

States Parties undertake to submit to the Secretary-General of the United Nations, for consideration by the Committee, a report on the legislative, judicial, administrative or other measures which they have adopted to give effect to the provisions of the present Convention and on the progress made in this respect:
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(a) Within one year after the entry into force for the State concerned;

(b) Thereafter at least every four years and further whenever the Committee so requests.

2. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Convention.

Art icle 19

1. The Committee shall adopt its own rules of procedure.

2. The Committee shall elect its officers for a term of two years.

Art icle 20

1. The Committee shall normally meet for a period of not more than two weeks annually in order to consider the reports submitted in accordance with article 18 of the present Convention.

2. The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee.

Art icle 21

1. The Committee shall, through the Economic and Social Council, report annually to the General Assembly of the United Nations on its activities and may make suggestions and general recommendations based on the examination of reports and information received from the States Parties. Such suggestions and general recommendations shall be included in the report of the Committee together with comments, if any, from States Parties.

2. The Secretary-General of the United Nations shall transmit the reports of the Committee to the Commission on the Status of Women for its information.

Art icle 22

The specialized agencies shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their activities. The Committee may invite the specialized agencies to submit reports on the implementation of the Convention in areas falling within the scope of their activities.

PART VI

Art icle 23

Nothing in the present Convention shall affect any provisions that are more conducive to the achievement of equality between men and women which may be contained:

(a) In the legislation of a State Party; or

(b) In any other international convention, treaty or agreement in force for that State.

Art icle 24

States Parties undertake to adopt all necessary measures at the national level aimed at achieving the full realization of the rights recognized in the present Convention.

Art icle 25

1. The present Convention shall be open for signature by all States.

2. The Secretary-General of the United Nations is designated as the depositary of the present Convention.

3. The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
4. The present Convention shall be open to accession by all States. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

**Article 26**

1. A request for the revision of the present Convention may be made at any time by any State Party by means of a notification in writing addressed to the Secretary-General of the United Nations.

2. The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such a request.

**Article 27**

1. The present Convention shall enter into force on the thirtieth day after the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying the present Convention or acceding to it after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or accession.

**Article 28**

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.

2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.

3. Reservations may be withdrawn at any time by notification to this effect addressed to the Secretary-General of the United Nations, who shall then inform all States thereof. Such notification shall take effect on the date on which it is received.

**Article 29**

1. Any dispute between two or more States Parties concerning the interpretation or application of the present Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State Party may at the time of signature or ratification of the present Convention or accession thereto declare that it does not consider itself bound by paragraph I of this article. The other States Parties shall not be bound by that paragraph with respect to any State Party which has made such a reservation.

3. Any State Party which has made a reservation in accordance with paragraph 2 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

**Article 30**

The present Convention, the Arabic, Chinese, English, French, Russian and Spanish texts of which are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned, duly authorized, have signed the present Convention.
6.8 Declaration on the Protection of Women and Children in Emergency and Armed Conflict

85th plenary meeting
20 December 1993

Proclaimed by General Assembly resolution 3318 (XXIX) of 14 December 1974

The General Assembly,

Having considered the recommendation of the Economic and Social Council contained in its resolution 1861 (LVI) of 16 May 1974,

Expressing its deep concern over the sufferings of women and children belonging to the civilian population who in periods of emergency and armed conflict in the struggle for peace, self-determination, national liberation and independence are too often the victims of inhuman acts and consequently suffer serious harm,

Aware of the suffering of women and children in many areas of the world, especially in those areas subject to suppression, aggression, colonialism, racism, alien domination and foreign subjugation,

Deeply concerned by the fact that, despite general and unequivocal condemnation, colonialism, racism and alien and foreign domination continue to subject many peoples under their yoke, cruelly suppressing the national liberation movements and inflicting heavy losses and incalculable sufferings on the populations under their domination, including women and children,

Deploring the fact that grave attacks are still being made on fundamental freedoms and the dignity of the human person and that colonial and racist foreign domination Powers continue to violate international humanitarian law,

Recalling the relevant provisions contained in the instruments of international humanitarian law relative to the protection of women and children in time of peace and war,

Recalling, among other important documents, its resolutions 2444 (XXIII) of 19 December 1968, 2597 (XXIV) of 16 December 1969 and 2674 (XXV) and 2675 (XXV) of 9 December 1970, on respect for human rights and on basic principles for the protection of civilian populations in armed conflicts, as well as Economic and Social Council resolution 1515 (XLVIII) of 28 May 1970 in which the Council requested the General Assembly to consider the possibility of drafting a declaration on the protection of women and children in emergency or wartime,

Conscious of its responsibility for the destiny of the rising generation and for the destiny of mothers, who play an important role in society, in the family and particularly in the upbringing of children,

Bearing in mind the need to provide special protection of women and children belonging to the civilian population,

Solemnly proclaims this Declaration on the Protection of Women and Children in Emergency and Armed Conflict and calls for the strict observance of the Declaration by all Member States:

1. Attacks and bombings on the civilian population, inflicting incalculable suffering, especially on women and children, who are the most vulnerable members of the population, shall be prohibited, and such acts shall be condemned.

2. The use of chemical and bacteriological weapons in the course of military operations constitutes one of the most flagrant violations of the Geneva Protocol of 1925, the Geneva Conventions of 1949 and the principles of international humanitarian law and inflicts heavy losses on civilian populations, including defenceless women and children, and shall be severely condemned.

3. All States shall abide fully by their obligations under the Geneva Protocol of 1925 and the Geneva Conventions of 1949, as well as other instruments of international law relative to respect for human rights in armed conflicts, which offer important guarantees for the protection of women and children.
4. All efforts shall be made by States involved in armed conflicts, military operations in foreign territories or military operations in territories still under colonial domination to spare women and children from the ravages of war. All the necessary steps shall be taken to ensure the prohibition of measures such as persecution, torture, punitive measures, degrading treatment and violence, particularly against that part of the civilian population that consists of women and children.

5. All forms of repression and cruel and inhuman treatment of women and children, including imprisonment, torture, shooting, mass arrests, collective punishment, destruction of dwellings and forcible eviction, committed by belligerents in the course of military operations or in occupied territories shall be considered criminal.

6. Women and children belonging to the civilian population and finding themselves in circumstances of emergency and armed conflict in the struggle for peace, self-determination, national liberation and independence, or who live in occupied territories, shall not be deprived of shelter, food, medical aid or other inalienable rights, in accordance with the provisions of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Declaration of the Rights of the Child or other instruments of international law.

6.9 Declaration on the Elimination of Violence against Women

Resolution adopted by the General Assembly on the report of the Third Committee

(A/48/629)

Resolution 48/104

The General Assembly,

Recognizing the urgent need for the universal application to women of the rights and principles with regard to equality, security, liberty, integrity and dignity of all human beings,

Noting that those rights and principles are enshrined in international instruments, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Recognizing that effective implementation of the Convention on the Elimination of All Forms of Discrimination against Women would contribute to the elimination of violence against women and that the Declaration on the Elimination of Violence against Women, set forth in the present resolution, will strengthen and complement that process,

Concerned that violence against women is an obstacle to the achievement of equality, development and peace, as recognized in the Nairobi Forward-looking Strategies for the Advancement of Women, in which a set of measures to combat violence against women was recommended, and to the full implementation of the Convention on the Elimination of All Forms of Discrimination against Women,

Affirming that violence against women constitutes a violation of the rights and fundamental freedoms of women and impairs or nullifies their enjoyment of those rights and freedoms, and concerned about the long-standing failure to protect and promote those rights and freedoms in the case of violence against women,

Recognizing that violence against women is a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of the full advancement of women, and that violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men,

Concerned that some groups of women, such as women belonging to minority groups, indigenous women, refugee women, migrant women, women living in rural or remote communities, destitute women, women in institutions or in detention, female children, women with disabilities, elderly women and women in situations of armed conflict, are especially vulnerable to violence,
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Recalling the conclusion in paragraph 23 of the annex to Economic and Social Council resolution 1990/15 of 24 May 1990 that the recognition that violence against women in the family and society was pervasive and cut across lines of income, class and culture had to be matched by urgent and effective steps to eliminate its incidence,

Recalling also Economic and Social Council resolution 1991/18 of 30 May 1991, in which the Council recommended the development of a framework for an international instrument that would address explicitly the issue of violence against women,

Welcoming the role that women’s movements are playing in drawing increasing attention to the nature, severity and magnitude of the problem of violence against women,

Alarmed that opportunities for women to achieve legal, social, political and economic equality in society are limited, inter alia, by continuing and endemic violence,

Convinced that in the light of the above there is a need for a clear and comprehensive definition of violence against women, a clear statement of the rights to be applied to ensure the elimination of violence against women in all its forms, a commitment by States in respect of their responsibilities, and a commitment by the international community at large to the elimination of violence against women,

Solemnly proclaims the following Declaration on the Elimination of Violence against Women and urges that every effort be made so that it becomes generally known and respected:

Article 1

For the purposes of this Declaration, the term “violence against women” means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.

Article 2

Violence against women shall be understood to encompass, but not be limited to, the following: a) Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female 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, wherever it occurs.

Article 3

Women are entitled to the equal enjoyment and protection of all human rights and fundamental freedoms in the political, economic, social, cultural, civil, or any other field. Theses rights include, inter alia:

a) The right to life;¹

b) The right to equality;²

c) The right to liberty and security of person;³

d) The right to equal protection under the law;²

e) The right to be free from all forms of discrimination;⁴

f) The right to the highest standard attainable of physical and mental health;⁴

ɡ) The right to just and favorable conditions of work;⁵

h) The right not to be subjected to torture, or other cruel, inhuman or degrading treatment or punishment.⁶
Article 4

States should condemn violence against women and should not invoke any custom, tradition, or religious consideration to avoid their obligations with respect to its elimination. States should pursue by all appropriate means and without delay a policy of eliminating violence against women and, to this end, should:

a) Consider, where they have not yet done so, ratifying or acceding to the Convention on the Elimination of All Forms of Discrimination Against Women or withdrawing reservations to that Convention;

b) Refrain from engaging in violence against women;

c) Exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons;

d) Develop penal, civil, labour and administrative sanctions in domestic legislation to punish and redress the wrongs caused to women who are subjected to violence: women who are subjected to violence should be provided with access to the mechanisms of justice and, as provided for by national legislation, to just and effective remedies to the harm they have suffered; States should also inform women of their rights in seeking redress through mechanisms;

e) Consider the possibility of developing national plans of action to promote the protection of women against any form of violence, or to include provisions for that purpose in plans already existing, taking into account, as appropriate, such cooperation as can be provided by non-governmental organizations, particularly those concerned with the issue of violence against women;

f) Develop, in a comprehensive way, preventative approaches and all those measures of legal, political, administrative and cultural nature that promote the protection of women against any form of violence, and ensure that the re-victimization of women does not occur because of laws insensitive to gender considerations, enforcement practices or other interventions;

g) Work to ensure, to the maximum extent feasible in the light of their available resources and, where needed, within the framework of international cooperation, that women subjected to violence and, where appropriate, their children have specialized assistance, such as rehabilitation, assistance in child care and maintenance, treatment, counselling, and health and social services, facilities and programmes, as well as support structures, and should take all other appropriate measures to promote their safety and physical and psychological rehabilitation;

h) Include in government budgets adequate resources for their activities related to the elimination of violence against women;

i) Take measures to ensure that law enforcement officers and public officials responsible for implementing policies to prevent, investigate and punish violence against women receive training to sensitize them to the needs of women;

j) Adopt all appropriate measures, especially in the field of education, to modify the social and cultural patterns of conduct of men and women to eliminate prejudices, customary practices and all other practices based on the idea of inferiority or superiority of either of the sexes and on stereotyped roles for men and women;

k) Promote research, collect data and compile statistics, especially concerning domestic violence, relating to the prevalence of different forms of violence against women and encourage research on the causes, nature, seriousness and consequences of violence against women and on the effectiveness of measures implemented to prevent and redress violence against women; those statistics and findings of the research will be made public;

l) Adopt measures directed towards the elimination of violence against women who are especially vulnerable to violence;

m) Include, in submitting reports as required under relevant human rights instruments of the United Nations, information pertaining to violence against women and measures taken to implement the present Declaration;

n) Encourage the development of appropriate guidelines to assist in the implementation of the principles set forth in the present Declaration;

o) Recognize the important role of the women’s movement and non-governmental organizations world wide in raising awareness and alleviating the problem of violence against women;
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p) Facilitate and enhance the work of the women’s movement and non-governmental organizations and cooperate with them at local, national and regional levels;

q) Encourage intergovernmental regional organizations of which they are members to include the elimination of violence against women in their programmes, as appropriate.

Article 5

The organs and specialized agencies of the United Nations system should, within their respective fields of competence, contribute to the recognition and realization of the rights and the principles set forth in the present Declaration and, to this end, should, *inter alia*:

a) Foster international and regional cooperation with a view to defining regional strategies for combating violence, exchanging experiences and financing programmes relating to the elimination of violence against women;

b) Promote meetings and seminars with the aim of creating and raising awareness among all persons of the issue of the elimination of violence against women;

c) Foster coordination and exchange within the United Nations system between human rights treaty bodies to address the issue of violence against women effectively;

d) Include in analyses prepared by organizations and bodies of the United Nations system of social trends and problems, such as the periodic reports on the world social situation, examination of trends in violence against women;

e) Encourage coordination between organizations and bodies of the United Nations system to incorporate the issue of violence against women into ongoing programmes, especially with reference to groups of women particularly vulnerable to violence;

f) Promote the formulation of guidelines or manuals relating to violence against women, taking into account the measures referred to in the present Declaration;

g) Consider the issue of the elimination of violence against women, as appropriate, in fulfilling their mandates with respect to the implementation of human rights instruments;

h) Cooperate with non-governmental organizations in addressing the issue of violence against women.

Article 6

Nothing in the present Declaration shall affect any provision that is more conducive to the elimination of violence against women that may be contained in the legislation of a State or in any international convention, treaty or other instrument in force in a State.

Notes

1. Universal Declaration of Human Rights, article 3, and International Covenant on Civil and Political Rights, article 6.

2. International Covenant on Civil and Political Rights, article 26


6. Universal Declaration of Human Rights, article 5; International Covenant on Civil and Political Rights, article 2; and Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment.
6.10 Resolution 1325

Resolution 1325 (2000)

Adopted by the Security Council at its 4213th meeting, on
31 October 2000

The Security Council,


Bearing in mind the purposes and principles of the Charter of the United Nations and the primary responsibility of the Security Council under the Charter for the maintenance of international peace and security,

Expressing concern that civilians, particularly women and children, account for the vast majority of those adversely affected by armed conflict, including as refugees and internally displaced persons, and increasingly are targeted by combatants and armed elements, and recognizing the consequent impact this has on durable peace and reconciliation,

Reaffirming the important role of women in the prevention and resolution of conflicts and in peace-building, and stressing the importance of their equal participation and full involvement in all efforts for the maintenance and promotion of peace and security, and the need to increase their role in decision-making with regard to conflict prevention and resolution,

Reaffirming also the need to implement fully international humanitarian and human rights law that protects the rights of women and girls during and after conflicts,
Emphasizing the need for all parties to ensure that mine clearance and mine awareness programmes take into account the special needs of women and girls,

Recognizing the urgent need to mainstream a gender perspective into peacekeeping operations, and in this regard noting the Windhoek Declaration and the Namibia Plan of Action on Mainstreaming a Gender Perspective in Multidimensional Peace Support Operations (S/2000/693),

Recognizing also the importance of the recommendation contained in the statement of its President to the press of 8 March 2000 for specialized training for all peacekeeping personnel on the protection, special needs and human rights of women and children in conflict situations,

Recognizing that an understanding of the impact of armed conflict on women and girls, effective institutional arrangements to guarantee their protection and full participation in the peace process can significantly contribute to the maintenance and promotion of international peace and security,

Noting the need to consolidate data on the impact of armed conflict on women and girls,

1. **Urges** Member States to ensure increased representation of women at all decision-making levels in national, regional and international institutions and mechanisms for the prevention, management, and resolution of conflict;

2. **Encourages** the Secretary-General to implement his strategic plan of action (A/49/587) calling for an increase in the participation of women at decision-making levels in conflict resolution and peace processes;

3. **Urges** the Secretary-General to appoint more women as special representatives and envoys to pursue good offices on his behalf, and in this regard **calls on** Member States to provide candidates to the Secretary-General, for inclusion in a regularly updated centralized roster;

4. **Further urges** the Secretary-General to seek to expand the role and contribution of women in United Nations field-based operations, and especially among military observers, civilian police, human rights and humanitarian personnel;

5. **Expresses** its willingness to incorporate a gender perspective into peacekeeping operations, and **urges** the Secretary-General to ensure that, where appropriate, field operations include a gender component;

6. **Requests** the Secretary-General to provide to Member States training guidelines and materials on the protection, rights and the particular needs of women, as well as on the importance of involving women in all peacekeeping and peacebuilding measures, **invites** Member States to incorporate these elements as well as HIV/AIDS awareness training into their national training programmes for military and civilian police personnel in preparation for deployment, and **further requests** the Secretary-General to ensure that civilian personnel of peacekeeping operations receive similar training;

7. **Urges** Member States to increase their voluntary financial, technical and logistical support for gender-sensitive training efforts, including those undertaken by relevant funds and programmes, inter alia, the United Nations Fund for Women and United Nations Children’s Fund, and by the Office of the United Nations High Commissioner for Refugees and other relevant bodies;
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8. **Calls on** all actors involved, when negotiating and implementing peace agreements, to adopt a gender perspective, including, inter alia:

   (a) The special needs of women and girls during repatriation and resettlement and for rehabilitation, reintegration and post-conflict reconstruction;

   (b) Measures that support local women’s peace initiatives and indigenous processes for conflict resolution, and that involve women in all of the implementation mechanisms of the peace agreements;

   (c) Measures that ensure the protection of and respect for human rights of women and girls, particularly as they relate to the constitution, the electoral system, the police and the judiciary;


10. **Calls on** all parties to armed conflict to take special measures to protect women and girls from gender-based violence, particularly rape and other forms of sexual abuse, and all other forms of violence in situations of armed conflict;

11. **Emphasizes** the responsibility of all States to put an end to impunity and to prosecute those responsible for genocide, crimes against humanity, and war crimes including those relating to sexual and other violence against women and girls, and in this regard stresses the need to exclude these crimes, where feasible from amnesty provisions;

12. **Calls upon** all parties to armed conflict to respect the civilian and humanitarian character of refugee camps and settlements, and to take into account the particular needs of women and girls, including in their design, and recalls its resolutions 1208 (1998) of 19 November 1998 and 1296 (2000) of 19 April 2000;

13. **Encourages** all those involved in the planning for disarmament, demobilization and reintegration to consider the different needs of female and male ex-combatants and to take into account the needs of their dependants;

14. **Reaffirms** its readiness, whenever measures are adopted under Article 41 of the Charter of the United Nations, to give consideration to their potential impact on the civilian population, bearing in mind the special needs of women and girls, in order to consider appropriate humanitarian exemptions;

15. **Expresses** its willingness to ensure that Security Council missions take into account gender considerations and the rights of women, including through consultation with local and international women’s groups;

16. **Invites** the Secretary-General to carry out a study on the impact of armed conflict on women and girls, the role of women in peace-building and the gender dimensions of peace processes and conflict resolution, and further invites him to submit a report to the Security Council on the results of this study and to make this available to all Member States of the United Nations;

17. **Requests** the Secretary-General, where appropriate, to include in his reporting to the Security Council progress on gender mainstreaming throughout peacekeeping missions and all other aspects relating to women and girls;

18. **Decides** to remain actively seized of the matter.

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6.11 Rome Statute of the International Criminal Court

Article 7

Crimes against humanity

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

   (a) Murder;
   (b) Extermination;
   (c) Enslavement;
   (d) Deportation or forcible transfer of population;
   (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
   (f) Torture;
   (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
   (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;
   (i) Enforced disappearance of persons;
   (j) The crime of apartheid;
   (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

Article 8

War crimes

1. The Court shall have jurisdiction in respect of war crimes in particular when committed as part of a plan or policy or as part of a large-scale commission of such crimes.

2. For the purpose of this Statute, "war crimes" means:

   (a) Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention: (...)
   (b) Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts: (...)
   (xxii) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions;