

ECONOMIC AND SOCIAL COMMISSION FOR WESTERN ASIA (ESCWA)

**PROTECTING THE RIGHTS OF WOMEN IN THE ESCWA REGION
THROUGH THE PROPER USE OF UN RESOLUTIONS AND
INTERNATIONAL PROTOCOLS ON WAR AND
ARMED CONFLICT**

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Note: The opinions expressed are those of the author and do not necessarily reflect the views of the United Nations.

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Executive summary

This study examines international human rights instruments and mechanisms related to the protection of the rights of women living in conflict situations and their relevance and applicability in the region of the Economic and Social Commission for Western Asia (ESCWA). It also identifies and examines the physical, economic, social, legal and other challenges facing women living in conflict situations; and makes recommendations to ESCWA member countries and the international community on the development of policies and programmes aimed at protecting the rights of women in conflict situations.

The first three chapters of the study examine relevant international legal instruments, their respective mechanisms, and their impact on selected ESCWA countries. Chapter IV presents a case study on Iraqi women refugees in the Syrian Arab Republic and Jordan, and the final chapter contains recommendations. Chapter I presents the universal legal framework of the rights of women incorporated in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). It also explores the different mechanisms of CEDAW, such as the reporting, individual complaints and inquiry procedures; and examines other treaty body mechanisms, such as the inter-State complaints system. Furthermore, Chapter I provides a brief overview of the status of implementation of CEDAW in Arab States.

Women living in conflict situations in the ESCWA region need to be guaranteed their basic rights under domestic legislation. Amendments are primarily needed in laws governing the private sphere in general, and family status, nationality and freedom of movement, in particular. CEDAW sets standards for the rights of women and needs to be fully implemented by member countries in order to guarantee the rights of women in situations of peace and war. Most Arab States expressed reservations on CEDAW, but many of them have since withdrawn their reservations or amended their national legislations to bring their legislations into line with the Convention. Such measures include amendments to the family law in Morocco; the modernization of the personal status code in Tunisia; changes to divorce and nationality rights in Egypt; and updating of employment laws in Lebanon. Social security nets and benefits have been expanded to include women; penal codes have been revised, especially in relation to so-called honour crimes; and education has been made compulsory for boys and girls in most countries.

Chapter II discusses the impact of CEDAW, the general situation of women in the social and political set-up in the region, and focuses on the fifth area of concern of the Beijing Declaration and Platform for Action, which deals with the effects of armed or other kinds of conflict on women, including those living under foreign occupation, and as such pertains to the agenda of empowerment of women in the ESCWA region. It is complemented by a presentation of a list of relevant United Nations declarations and resolutions on the protection of rights of women living in conflict situations.

Chapter III focuses on the rights of women found in war-related United Nations conventions and institutions, especially the Geneva conventions, and the creation of the International Criminal Court, and shows their promise as well as their limitations in the ESCWA region. The Geneva conventions did not originally focus on gender discrimination. Only Article 27 of the Fourth Convention states that “women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault”; and the Additional Protocol I, relating to civilians, notes that “women shall be the object of special respect and shall be protected in particular against rape, forced prostitution and any other form of indecent assault”. Nevertheless, the conventions and protocols provide the legal standards for States to comply with in times of war, and bind their Governments as State parties.

Chapter IV presents a case study on Iraqi women and the tragic state of refugees displaced domestically and regionally after 2003. It examines in some detail the mechanisms of their victimization; their struggles; the rights they are entitled to; the economic, physical, social and legal challenges that they face; and recommendations on how they can be better protected.

Based on the findings of the case study in Iraq and in line with CEDAW and other human rights and humanitarian law instruments examined in this study, the final chapter concludes with specific recommendations to member countries on how to better defend and secure the rights of women living in conflict situations in the ESCWA region. Recommendations, among others, urge member countries to enact special legislation pertaining to the family, nationality and freedom of movement; to ratify CEDAW and its Optional Protocol and all war-related conventions and instruments; and to adopt special measures to address the physical, economic and social challenges of refugee women, especially SGBV. In addition to protecting them in conflict situations, member countries should ensure that women are included in all aspects of conflict resolution and post-conflict reconstruction efforts.

Introduction

On 19 June 2008, United Nations Security Council Resolution 1820 was passed unanimously. The Resolution addresses the issue of violence against women in war theaters and builds on a growing body of international conventions and other legal instruments concerned with the rights of women in situations of armed conflict. With continuing high levels of violence in some member countries of the Economic and Social Commission for Western Asia (ESCWA), and more generally in the Middle East, the present report makes recommendations that are commensurate with both the level of gender-specific violence and the challenges resulting from the impunity of perpetrators of crimes condemned in international legal instruments.

The objectives of the study are: (a) to examine international human rights instruments and mechanisms related to the protection of the rights of women living in conflict situations and their relevance and applicability in the ESCWA region; (b) to identify and examine the physical, economic, social, legal and other challenges facing women living in conflict situations; and (c) to make recommendations to ESCWA member countries and the international community on the development of policies and programmes aimed at protecting the rights of women in conflict situations.

Women living in conflict situations in the ESCWA region need to be guaranteed their basic rights under domestic legislation. It is therefore important for amendments to be made to laws governing the private sphere in general, and family status, nationality, freedom of movement, in particular. Chapters I and II examine the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) and its relevance and applicability in the ESCWA region. CEDAW generally sets the standards for the rights of women, and needs to be fully implemented by member countries in order to guarantee their rights in both situations of peace and war. An analysis of CEDAW is supplemented by a brief examination in Chapter II of other human rights instruments and mechanisms pertaining specifically to the protection of women living in conflict situations in the ESCWA region.

Fighting impunity and holding the perpetrators of crimes against women accountable has proved to be a difficult task despite numerous resolutions and international instruments on the subject. Chapter III examines the 1949 Geneva Conventions, especially the Fourth Geneva Convention on the Protection of Civilians in Conflict Situations, the Convention against Torture, and the mandate and competence of the International Criminal Court (ICC) in trial cases pertaining to violations committed against women in the region.

In Chapter IV, a case study on Iraqi refugees highlights the devastating physical, social, legal and economic impact of war and conflicts on women, and the need for member countries to adopt special measures in order to mitigate these effects. Chapter V concludes with specific recommendations to policymakers on the protection of the rights of women living in conflict situations.

Research methodology

The study is based on a desk review of the vast and ever-increasing repository of literature available on international instruments that define the rights of women living in conflict situations, and provide for universally accepted standards. Starting with CEDAW, these are commitments that Governments and actors in conflict situations must respect.

The international system also provides legal remedies for the infringement of rights protected by human rights instruments, especially the Geneva Conventions and the developing international criminal law conventions, particularly the Convention against Torture and the Rome Convention establishing the International Criminal Court.

Furthermore, this study has benefited from substantive contributions and data from country offices of the United Nations High Commissioner for Refugees (UNHCR), with respect to the situation of Iraqi refugees living in Jordan, Lebanon and the Syrian Arab Republic.

I. INTERNATIONAL GENDER LAW: CEDAW

International gender law has narrowed the gap between domestic and international law insofar as the legal framework within each State party has developed out of the 1979 CEDAW Convention.¹ CEDAW, and the debate surrounding its provisions, probably offers the most relevant forum for these tensions to play out. In order to better protect the rights of women living in conflict situations, significant amendments are needed in the laws governing family status, nationality, freedom of movement and the private sphere.²

Because of their unequal status in society and the existence of discriminative gender laws governing family status, nationality, labour and the penal code, Arab women are disproportionately affected in conflict situations. Personal status laws in the Arab world make it difficult for women to obtain custody over their children and travel permits for themselves and their family members. The consent or signature of a male guardian is often needed when applying for such documents, thereby hindering the movement of women refugees attempting to flee violence and war. Discrimination in accessing education, unequal wages and lack of opportunities to develop income-generating skills also undermine the economic empowerment of women. Income-generating skills are particularly needed when women are under pressure to provide for their families because of the absence of male providers due to war, even if they have not been previously prepared to assume such new roles. Moreover, women are much more prone to sexual violence in conflict situations; this situation is exacerbated by the absence of male family members, creating additional burdens on them to care for the family. Even basic tasks, such as fetching water or food, obliges women to travel greater distances, exposing them to increased risks of sexual violence. The lack of gender-sensitive training among police officers and laws punishing sexual harassment and sexual abuse continue to pose a direct challenge to the elimination of violence against women in both peace and conflict situations.

The amendment of discriminative gender laws and the full implementation of human rights instruments, especially CEDAW, constitute a necessary step towards guaranteeing the protection of rights of women in situations of armed conflict.

A. THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW)

Since its adoption in 1979, CEDAW has been considered as the universal bill of rights for women. CEDAW does not stand on its own, but it adds a specific, universal gender dimension to a panoply of human rights instruments, including the International Covenant on Civil and Political Rights (1966) and the International Covenant on Economic, Social and Cultural Rights (1966), in addition to a number of other conventions, declarations and resolutions on women's rights, including the Equal Remuneration Convention (1951), the Convention on the Political Rights of Women (1952), the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (1962), the Declaration on the Elimination of Discrimination Against Women (1967), and the Declaration on the Protection of Women and Children in Emergency and Armed Conflicts (1974). This proliferation of international instruments has convinced the international community of the need for an all-encompassing instrument that could guarantee rights of women more comprehensively. In view of the partial coverage of these conventions, the United Nations Commission on Human Rights began drafting CEDAW as a comprehensive instrument regrouping all the rights found in preceding declarations and conventions and adding to them an exhaustive list of rights that women should enjoy.

CEDAW comprises a preamble and 30 Articles, 16 of which are substantive. In Article 1, discrimination is defined as “any distinction, exclusion or restriction made on the basis of sex which has the

¹ See on CEDAW: International Women's Rights Project, *Annotated CEDAW Bibliography*, current until 2006. Available at: <http://www.iwrrp.org/pdf/biblio.pdf>.

² For an overview, see Mallat, C. 2007. Family Law: The Search For Equality in *Introduction to Middle Eastern Law*.

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”.

CEDAW also provides a detailed description of the commitment of States in implementing the Convention. The first obligation requires States to refrain from interfering directly or indirectly with the enjoyment of human rights. The second obligation requires them to take measures to prevent third parties from interfering with the human rights of individuals, while the last obligation requires that human rights are enforced, provided and promoted through the adoption of appropriate legislative, administrative, budgetary, judicial, promotional and other measures aimed at the full realization of human rights.

With respect to gender discrimination, Article 2 of CEDAW sets out the three levels detailing anti-discriminatory legislation. The first level must incorporate the concept of gender equality in the Constitution. Subsequently, legislation must be enacted that prohibits and punishes any form of discrimination against women. States must refrain from discriminating against women by enacting proper legislation and establishing tribunals and courts to protect women and provide them with appropriate recourse. The obligation to protect is stated in Article 2 (e): “To take all appropriate measures to eliminate discrimination against women by any person, organization, or enterprise”, while the obligation to fulfil as stated in Article 2 (f) involves taking “all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women”. Article 4 provides for the adoption of temporary special measures aimed at accelerating *de facto* equality. Such measures are also provided for in other international instruments, for example the International Convention on the Elimination of all Forms of Racial Discrimination (ICERD).

Women may face *de jure* and *de facto* gender inequality. *De jure* inequality appears in laws and legislation, and reflects unequal practices on the ground. *De facto* inequality may be attributed to discriminatory practices by States and private individuals that lead to inequality, even if legal statutes do not discriminate *prima facie* between men and women. The CEDAW Committee therefore decided to make provision for temporary special measures to accelerate the proper fulfilment of gender equality, given that *de facto* inequality may persist when approximate legislative measures have been taken. In Article 4, CEDAW states that such special measures shall not be considered as discrimination [against men], and shall be discontinued when their objectives have been achieved.

Article 5, which calls for the modification of social and cultural patterns, is closely related to Article 4 and the adoption of temporary special measures. It is largely a result of stereotyping that women are discriminated against, and Article 5 requires States to modify social and cultural patterns of conduct with a view to the elimination of prejudices, which are based on the idea of the inferiority of women. It is the only article in human rights conventions that refers directly to the modification of cultural patterns, a subject which has consistently proven to be politically sensitive.

In Articles 7-9, CEDAW enumerates a variety of rights, including the right to participate in public and political life; vote in elections and be eligible for election; join non-governmental organizations (NGOs); represent Governments at the international level; acquire, change or retain nationality, and rights relating to nationality of children. Other rights, including education, employment economic and social benefits; health and family planning; and equality before the law are addressed in Articles 10-13. The rights of rural women are addressed in Article 14. Rights relating to marriage and family life are protected under Article 16. Some of those rights are complex and require further clarification by the CEDAW Committee, which issues regular general comments aimed at interpreting some of the provisions of the Convention.

B. STATUS OF CEDAW IN ARAB STATES

As of February 2009, there were 185 State parties to CEDAW, including 18 of the 22 Arab countries (see table 1).

However, 11 States have expressed reservations to specific articles, and some, including the Libyan Arab Jamahiriya, Mauritania and Saudi Arabia, have declared that they are not committed to the implementation of any of the articles of CEDAW that do not comply with the provisions of Islamic Shari‘a (see table 2). All Arab states, except Qatar, Palestine, Somalia and Sudan, have ratified CEDAW. With the exception of Comoros, Djibouti, Oman and the United Arab Emirates, Arab states have submitted initial reports (see table 3).

TABLE 1. STATUS OF RATIFICATION (AS OF JULY 2008)

	Country	Ratification ^{a/}	Entry into force	Amendment re: Article 20(1) ^{b/}
1.	Algeria	22 May 1996	21 June 1996	
2.	Bahrain	18 June 2002	18 July 2002	
3.	Comoros	31 October 1994	30 November 1994	
4.	Djibouti	2 December 1998	1 January 1999	
5.	Egypt	18 September 1981	18 October 1981	2 August 2001
6.	Iraq	13 August 1986	12 September 1986	
7.	Jordan	1 July 1992	31 July 1992	11 January 2002
8.	Kuwait	2 September 1994	2 October 1994	
9.	Lebanon	16 April 1997	16 May 1997	
10.	Libyan Arab Jamahiriya	16 May 1989	15 June 1989	
11.	Mauritania	10 May 2001	9 June 2001	
12.	Morocco	21 June 1993	21 July 1993	
13.	Oman	7 February 2006	7 March 2006	
14.	Saudi Arabia	7 September 2000	7 October 2000	
15.	Syrian Arab Republic	28 March 2003	27 April 2003	
16.	Tunisia	20 September 1985	20 October 1985	
17.	United Arab Emirates	6 October 2004	6 November 2004	
18.	Yemen	30 May 1984 ^{c/}	29 June 1984	

^{a/} The term “Ratification” includes ratification, accession or succession.

^{b/} Dates represent acceptance of the amendment. The amendment to Article 20(1) of CEDAW extends the amount of annual meeting time of the Committee.

^{c/} On 19 May 1990 the Yemen Arab Republic and the People’s Democratic Republic of Yemen informed the Secretary-General that the Republics would merge on 22 May 1990 into a single State called the Republic of Yemen. As concerns the treaties concluded prior to their union by the Yemen Arab Republic or the People’s Democratic Republic of Yemen, the Republic of Yemen is a successor party as from the date when one of these States first became a party to those treaties. Prior to unification, the People’s Democratic Republic of Yemen had ratified CEDAW on 30 May 1984.

TABLE 2. RESERVATIONS OF ARAB STATES

Countries	Reservations on Articles	Ratification of optional protocol
1. Algeria	2, 9, 15, 16, 29	
2. Bahrain	2, 9, 15, 16, 29	
3. Comoros	no reservations	
4. Djibouti	no reservations	
5. Egypt	2, 9, 16, 29	
6. Iraq	2, 9, 16, 29	
7. Jordan	9, 16*	
8. Kuwait	7, 9, 16, 29	
9. Lebanon	9, 16, 29	
10. Libyan Arab Jamahiriya	2, 16, Declaration	18 June 2004
11. Mauritania	Declaration	
12. Morocco	2, 9, 15, 16, 29	
13. Oman	9, 15, 16, 29, Declaration	
14. Saudi Arabia	9, 29, Declaration	
15. Syrian Arab Republic	2, 9, 15, 16, 29	
16. Tunisia	9, 15, 16, 29, Declaration	
17. United Arab Emirates	2, 9, 15, 16, 29	
18. Yemen	29	

* Jordan lifted its reservation to Article 15 in February 2009.

The bulk of the reservations lodged by Arab States concerns Articles 2, 9, 15, 16 and 29. Article 2 deals with the implementation of the Convention and the need to include the principle of equality in the respective constitutions and take legislative, administrative and other steps that are necessary to realize gender equality. Article 9 addresses the right of women to acquire, change and retain a nationality and pass it to their children, while Article 15 underlines equality before the law and the right of women to conclude contracts, administer property and be treated equally in all stages of court and tribunal procedures. Almost all Arab States have made reservations to Article 16, which governs the rights of women in marriage, divorce and child custody. Because that Article pertains to family law, States which legislate according to religious codes have argued that it contradicts the Islamic Shari'a. These reservations continue to represent a major impediment to the implementation of the Convention, and need to be understood against a deep and complex background of gender law informed by Islamic and other Middle Eastern legal traditions.

Notwithstanding those reservations, there have been positive developments with respect to the implementation of CEDAW: some Arab States have recently withdrawn their reservations or have sought to amend their national legislation in order to bring it into line with the Convention. Such measures include amendments to the family law of Morocco, the modernization of the personal status code in Tunisia, changes to divorce and nationality rights in Egypt, and employment laws in Lebanon have been updated to be fairer towards women. Social security nets and benefits have been expanded to include women; penal codes have been revised, especially in relation to so-called honour crimes; and education has been made compulsory for boys and girls in most countries.

C. STATE REPORTS UNDER CEDAW

The international human rights system does not solely revolve around the production of legal texts and standards. It also creates mechanisms to guarantee that the rights set forth in the instruments are respected. Ideally, a domestic or international judicial system should provide a forum in which aggrieved individuals can seek a remedy. In practice, this operates haphazardly, and few ESCWA countries have incorporated the international legal human rights regime into the domestic system in a way that allows litigants to use it in court.

TABLE 3. CEDAW- REPORTING HISTORY SUBMISSION OF STATE REPORTS
(AS OF MARCH 2008)

	Arab State party to CEDAW	Initial report	Other reports
1.	Algeria	1 September 1998 CEDAW/C/DZA/1, Corr.1 & Add.1	Second report: 29 January 2003 CEDAW/C/DZA/2
2.	Bahrain	6 June 2008 CEDAW/C/BHR/2	
3.	Comoros		
4.	Djibouti		
5.	Egypt	02 February 1983 CEDAW/C/5/Add.10 & Amend.1	- Second report:19-Dec-86 CEDAW/C/13/Add.2 & Amend.1 - Third report: 30-Jan-96 CEDAW/C/EGY/3 - Fourth and fifth combined: 30 March 2000 CEDAW/C/EGY/4-5
6.	Iraq	16 May 1990 CEDAW/C/5/Add.66/Rev.1	Second and third combined reports: 13 October 1998 CEDAW/C/IRQ/2-3
7.	Jordan	27 October 1997 CEDAW/C/JOR/1	- Second report: 19 November 1999 CEDAW/C/JOR/2 - Third and fourth combined reports: 12 December 2005 CEDAW/C/JOR/3-4
8.	Kuwait	29-Aug-02 CEDAW/C/KWT/1-2 ^{a/}	
9.	Lebanon	12 November 2003 CEDAW/C/LBN/1	- Second report: 11 February 2005 CEDAW/C/LBN/2 - Third report: 06 July 2006 CEDAW/C/LBN/3
10.	Libyan Arab Jamahiriya	18 February 1991 CEDAW/C/LIB/1 & Add.1	Second report: 14 December 1998 CEDAW/C/LBY/2
11.	Mauritania	11 May 2005 CEDAW/C/MRT/1	
12.	Morocco	14 September 1994 CEDAW/C/MOR/1	- Second report: 28 February 2000 CEDAW/C/MOR/2 - Third and fourth combined reports: 18 August 2006 CEDAW/C/MOR/3-4
13.	Oman		
14.	Saudi Arabia	12 September 2006 CEDAW/C/SAU/2 ^{b/}	
15.	Syrian Arab Republic	25 August 2005 CEDAW/C/SYR/1	
16.	Tunisia	17 September 1993 CEDAW/C/TUN/1-2 ^{c/}	Third and fourth combined reports:
17.	United Arab Emirates		
18.	Yemen	23 January 1989 CEDAW/C/5/Add.61	- Second report: 08 June 1989 CEDAW/C/13/Add.24 & Amend.1 - Third report: 13 November 1992 CEDAW/C/YEM/3 - Fourth report: 08 March 2000 CEDAW/C/YEM/4 - Fifth report: 01 April 2002 CEDAW/C/YEM/5 - Sixth report: 05 December 2006 CEDAW/C/YEM/6

^{a/} See more information in the national reports of Saudi Arabia and Jordan submitted to the United Nations Committee on the Elimination of Discrimination Against Women (CEDAW). Available at: http://www.un.org/women_watch/daw/cedaw/reports.htm.

^{b/} Id.

^{c/} Ibid.

State Parties are required to make a particular effort to honour their commitments and obligations under the conventions they have ratified by, among others, providing regular reports on the implementation of the convention.

While the focus in this chapter is on CEDAW, other conventions also need to be borne in mind. Eight additional relevant core international human rights treaties are currently in force: the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the Convention against Torture (CAT), the Convention on the Rights of the Child (CRC), the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families (ICRMW), the International Convention for the Protection of All Persons from Enforced Disappearance, and the Convention on the Rights of Persons with Disabilities.

With the exception of the International Convention for the Protection of All Persons from Enforced Disappearance and the Convention on the Rights of Persons with Disabilities, all other treaties, including CEDAW and CAT, have a standing committee to oversee their implementation. State reporting is a mandatory procedure that is common to all these international human rights treaties. State parties are obliged to submit an initial report one year after they have ratified the convention, and then (in most cases) every four years, or whenever the committee deems it is necessary. Ideally State reports should involve contributions from civil society, reflect the true situation on the ground and help describe the reality on the ground to the committee. The report should contain detailed information about legislation, plans of action, statistics and *de facto* practices; and it should explain how the State plans to implement its obligations under the conventions. The overall picture of State reporting in the region varies.

Amongst ESCWA countries, Jordan and Saudi Arabia have submitted regular reports. Saudi Arabia includes prominent women on their task force, which is exceptional for that country, and Jordan has developed a keen interest in adjusting its laws with CEDAW requirements, especially with regard to so-called honour crimes.³

After a report has been submitted, the committee examines information from other sources, for example NGOs and United Nations specialized agencies, and engages in a constructive dialogue with the State representative at the moment of consideration of reports. Based on information from different sources, the committee compiles a list of issues to scrutinize the State report, raises concerns as appropriate and issues concluding observations at the end of the session. These are non-binding observations containing an introduction, positive aspects, factors and difficulties, issues of concern, and end with suggestions and recommendations. Although the committee scrutinizes State practices during the dialogue that takes place during the examination of State reports, the concluding observations are of a non-binding nature and serve only to publicize State practices and use the 'shame factor' in an effort to influence the conduct of the States under examination.

D. INTER-STATE COMPLAINTS

The reporting mechanisms provide one of several tools developed by international humanitarian and human rights law to force, or at least encourage, countries to abide by their commitments under conventions and treaties. Another important mechanism is provided by the inter-State complaints system and contained in Articles 11-13 of ICERD, Articles 41-43 of ICCPR, and Article 21 of CAT. For ICERD, all State parties can use this mechanism; whereas for ICCPR and CAT, only those State parties that accept the competence of the respective committees in dealing with inter-State complaints can benefit from the procedure.

³ See more information in the national reports of Saudi Arabia and Jordan submitted to the United Nations Committee on the Elimination of Discrimination Against Women (CEDAW). Available at: <http://www.un.org/womenwatch/daw/cedaw/reports.htm>.

When a State party informs the Committee that another State party is violating the Convention, the Committee requests the State that is being accused of violations to clarify the matter in writing within a period of three months. During this time, the two State parties can engage in bilateral negotiations or other methods of conflict resolution. If the issue is not settled “within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State”.⁴ An ad-hoc conciliation commission comprising five members would then be appointed with the consent of the two conflicting parties in order to provide good offices and reach an amicable solution. The role of the commission is simply to submit a report on its findings containing non-binding recommendations, and the States concerned have three months to either accept or reject these recommendations. At the end of this process, the other State parties to the convention have access to the report of the commission.

The inter-States complaints system suggests interventions by one State, and/or the United Nations, into the domestic affairs of another State. This is not the case. Because of the traditional reluctance of States to intervene in the domestic affairs of other States, this procedure “has never been used to date”.⁵ The principle of mutual interest dictates the compliance of States with their obligations and preserves the balance in international relations. This mutual interest is not present in international human rights law because States have little interest in pointing out human rights violations of other States against their own citizens, since this might endanger their friendly relations. Since the procedure has never been used to date, it is not clear how it can be revived to deter human rights violations in general or to protect the rights of women in particular.

E. INDIVIDUAL COMPLAINTS

The individual complaints system is a procedure established by ICCPR under its Optional Protocol, ICERD Article 14, CAT Article 22 and CEDAW under its Optional Protocol. The individuals whose rights – as recognized by the above human rights treaties – were violated may submit an individual complaint. The complaint must meet certain conditions in order to be reviewed by the relevant committee. The conditions are the following: it must be “a non-anonymous complaint, a complaint that falls within the jurisdiction of the committee, i.e. the violation relates to a right that has been set forth in the relevant treaty, a complaint that is related to a violation committed by a State party to the convention and that has accepted the competence of the committee to review individual complaints (Optional Protocol or a declaration under a specific article), a complaint that has not been reviewed by another international organization, and a complaint that has been reviewed by the local authorities - the principle of exhaustion of local remedies”.⁶ Once accepted for review, the complaint is examined confidentially by the committee; the State party has then six months to reply in writing, to clarify the matter, to propose a remedy or to solve the issue. If the matter is not resolved, the committee will issue its views, and will include them in its annual report to the General Assembly.

The individual complaints system is one type of mechanisms that could protect the economic, social, political, civil and legal rights of Arab women and convey violations of these rights to the international system in both peace and war situations, provided that Arab States ratify CEDAW’s Optional Protocol and acknowledge the competence of the committee in reviewing such complaints. All CEDAW ratifying States have been urged by the CEDAW Committee and the Vienna Declaration and Programme of Action (1993) to ratify the Optional Protocol so as to provide their citizens with the necessary complaint and protection mechanism. In the Arab region, only Libya and Tunisia have ratified the Optional Protocol.

⁴ United Nations. 1984. The Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). Article 21 (b), available at: <http://www2.ohchr.org/english/law/cat.htm>.

⁵ Nowak, M. 2003. *Introduction to the International Human Rights Regime*, p. 89.

⁶ Op. cit.

Critics of the individual complaints system affirmed that, because the CEDAW Committee issues only non-binding views and that the exhaustion of all local remedies is an important precondition to accept complaints, this mechanism seems to protect State sovereignty rather than to ensure human rights. Since States can always stall the review by the local authorities, a lengthy process ensues. It also seems that this procedure, which was used mostly by the victims of ICCPR violations, rarely resulted in a change of legislation favourable to human rights. In a few instances, the CEDAW Committee has succeeded in using the ‘shame factor’ against a State party that has violated human rights.

F. INQUIRIES

This procedure relates only to two international human rights treaties: CAT (Articles 8-10) and CEDAW (Optional Protocol). The committees of these two treaties may, on their own initiative, initiate inquiries if they have received reliable factual information on flagrant violations of the Conventions by a State party. Inquiries may only be undertaken with respect to States parties who have recognized the competence of the relevant committee in this regard. States parties to CAT may opt out, at the time of ratification or accession, by making a declaration under Article 28. States parties to the CEDAW Optional Protocol may similarly exclude the competence of the committee by making a declaration under Article 10. If the committee is informed that a certain State party is systematically violating the conventions (CAT and CEDAW), then it would invite the State party to cooperate and submit information and observations on the requested issues. The committee may decide to designate someone to make a confidential inquiry and report urgently on these violations. With the consent of States, CEDAW and CAT procedure “authorizes a visit to the territory of the State concerned where warranted and with the State’s consent. The findings of the member(s) are then examined by the Committee and transmitted to the State party together with any appropriate comments or suggestions/recommendations”.⁷ The State in question then normally has six months to respond to the observations of the committee. At the end of this procedure an account of the inquiry may be included in the annual report submitted to the Secretary-General of the United Nations.

As mentioned, Libya and Tunisia are the only Arab States to have ratified the CEDAW Optional Protocol. Globally, only one inquiry case has been submitted to the CEDAW Committee; the case relates to the systematic assassination and murder of Mexican women living in the Juarez region. Although during this procedure, confidentiality and the consent of the State are required, the inquiry system proved to be efficient because country visits and investigations have placed pressure on the Government of Mexico to address the issue of the Juarez killings.

Women living in conflict situations in the Arab region are experiencing systematic and flagrant human rights violations. This could prompt the CEDAW Committee to initiate an inquiry procedure; however, Arab States first need to ratify the Optional Protocol to CEDAW and accept the competence of the Committee to review such cases.

⁷ United Nations Office of the High Commissioner for Human Rights (OHCHR). Human Rights Bodies – Complaints Procedures. More information available at: <http://www2.ohchr.org/english/bodies/petitions/index.htm>.

II. THE IMPACT OF CEDAW: INTERNATIONAL HUMAN RIGHTS INSTRUMENTS ON THE PROTECTION OF RIGHTS OF WOMEN IN CONFLICT SITUATIONS

A. BACKGROUND

The ESCWA region has experienced a series of wars and conflicts and continuous instability, for example the Iran-Iraq war (1980-1988); the invasion of Kuwait by Iraq in 1991 and the ensuing Gulf War; the 2003 invasion of Iraq; the 1994 civil war in Yemen; the 2006 Israeli war on Lebanon; the continuing occupation of Palestinian territories; and the Israeli attack on Gaza – the latest in a series of Israeli-Arab wars. Such instability has prompted some Arab States to compete in purchasing the most technologically advanced weapons and armaments. Excessive military expenditure substantially decreases the funds allocated by Governments to development in general, and to projects relating to the empowerment of women, in particular. According to a BBC news report, the 1991 Gulf War was 90 per cent financed by Gulf States at a cost of \$61 billion.⁸ In addition to financial burdens, war and conflicts in the region have resulted in structural devastation, massive displacement and continued human tragedy. Women are most likely to experience conflict as civilians. During the 2006 war on Lebanon, 214 women were among the 1,140 people fatalities. Of the total 4,036 people who got injured during that same war, 1,107 women had to be hospitalized.⁹ In Palestine, from 29 September 2000 until 30 September 2003; 2,793 people were killed, 497 among them were children and 182 were women.¹⁰ None of the combatants in these conflicts were women.

Women are often injured or killed during random shelling of civilians, and are also specifically targeted because of their gender. According to a report released by a local NGO in Iraq (Equality in Iraq), over 30 women were killed by militias every month in 2005-2006 because of their gender.¹¹ In November 2006, the tortured and mutilated bodies of more than 150 women were discovered in Baghdad.¹² According to Iraqi officials, 133 women that were killed and mutilated by Islamist militias in 2007 were PhD holders, lawyers and doctors.¹³

When women are not targeted because of their gender, they are often wounded by weapons that have an indiscriminate effect, such as anti-personnel weapons or landmines. In conflict-stricken areas in the Arab region, many men, women and children, especially in rural areas, die or lose their limbs because of landmines. The United Nations' Children Fund (UNICEF) warned that there are more than 100,000 undetonated landmines in over 400 different locations in Lebanon due to the 2006 Israeli war with Lebanon.¹⁴ These landmines are sometimes difficult to find because of heavy rainfall and landslides, and threaten the lives of many individuals, especially farmers. According to a Crisis Prevention and Recovery Programme of the United Nations Development Programme (UNDP) in Yemen, women and children in Yemen are maimed or killed on a daily basis in the course of their work (for example, while looking after cattle or sheep) or in play. National statistics indicate that there are between 4-6 new landmine casualties per month in Yemen.¹⁵ Landmines were planted in Yemen during the four different conflicts that the country

⁸ Schiffers, S. 2003. Paying for an Iraq war. *BBC News*. 11 February 2003, available at: <http://news.bbc.co.uk/2/low/americas/2746759.stm>.

⁹ For more information see ESCWA. 2007. *Women's Rights in Conflict Situations*.

¹⁰ Ibid.

¹¹ Ibid. See below Chapter IV on case study in Iraq.

¹² Ibid.

¹³ See Women's International League for Peace and Freedom. 2008. Who is Killing the Women of Basra? Available at: www.peacewomen.org/news/MiddleEast/Jan08/who_killing_basra.html.

¹⁴ For more information see ESCWA. 2007. *Women's Rights in Conflict Situations*.

¹⁵ See Women's International League for Peace and Freedom. 2008. Yemen: Landmine-free by 2009? Available at: www.peacewomen.org/news/MiddleEast/March08/YemenLandmines.html.

has experienced, namely the 1962-1975 civil war between Republicans and Royalists; the 1967-1973 war of independence in the South; the 1970-1983 border war; and 1994 conflict between North and South.

Human rights and humanitarian law stipulate that the rights of women must be accorded special attention during conflict situations, and that the perpetrators of crimes against women should be prosecuted. Royal pardons or presidential decrees, such as those issued following the civil wars in Algeria and Lebanon, perpetuated a culture of impunity in the region as it allowed the perpetrators of crimes against women to be released unpunished.

In addition to protecting the rights of women, many human rights instruments urged member States to increase the participation of women in decision-making bodies. As of February 2009, women constituted 9.7 per cent of members of national parliaments in the Arab region – one of the lowest rates of female political representation in the world.¹⁶

Overall, some of the challenges in the Arab region that hinder the full political participation of Arab women can be described as follows:

1. *The political system*

According to Naila Kabeer, women are more likely elected to national parliaments in democratic countries than in countries that are ruled by non-democratic regimes. While women constitute 24 per cent of national parliaments in democratic countries worldwide, they only form 11 per cent of parliaments that are ruled by a one-party regime.¹⁷ Furthermore, when women join the single party political system, they seldom use their political presence to advance the cause of women, especially if these issues were not initially part of the agenda of the ruling party.

2. *Tribalism and sectarianism as barriers to political empowerment of women*

In the majority of Arab States that are dominated by a bedouin or '*ashira* (extended tribe) culture, such as Iraq, Jordan, Yemen and some Gulf States, it is mostly the heads of the clans who nominate the person who will run for parliamentary and municipal elections. They also decide on the choice of candidate the clan should vote for at the national level. In Lebanon, sectarianism is a permanent barrier to the political participation of women and the adoption of a quota system for their representation in the Lebanese national parliament. Women in Lebanon lobbied for the adoption of a quota system that would allocate certain seats to Lebanese women as the Lebanese Government discussed the adoption of a new electoral law during the 2005 parliamentary elections. The Government refused the proposal and hinted that the adoption of a quota system for women would disrupt the Lebanese parliamentary system and the overall confessional balance by reducing previously allocated seats for the different religious communities.

3. *Stereotypes about the role of women in society*

Article 5 of CEDAW highlights the need to modify cultural patterns and stereotypes which cause discrimination and reinforce the subordinate position of women in society. Some sectors of the Arab society still view the role of women as limited to taking care of the family, raising children and possibly working in professions that are a natural extension of their caretaking roles, such as teaching or nursing.

However, politics in the Arab world have been traditionally limited to Arab men. Unlike other developing regions in Asia and South-East Asia where women have been elected to high positions, for example as presidents (in Philippines) and prime ministers (in Bangladesh, India, Pakistan and Sri Lanka), political participation of women in some parts of the Arab world has been limited to selected ministerial

¹⁶ For more information see Inter-Parliamentary Union. 2009. Women in National Parliaments, available at: <http://www.ipu.org/wmn-e/world.htm>.

¹⁷ See Kabeer, N. 2003. Gender equality and women's empowerment: a critical analysis of the third Millennium Development Goal.

appointments and parliamentary positions. In other countries, including Egypt and Kuwait, however, progress has been made in engaging women to actively take part in public and political life.

4. Quotas

The quota system, which serves as a temporary special measure to enhance the empowerment of women and to accelerate the achievement of equality in political life, is clearly articulated in Article 4 of CEDAW, which emphasizes the quota system as a temporary measure that should be discontinued once full equality in political participation is reached.

Quota systems are important because granting women the right to vote and to run for elections is not, in itself, sufficient. Even if women acquire those political rights, they are not automatically elected to legislative posts. It took 30 years before any woman in Lebanon and Morocco won seats in their national parliaments, although they had been granted their political rights in the 1940s and 1950s.

In contrast, Iraq has the highest percentage of women members of national parliaments with 25.5 per cent, followed by 22.8 per cent in Tunisia and 22.5 per cent in the United Arab Emirates.¹⁸ Those high percentages can be directly attributed to the institutionalization of the quota system.¹⁹ Table 4 gives additional information on women in Arab parliaments.

TABLE 4. WOMEN IN ARAB PARLIAMENTS AS OF 30 NOVEMBER 2008

Country	Lower or single House				Upper House or Senate			
	Elections	Seats*	Women	Percentage of women	Elections	Seats*	Women	Percentage of women
Iraq	December 2005	275	70	25.5	---	---	---	---
Tunisia	October 2004	189	43	22.8	August 2008	112	17	15.2
United Arab Emirates	December 2006	40	9	22.5	---	---	---	---
Mauritania	November 2006	95	21	22.1	January 2007	56	9	16.1
Sudan	August 2005	443	80	18.1	August 2005	50	3	6.0
Syrian Arab Republic	April 2007	250	31	12.4	---	---	---	---
Morocco	September 2007	325	34	10.5	September 2006	270	3	1.1
Algeria	May 2007	389	30	7.7	December 2006	136	4	2.9
Libyan Arab Jamahiriya	March 2006	468	36	7.7	---	---	---	---
Jordan	November 2007	110	7	6.4	November 2007	55	7	12.7
Lebanon	May 2005	128	6	4.7	---	---	---	---
Kuwait	May 2008	65	2	3.1	---	---	---	---
Bahrain	November 2006	40	1	2.5	December 2006	40	10	25.0
Egypt	November 2005	442	8	1.8	June 2007	264	18	6.8
Yemen	April 2003	301	1	0.3	April 2001	111	2	1.8
Oman	October 2007	84	0	0.0	November 2007	70	14	20.0
Qatar	July 2008	35	0	0.0	---	---	---	---
Saudi Arabia	April 2005	150	0	0.0	---	---	---	---

* Figures correspond to the number of seats currently filled in parliament.

Source: Inter-Parliamentary Union. 2009. Women in National Parliaments. Available at: <http://www.ipu.org/wmn-e/world.htm>.

¹⁸ As of February 2009, information available at: www.ipu.org.

¹⁹ Critiques of the quota system argue that it is flawed because it overlooks merit, and does not necessarily guarantee that competent and skillful women are appointed to the legislative body. In addition to the possibility of appointing women who do not have a solid constituency at the grass-root level, the quota system can favour the rule by proxy where the appointed female parliamentarian might act as a façade to her husband, father or brother. But despite its shortfalls, the quota system helps promote a new political culture in the Arab world where women are handed new roles taking up challenging positions in public life by becoming deputies and parliamentarians, ministers and even presidents.

B. THE BEIJING DECLARATION AND PLATFORM FOR ACTION (fifth area of concern)

In the wake of CEDAW, a comprehensive Plan of Action was issued at the 1995 Fourth World Conference on Women held in Beijing. The Beijing Declaration and Platform for Action (BDPA) was agreed upon by 189 countries and serves as an agenda for the empowerment of women.²⁰

While CEDAW outlines specific obligations of States parties to eliminate discrimination in particular spheres, such as education, employment, health and political representation, the Beijing Platform takes a broader look at the issues facing women and expands the areas of concern to explicitly include the impact of armed conflict on women, the management of natural resources, and challenges to the rights of the girl child.

The Beijing Declaration is not a treaty. Nevertheless, all countries pledged to set up national programmes to implement the Beijing Platform and to give adequate resources to ensure the success of the programme. The CEDAW Committee has asked its States parties to report on implementation of the Beijing Platform. The Beijing process is overseen by the United Nations Commission on the Status of Women.²¹

The document includes a global framework, 12 areas of concern and related strategic objectives, and two final parts on institutional and financial arrangements at the national, regional and international levels.

The Fourth World Conference on Women stressed that years of profound political, economic, social and cultural change, including the emergence of globalization, rural migration, increasing poverty and global economic recession, have all had a negative impact on the overall status of women.

In its fifth area of concern, the BDPA addresses the topic of women and armed conflict. It includes six strategic objectives. The first objective calls for the protection of women living in conflict situations, and for the increase in the participation of women in decision-making and conflict-resolution processes. According to this objective, protection can take place by providing gender training to judges and prosecutors who are handling cases of violence against women in armed conflict, and by integrating a gender perspective in their work. Efforts to increase the participation of women in decision-making should include appointing them in the United Nations Secretariat and in judicial bodies, such as the International Court of Justice (ICJ) and in other bodies and tribunals related to peaceful settlement of disputes.

The second strategic objective calls for the reduction of excessive military expenditure and the control of availability of armaments. According to BDPA, the reduction of excessive military expenditures might release much-needed funds that could be allocated for social and economic development, including the advancement of women. The BDPA urges States to address the dangers of arms trading and to combat illicit arms trafficking, especially those arms that are particularly injurious to women and children or that have indiscriminate effect, such as anti-personnel landmines. In this context, the BDPA urges States to ratify the 1981 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects, particularly the Protocol on Prohibitions or Restrictions on the Use of Mines, Booby Traps and Other Devices. In addition to ratification, States should provide assistance to developing countries by transferring appropriate knowledge and technology and cooperate in mine clearance and demining operations. Adopting a moratorium on the export of anti-personnel mines is also recommended. The second strategic objective also stresses on the need to demonstrate restraint in nuclear testing and to work towards complete disarmament by supporting negotiations to adopt a nuclear test-ban treaty.

²⁰ More information is available at: <http://www.un.org/womenwatch/daw/Review/english/49sess.htm>.

²¹ Hadar, H. 2005. Current Processes for Assessment of Women's Human Rights in International Law in *American Society of International Law Insights*, available at: http://www.asil.org/insights050316.cfm#_edn6.

The third strategic objective calls for the promotion of non-violent forms of conflict resolution and the reduction of human rights violations in conflict situations by adhering to the norms of international humanitarian law and protecting women against rape, forced prostitution or any other form of assault. Respecting these norms should be first translated by the ratification of humanitarian law instruments, particularly the 1949 Geneva Convention relative to the Protection of Civilian Persons in Time of War, and its two additional protocols. States are then required to encourage the peaceful settlement of disputes and the involvement of women in peacekeeping, preventive diplomacy, peace mediation and negotiation processes. In addition to promoting the respect of humanitarian law and calling for the adoption of non-violent forms of conflict resolution, this strategic objective also refers to the obligation of States to identify rape as a war crime and to take certain actions when it is deliberately used as an instrument of war. These actions include prosecuting criminals responsible for war crimes against women, and providing redress and full assistance to women victims who might suffer from physical and mental injuries. Providing gender training to relevant personnel, such as United Nations peacekeepers and humanitarian aid personnel, is also needed since these groups have to identify the different needs of women and support victims. The role of these agents is also crucial when it comes to aid/food distribution in affected countries, and food and medicine should not be used as a tool for political pressure. Furthermore, measures should be taken to alleviate the negative impact of economic sanctions on women and children.

The fourth objective invites States to promote the contribution of women in fostering a culture of peace through: peace education; training; community action; youth exchange programmes; the development and dissemination of studies on the impact of armed conflict on women and children; and the role of women in peace movements.

The fifth strategic objective addresses the rights of refugee women and calls on States, intergovernmental, non-governmental and United Nations agencies to provide refugee and displaced women with protection, assistance and training. This objective calls for measures to be taken to assist and protect refugee and displaced women, such as involving them in camp management operations and ensuring that they have direct access to services provided in affected areas. Furthermore, women should be included in the planning, design and implementation and monitoring stages of all assistance projects. Moreover, appropriate measures should be taken to ensure equal access of women to food, water, shelter, education, social and health services, including access to reproductive health and maternal care.

The document reaffirms that the equal rights of women should be respected at all times, even in refugee determination procedures and the granting of asylum. States should recognize as refugees “those women whose claim to refugee status is based upon well-founded fear of persecution, including through sexual violence or other gender-related persecution”.²² The protection of human rights of women includes recognizing their right to family reunification. This strategic objective also addresses the issue of return of refugee women to their country of origin. While respecting the right of *non-refoulement*, States should take all necessary steps to ensure the right of refugees and displaced women to return voluntarily to their place of origin, and to ensure that they are protected after their return. As for internally-displaced women, States are invited to find solutions to “the root causes of their displacement with a view to preventing it and when appropriate facilitate their return or resettlement”.²³

In addition to providing protection and assistance, States, United Nations agencies, intergovernmental and non-governmental organizations are invited to provide training to refugee women, such as self-reliance, vocational/professional and capacity-building training. Furthermore, these parties should offer counselling on all forms of violence against women and rehabilitation programmes for victims of rape and trauma. Raising awareness of the human rights of women and providing gender-sensitive training to military and

²² United Nations. 1995. The Beijing Declaration and Platform for Action, available at: <http://www.un.org/womenwatch/daw/beijing/pdf/BDPFA%20E.pdf>, Strategic objective E.5, B.

²³ Id. Strategic objective E.5, H.

police personnel operating in conflict areas where there are refugees, are important tools to safeguarding the rights of women and protecting them from violence and abuse. The dissemination and implementation of UNHCR Guidelines on the Protection of Refugee Women²⁴ are also a step in the right direction.

According to the BDPA, women and children constitute 80 per cent of the millions of refugees and displaced persons in the world. The Middle East, along with sub-Saharan and Central Africa, hosts and produces the largest populations of displaced persons worldwide. In the Arab region, waves of displaced persons were received by neighbouring countries: 700,000 Palestinians in 1948, 2 million Iraqi refugees from the first Gulf War in the 1990s, and 2.4 Million Iraqis since 2003.²⁵

Peace is inextricably linked to the concept of equality between women and men. It is largely women who suffer human rights violations in situations of armed conflict, including terrorism, torture, disappearance, rape, ethnic cleansing, family separation and displacement, and bear the lifelong social and psychological traumas of conflicts. The BDPA underlines the fact that, if women are to play an equal part in securing and maintaining peace, they must be empowered politically and economically and represented adequately at all decision-making levels. At the same time, peace and security are essential for economic growth, development and the empowerment of women. That position has been reaffirmed through a number of declarations and resolutions as early as 1974, as can be gathered below.

C. DECLARATION ON THE PROTECTION OF WOMEN AND CHILDREN IN EMERGENCY AND ARMED CONFLICT (1974)

The Declaration on the Protection of Women and Children in Emergency and Armed Conflict was adopted by the General Assembly in December 1974. The resolution called upon States to observe international humanitarian law and focused on the rights of civilians during armed conflict. It prohibited attacks and bombings that target civilians and the use of chemical or bacteriological weapons. The Resolution furthermore called upon States that are involved in conflicts to spare women and children from harm and to prohibit torture, punitive measures, or degrading treatment of civilians. States have been also requested to criminalize belligerents who engage in acts of torture, imprisonment, mass arrests, collective punishment, and destroy homes and forcibly evict civilian population from their homes.

D. UNITED NATIONS SECURITY COUNCIL RESOLUTION 1325 (2000)

United Nations Security Council Resolution 1325, adopted on 31 October 2000, marked the first time the Security Council addressed the “disproportionate and unique impact of armed conflict on women, recognized the under-valued and under-utilized contributions women make to conflict prevention, peacekeeping, conflict resolution and peace-building, and stressed the importance of their equal and full participation as active agents in peace and security”.²⁶ If member States are to fully implement the Resolution, they should tackle important issues pertinent to women, peace and security, such as:

- Increasing the political participation of women at all levels of decision-making mechanisms;
- Protecting the rights of women and children during wars and armed conflict and according due attention to their special needs;

²⁴ Available at: www.unhcr.org/publ/PUBL/3d4f915e4.pdf.

²⁵ See United Nations Economic and Social Commission for Western Asia (ESCWA). 2009. *The Impact of Conflict-driven Displacement in the ESCWA Region*.

²⁶ Women’s International League for Peace and Freedom, Index of United Nations Security Council resolution 1325. More information is available at: www.peacewomen.org/un/UN1325.

- Including women in peace talks, conflict resolution, and peace-building and post-conflict reconstruction and rehabilitation efforts;
- Gender mainstreaming in peace operations and the security sector.

E. UNITED NATIONS SECURITY COUNCIL RESOLUTION 1820 (2008)

The United Nations Security Council has now furthered its concern with the disproportionate effect of war on women in United Nations Security Council Resolution 1820, which crystallizes recent thinking on the impact of armed conflict on women as it:

Notes that rape and other forms of sexual violence can constitute a war crime, a crime against humanity, or a constitutive act with respect to genocide, *stresses the need for* the exclusion of sexual violence crimes from amnesty provisions in the context of conflict resolution processes, and *calls upon* Member States to comply with their obligations for prosecuting persons responsible for such acts, to ensure that all victims of sexual violence, particularly women and girls, have equal protection under the law and equal access to justice, and *stresses* the importance of ending impunity for such acts as part of a comprehensive approach to seeking sustainable peace, justice, truth, and national reconciliation.²⁷

Large-scale violence against women, which in one of its ugliest forms takes the form of rape, constitutes a crime against humanity and a war crime and could, indeed, possibly constitute a defining act of genocide. In this Resolution, the Security Council reaffirmed what the ICC and other international courts had already included in the list of crimes that they are competent to punish.

²⁷ United Nations. 2008. Security Council Resolution 1820, Dispositive section 4.

III. THE INTERNATIONAL CRIMINAL AND HUMANITARIAN LAW SYSTEM: FROM THE GENEVA CONVENTIONS TO THE ICC

The three main conventions relevant to the application of International Humanitarian Law and International Criminal Law in situations of armed conflict are: the Geneva conventions; the Convention against Torture; and the International Criminal Court regime under the Rome Convention.

A. THE GENEVA CONVENTIONS²⁸

Since almost all States have ratified the Geneva conventions of 1949 as well as the four conventions and three protocols of 1977,²⁹ they constitute the thrust of international humanitarian law. The conventions and protocols provide the legal standards for States to comply with in times of war, and bind their Governments as State parties.

1. *Substance: grave breaches*

Grave breaches cover a large spectrum, which can be summarized as follows:

(a) *Persons who are hors combat*

Persons who do not or can no longer take part in the hostilities are entitled to respect for their life and for their physical and mental integrity. Such persons must in all circumstances be protected and treated with humanity.

(b) *Safety after surrender*

It is forbidden to kill or wound an adversary who surrenders or who can no longer take part in the fighting.

(c) *Wounded and sick*

The wounded and sick must be collected and cared for by the party to the conflict which has them in its power. Medical personnel and medical establishments, transports and equipment must be spared. The Red Cross or Red Crescent on a white background is the sign protecting such persons and objects and must be respected.

(d) *Captured combatants and civilians*

Fighters and civilians who find themselves under the authority of the adverse party are entitled to respect for their life, their dignity, their personal rights and their political, religious and other convictions. They must be protected against all acts of violence or reprisal. They are entitled to exchange news with their families and receive aid.

(e) *Judicial guarantee*

Everyone must enjoy basic judicial guarantees and no one may be held responsible for an act he has not committed. No one may be subjected to physical or mental torture or to cruel or degrading corporal punishment or other treatment.

²⁸ For more information see Pictet, J.S. (ed.). 1952. *Les conventions de Genève du 12 août 1949: Commentaire*. Geneva. Comité international de la Croix-Rouge.

²⁹ In 2009, there were 194 State parties to the Geneva conventions.

(f) *Proportionality*

Neither parties to the conflict nor members of their armed forces have an unlimited right to choose methods and means of warfare. It is forbidden to use weapons or methods of warfare that are likely to cause unnecessary losses or excessive suffering.

(g) *Protection of civilians*

The parties to a conflict must at all times distinguish between the civilian population and combatants in order to spare the civilian population and civilian property. Neither the civilian population as a whole nor individual civilians may be attacked. Attacks may be made solely against military objectives. These measures are covered in some detail in the Conventions, most emphatically in Article 3, which refers to situations of internal conflict.

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:

(a) 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:

- (i) Violence to life and person, in particular, murder of all kinds, mutilation, cruel treatment and torture;
 - (ii) Taking of hostages;
 - (iii) Outrages upon personal dignity, in particular, humiliating and degrading treatment;
 - (iv) 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.
- (b) The wounded and sick shall be collected and cared for:
- (i) An impartial humanitarian body, such as the International Committee of the Red Cross (ICRC), may offer its services to the parties to the conflict;
 - (ii) 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;
 - (iii) The application of the preceding provisions shall not affect the legal status of the parties to the conflict.

2. *Gender*

Even though the Conventions addressed the broad spectrum of human rights, they do not specifically focus on gender discrimination. Only the Fourth Geneva Convention on the Protection of Civilian Persons in Time of War and its Additional Protocol paid some attention to the plight of women. Article 27 of the Convention states that “Women shall be especially protected against any attack on their honour, in particular

against rape, enforced prostitution, or any form of indecent assault”. This was extended to cases of internal conflict. Additional Protocol I, relating to civilians, notes that “women shall be the object of special respect and shall be protected in particular against rape, forced prostitution and any other form of indecent assault”.

3. Jurisdiction

The Geneva Conventions also play an important role in setting standards in domestic conflicts. The ICRC mentions that:

“On becoming party to the Geneva Conventions, States undertake to enact any legislation necessary to punish persons guilty of grave breaches of the Conventions. States are also bound to prosecute in their own courts any person suspected of having committed a grave breach of the Conventions, or to hand that person over for judgment to another State. In other words, perpetrators of grave breaches, i.e. war criminals, must be prosecuted at all times and in all places, and States are responsible for ensuring that this is done.

Generally speaking, a State’s criminal laws apply only to crimes committed on its territory or by its own nationals. International humanitarian law goes further in that it requires States to seek out and punish any person who has committed a grave breach, irrespective of his nationality or the place where the offence was committed. This principle of universal jurisdiction is essential to guarantee that grave breaches are effectively repressed.”³⁰

In practice, the implementation of the Convention is patchy, and apprehending war criminals has been the exception rather than the rule. Occasionally, States will prosecute some of their soldiers, but the universal jurisdiction dimension remains limited by the lack of willingness by Governments to surrender their top officials to the jurisdiction of other countries. Universal jurisdiction remains patchy.

All in all, the implementation of the Geneva Conventions has failed in two areas: few prosecutions have taken place, and the Conventions have lacked particular emphasis on gender. Still, the standards are important, and continue to provide the yardstick for the laws on war and occupation.

B. CONVENTION AGAINST TORTURE³¹

The Geneva Conventions and Protocols have been complemented by the 1984 Convention against Torture (CAT), an important convention on the prohibition of torture. According to the World Organization against Torture (OMCT), form of torture, the circumstances under which it occurs, its consequences and the availability of, and access to, remedies for its victims are often gender-related.³² Several reports from Algerian NGOs indicate that more than 7,000 women were raped, tortured and kidnapped during the Algerian civil war.³³ In Iraq, many women prisoners were tortured during their detention in Iraqi prisons, such as Abu Ghreib. Over 90 women were imprisoned in Abu Ghreib before being transferred to another location.³⁴ Wives of militia men were arrested by the coalition forces in order to capture or put pressure on the husbands.³⁵ Despite the fact that women often experience torture for gender-related reasons, CAT does not pay attention to that particular form of specific discrimination. Still, women are entitled to benefit from the protection found in both the legal texts and the different mechanisms set up to implement and enforce

³⁰ International Committee of the Red Cross (ICRC). 2004. How are war criminals prosecuted under humanitarian law? In *International humanitarian law: answers to your questions*. 1 January 2004, available at: <http://www.icrc.org/web/eng/siteeng0.nsf/html/5KZMNU>.

³¹ Nowak, M., McArthur, E. 2008. *The United Nations Convention Against Torture: A Commentary* (Oxford Commentaries on International Law).

³² World Organisation Against Torture. 2000. Egypt – Press Release: Egyptian human rights defender faces years of imprisonment. 15 February 2000, available at: www.omct.org/index.php?id=EOL&lang=eng&articleSet=Documents&articleId=4.

³³ See ESCWA. 2007. *Women’s Rights in Conflict Situations*.

³⁴ Ibid.

³⁵ Ibid.

them. The section below provides a legal analysis of CAT and examines its applicability in the ESCWA region.

1. Overview³⁶

The prohibition against torture is found in both the Universal Declaration of Human Rights (1948) and the International Convention on Civil and Political Rights, which entered into force in 1976. Yet, the international community felt that a specific convention was needed because of the consistent and flagrant violation of the prohibition against torture. CAT was adopted in 1984 and entered into force in 1987. It consists of 33 Articles, 16 of which are substantive, and includes the following five central themes: (a) the definition of torture; (b) duty of States to prevent torture; (c) State obligations to provide remedies and reparation to victims of torture; (d) non-refoulement; and (e) universal jurisdiction.

Torture is defined in Article 1 of the Convention, which subsequently enumerates in Articles 2, 10, 11, 15 and 16 the duty of the State to prevent torture. The third section of the Convention relates to State obligations to provide remedies and reparation to those who were victims of torture (Articles 12, 13 and 14). The fourth theme regards the principle of *non-refoulement* (Article 3). The last theme pertains to the concept of universal jurisdiction, or *aut dedere aut judicare*.

2. Definition of torture

Article 1 states:

“1. For the purposes of this Convention, the term ‘torture’ means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

2. This article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application.”³⁷

According to Professor Manfred Nowak, United Nations Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, this definition is both narrow and controversial. According to this definition, torture “cannot be committed through negligence or by private persons, it also requires a certain degree of intensity in intentionally inflicting suffering; and it cannot be committed without purpose (for example, by mere sadism)”.³⁸ Moreover, the last sentence (torture... does not include pain or suffering arising from, inherent in or incidental to lawful sanctions)³⁹ was included to please certain States because they hoped that it might be used as a pretext to violate the Convention and exclude the prohibition of torture when it is inflicted upon individuals who are in prison or under arrest.

³⁶ For more information see Burgers, H., Danelius, H. 1988. *The United Nations Convention against Torture: A Handbook on the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment*.

³⁷ United Nations. 1984. The Convention against Torture, available at: <http://www2.ohchr.org/english/law/cat.htm>.

³⁸ Nowak, M. 2003. *Introduction to the International Human Rights Regime*. 88-89.

³⁹ United Nations. 1984. The Convention against Torture, available at: <http://www2.ohchr.org/english/law/cat.htm>, Article 1.

3. *The obligations of States with regard to the implementation of the Convention against Torture*

CAT enumerates the duty of States in Articles 2, 3, 10, 11, 15 and 16. These Articles specify that States have to take the appropriate administrative, judicial and legislative steps to prevent torture. They also have to note that an order from a superior officer to torture may not be invoked as a justification for torture. The Convention affirms that no emergency situation, such as war, threat to war or political instability, may be used as a pretext for allowing acts of torture. States also have the obligation to disseminate information on the prohibition of torture, and provide anti-torture training to law enforcement officers and other public, medical, civil or military officers involved in the interrogation or arrest of individuals. Furthermore, States have to keep under review all interrogation methods in order to ensure that no torture is taking place.

In addition to torture, States also have to prohibit all cruel, inhumane and degrading acts. They must disregard all statements that might have been obtained through torture, and any evidence that was obtained in judicial proceedings due to torture may not be valid nor accepted in court.

Other State obligations under CAT relate to the right of compensation for the victims of torture. States must investigate every incident of torture that may have occurred in the territory under their jurisdiction. Victims of torture have the right to complain to the competent authority and must be protected, together with other witnesses, from any threat or intimidation. States must ensure that their legal system can provide enforceable redress and compensation, including rehabilitation to the victims of torture. And “in the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation”.⁴⁰

4. *The right to non-refoulement*

In addition to these various state obligations, CAT provides in Article 3 for an important practical concept of *non-refoulement*:

“1. No State Party shall expel, return (*refouler*) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.”⁴¹

5. *Aut dedere aut judicare*

The fourth central theme in CAT is that of *aut dedere aut judicare*, which is the universal jurisdiction in crimes related to torture. CAT is the first human rights instrument that includes this concept in relation to torture, and was used in the decision of the House of Lords against the former Chilean dictator Augusto Pinochet.⁴²

The principle is defined in the following manner: “Whenever a person suspected of having committed an act of torture is present on the territory of a state party, irrespective of the nationality of perpetrator or victim or of the scene of the crime, State authorities (even without a request for extradition from the other State), are obligated to initiate a provisional investigation and take the suspect into custody or otherwise ensure their physical presence until criminal or extradition proceedings are commenced. If there is satisfaction after the examination of information that torture was committed, the State in accordance with the

⁴⁰ United Nations. 1984. CAT, available at: <http://www2.ohchr.org/english/law/cat.htm>, Article 14.

⁴¹ Id. Article 3.

⁴² For more information, see: <http://www.publications.parliament.uk/pa/ld199899/ldjudgmt/jd981125/pino01.htm>.

principle of *aut dedere aut judicare*, either has to extradite the person to another State, or undertake to prosecute the suspect under its own criminal proceedings”.⁴³

Under CAT, torture is recognized as an international crime that can take place in both times of peace and conflict. The perpetrators of torture should not be able to take refuge in any State, for they will be either prosecuted or extradited for prosecution. States can no longer invoke the concepts of State sovereignty, and non-interference in the affairs of their own citizens, when it comes to the prosecution of such crimes.

The definition of torture in CAT is narrow and controversial. It has, for example, prompted the United States to enter a reservation on Article 1 explaining that the exclusion of ‘lawful sanctions’ from the definition of torture should not defeat the object and purpose of the Convention. In addition to the ‘lawful sanctions’ exception, the limitation by Article 1 of acts of torture to public officials seems to exclude the acts of private individuals. Moreover, CAT has failed to define the three levels of State obligations to *respect, protect and fulfil*. The obligation to *respect* requires States to refrain from interfering directly or indirectly with the enjoyment of human rights. The obligation to *protect* requires States to take measures that prevent third parties from interfering with the human rights of individuals. And the obligation to *fulfil* requires States to facilitate, provide and promote human rights by adopting appropriate legislative, administrative, budgetary, judicial, promotional and other measures towards the full realization of human rights. Regarding the prohibition of torture, CAT has omitted the obligation on States to protect, because it did not include the prohibition of torture by private organizations or individuals.

Nevertheless, the strength of CAT comes from the fact that, for the first time, it includes the concept of universal jurisdiction in relation to torture into human rights law. CAT was also successful in defining an important right, namely *non-refoulement*, in Article 3. Finally, CAT is accredited with potentially efficient monitoring mechanism through the drafting of an Optional Protocol that entered into force in June 2006. As of April 2009, the Optional Protocol has been ratified by 46 State Parties.⁴⁴ The Optional Protocol, which is a procedure implemented in the European Union, provides for a system of regular visits to places of detention. This system can act as a preventive measure to deter acts of torture in places of detention.

In addition to the Optional Protocol, CAT includes provisions for individual complaints and inquiry procedures (with the consent of States), which are handled by the CAT committee. As of April 2009, CAT had secured the ratification of 146 States.⁴⁵ However, in the light of the seriousness of this crime, it is puzzling that over 50 countries have still not ratified the Convention.

6. *Relevance and applicability of the Convention against Torture in the ESCWA region*

Whether in times of peace or conflict, torture is considered an international crime which violates international law in general and the provisions of CAT in particular. Although 9 out of 13 ESCWA member countries have ratified the Convention (see table 5), there are still clear violations of the Convention in the region, such as sentences that include stoning to death, flogging and amputation. The death penalty, which human rights experts consider as the ultimate form of cruel, degrading and inhumane treatment, is still practiced by a large majority of countries in the region.

C. THE INTERNATIONAL CRIMINAL COURT⁴⁶

The Rome Statute on the International Criminal Court (ICC) represents one of the greatest advances in international law since the Second World War. Yet, the ICC is controversial, and a number of major

⁴³ Nowak, M. 2003. *Introduction to the International Human Rights Regime*, p. 90.

⁴⁴ See United Nations Office of the High Commissioner for Human Rights (OHCHR). Status of ratifications of the principal international human rights treaties, available at: <http://www2.ohchr.org/english/bodies/docs/statue.pdf>.

⁴⁵ *Id.*

⁴⁶ For more information see Cassese, A., Eser, A., Gaja, G., Kirsch, P. et al. (eds.) 2002. *The Rome Statute for an International Criminal Court: A Commentary*.

countries, including China, the Russian Federation and the United States have refused to ratify the Statute. One hundred and seven countries around the world, including 30 African States and all European Union countries have ratified the Statute, whereas Jordan is the only country in the ESCWA region to have done so.

TABLE 5. THE CONVENTION AGAINST TORTURE: RATIFICATION STATUS

	Country	Ratification	Entry into force	Article 21 Declaration	Article 22 Declaration	Article 28 Declaration (re: Article 20)	Amendment re: Articles 17(7) and 18(5)
1.	Algeria	12 September 1989	12 October 1989	12 September 1989	12 September 1989		
2.	Bahrain	6 March 1998	5 April 1998				
3.	Comoros	22 September 2000					
4.	Djibouti	5 November 2002	5 December 2002				
5.	Egypt	25 June 1986	26 June 1987				
6.	Iraq*						
7.	Jordan	13 November 1991	13 December 1991				
8.	Kuwait	8 March 1996	7 April 1996			8 March 1996	
9.	Lebanon	5 October 2000	4 November 2000				
10.	Libyan Arab Jamahiriya	16 May 1989	15 June 1989				
20.	Mauritania	17 November 2004	17 December 2004			17 November 2004	
11.	Morocco	21 June 1993			19 October 2006		
12.	Oman						
13.	Qatar	11 January 2000	10 February 2000				
14.	Saudi Arabia	23 September 1997	22 October 1997			23 September 1997	
15.	Sudan	4 June 1986					
16.	Syrian Arab Republic	19 August 2004	19 September 2004			19 August 2004	
17.	Tunisia	23 September 1988	23 October 1988	23 September 1988	23 September 1988		
18.	United Arab Emirates						
19.	Yemen	5 November 1991	5 December 1991				

Note: Two countries are missing from this list of the League of Arab States: one is considered as a failed State (Somalia) and the other (Palestine) has not yet been recognized as a State by the United Nations.

Source: http://www.bavefsky.com/html/cat_ratif_table.php.

* Iraq adhered to CAT in 2009, and the accession document has been deposited with the United Nations. UNHCR Iraq was informed that it will enter into force after being published in the National Gazette “alWaq’a’ e”.

The ICC was established to unify a field of law which had developed significantly in the 1990s in the wake of atrocities committed in Iraq, the former Republic of Yugoslavia and Rwanda. Efforts to establish an international court in the case of Iraq did not succeed, and the trial of the leaders of the former regime took eventually place before a national court. But the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) were established by the United Nations Security Council in 1993 and 1994 respectively, and they were followed by another four international or mixed tribunals, namely, for Timor-Leste, Sierra Leone, Cambodia, and, most remarkably in the ESCWA region, the Special Tribunal for Lebanon, which formally came into being on 1 March 2009.

1. *Competence for specific crimes*⁴⁷

The ICC therefore represents a general trend aimed at punishing those who commit the most serious violations in four categories of crimes established by the Statute (Article 5): genocide, crimes against humanity, war crimes and aggression. Aggression remains undefined, but the Statute is detailed on the other three categories:

The crime of genocide is defined under Article 6, following the 1949 Convention on Genocide, as “any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.”⁴⁸

Article 7 defines crimes against humanity as “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;

⁴⁷ For more information see Shelton, D. (ed.) 2005. *Encyclopedia of Genocide and Crimes Against Humanity*.

⁴⁸ United Nations. 1948. Convention on the Prevention and Punishment of the Crime of Genocide, Article II. The Convention was adopted in 1948 and came into effect in 1951.

(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 covers the following war crimes:

“(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:

(i) Wilful killing;

(ii) Torture or inhuman treatment, including biological experiments;

(iii) Wilfully causing great suffering, or serious injury to body or health;

(iv) Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;

(v) Compelling a prisoner of war or other protected person to serve in the forces of a hostile Power;

(vi) Wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;

(vii) Unlawful deportation or transfer or unlawful confinement;

(viii) Taking of hostages.

(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:

(i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;

(ii) Intentionally directing attacks against civilian objects, that is, objects which are not military objectives;

(iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;

- (iv) Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated;
- (v) Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives;
- (vi) Killing or wounding a combatant who, having laid down his arms or having no longer means of defense, has surrendered at discretion;
- (vii) Making improper use of a flag of truce, of the flag or of the military insignia and uniform of the enemy or of the United Nations, as well as of the distinctive emblems of the Geneva Conventions, resulting in death or serious personal injury;
- (viii) The transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory;
- (ix) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;
- (x) Subjecting persons who are in the power of an adverse party to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;
- (xi) Killing or wounding treacherously individuals belonging to the hostile nation or army;
- (xii) Declaring that no quarter will be given;
- (xiii) Destroying or seizing the enemy's property unless such destruction or seizure be imperatively demanded by the necessities of war;
- (xiv) Declaring abolished, suspended or inadmissible in a court of law the rights and actions of the nationals of the hostile party;
- (xv) Compelling the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of the war;
- (xvi) Pillaging a town or place, even when taken by assault;
- (xvii) Employing poison or poisoned weapons;
- (xviii) Employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;
- (xix) Employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions;
- (xx) Employing weapons, projectiles and material and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate

in violation of the international law of armed conflict, provided that such weapons, projectiles and material and methods of warfare are the subject of a comprehensive prohibition and are included in an annex to this Statute, by an amendment in accordance with the relevant provisions set forth in articles 121 and 123;

- (xxi) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;
- (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;
- (xxiii) Utilizing the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations;
- (xxiv) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;
- (xxv) Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Conventions;
- (xxvi) Conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities.

(c) In the case of an armed conflict not of an international character, serious violations of article 3 common to the four Geneva Conventions of 12 August 1949, namely, any of the following acts committed against 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:

- (i) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
- (ii) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;
- (iii) Taking of hostages;
- (iv) The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable.

(d) Paragraph 2 (c) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature;

(e) Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following acts:

- (i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;

- (ii) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;
- (iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;
- (iv) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;
- (v) Pillaging a town or place, even when taken by assault;
- (vi) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced sterilization, and any other form of sexual violence also constituting a serious violation of article 3 common to the four Geneva Conventions;
- (vii) Conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities;
- (viii) Ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand;
- (ix) Killing or wounding treacherously a combatant adversary;
- (x) Declaring that no quarter will be given;
- (xi) Subjecting persons who are in the power of another party to the conflict to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;
- (xii) Destroying or seizing the property of an adversary unless such destruction or seizure be imperatively demanded by the necessities of the conflict;

(f) Paragraph 2 (e) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature. It applies to armed conflicts that take place in the territory of a State when there is protracted armed conflict between governmental authorities and organized armed groups or between such groups.”

The ICC has a remit over a wide range of crimes, but the competence of the court is triggered only in the case of ‘serious violations.’ Terrorism, for instance, has not been included within the jurisdiction of the court, but gender-specific crimes are underlined, especially in the case of rape and other gender-specific mistreatment of women in Articles 7 (g), 8 (b) (12), and 8 (e) (6).

2. Jurisdiction

The Court exercises jurisdiction in a limited number of cases, as defined in Articles 12 and 13 of the Rome Statute.

Article 12 deals with preconditions to the exercise of jurisdiction:

“1. A State which becomes a Party to this Statute thereby accepts the jurisdiction of the Court with respect to the crimes referred to in article 5.

2. In the case of article 13, paragraph (a) or (c), the Court may exercise its jurisdiction if one or more of the following States are Parties to this Statute or have accepted the jurisdiction of the Court in accordance with paragraph 3:

(a) The State on the territory of which the conduct in question occurred or, if the crime was committed on board a vessel or aircraft, the State of registration of that vessel or aircraft;

(b) The State of which the person accused of the crime is a national.

3. If the acceptance of a State which is not a Party to this Statute is required under paragraph 2, that State may, by declaration lodged with the Registrar, accept the exercise of jurisdiction by the Court with respect to the crime in question. The accepting State shall cooperate with the Court without any delay or exception in accordance with Part 9.”

Paragraphs 2 (a) and (b) encapsulate the two central principles for the competence of the ICC: (i) crimes committed on the territory of a State party, which covers the territoriality principle; and (ii) if the accused belongs to a State party, which covers the personality principle. This narrows the competence of the Court, since it excludes competence based on the nationality of the victim, as does the referral process explained in Article 14.

Article 13 defines the exercise of jurisdiction of the ICC as follows:

“The Court may exercise its jurisdiction with respect to a crime referred to in article 5 in accordance with the provisions of this Statute if:

(a) A situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by a State Party in accordance with article 14;

(b) A situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by the Security Council acting under Chapter VII of the Charter of the United Nations; or

(c) The Prosecutor has initiated an investigation in respect of such a crime in accordance with article 15.”

Referral by a State party and/or by the prosecutor is constrained by two other principles, notably the complementarity principle, that is the absence of prosecution by the main State concerned, and by the temporal principle, as crimes committed before the entry into force of the Convention in 2002 are not covered by the ICC. The Security Council can also ask for the deferral of a case by means of a resolution under Chapter VII of the Charter of the United Nations.

So far, while the ICC has not exercised its competence as stipulated under Article 12 of the Rome Statute, the prosecutor has been formally active in a number of conflicts in Africa, the most important case being the Darfur case, which was deferred to the ICC by the Security Council under Article 13 (b), resulting in the indictment and arrest warrant against a number of high Sudanese officials. The case of Darfur reflects the determination of the international community to investigate cases of mass rape and murder of women.

According to the prosecutor, since 2003, thousands of women and girls belonging to the targeted ethnic groups in all three provinces of Darfur were, and continue to be, raped. A third of the rapes are

committed on children, and girls as young as five have been reported to have been raped. The prosecutor has concluded that there was evidence of systematic rape and that it had been taking place for the past five years. A typical testimony by women victims is quoted in the summary of the case: “when we see them, we run. Some of us succeed in getting away, and some are caught and taken to be raped -- gang-raped. Maybe around 20 men rape one woman.... [...] These things are normal for us here in Darfur. These things happen all the time. I have seen rapes too. It does not matter who sees them raping the women - they don't care. They rape women in front of their mothers and fathers”.⁴⁹ Concluding that rape is an integral part of the violence inflicted upon the targeted ethnic groups in Darfur, and partly based on the Akayesu precedent before the International Criminal Tribunal for Rwanda,⁵⁰ the prosecutor applied for a warrant of arrest, which was then confirmed by the ICC Pre-Trial Chamber I on 4 March 2009.⁵¹

⁴⁹ International Criminal Court. 2008. Situation in Darfur, The Sudan, Office of the Prosecutor, Summary of the Case, Prosecutor's Application for Warrant of Arrest under Article 58 Against Omar Hassan Ahmad AL BASHIR, p. 5, available at: <http://www.icc-cpi.int/NR/rdonlyres/64FA6B33-05C3-4E9C-A672-3FA2B58CB2C9/277758/ICCOTPSummary20081704ENG.pdf>.

⁵⁰ See International Crime Tribunal for Rwanda (ICTR). 1998. The Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4-T. 2 September 1998, available at: <http://69.94.11.53/ENGLISH/cases/Akayesu/judgement/akay001.htm> (considering the pattern of sexual violence committed by Akayesu as genocidal rape).

⁵¹ See International Criminal Court. Situations and Cases, available at: <http://www.icc-cpi.int/menus/icc/situations%20and%20cases/situations/situations%20icc%200205/related%20cases/icc02050109/icc02050109?lan=en-GB>

IV. CASE STUDY ON DISPLACED IRAQI WOMEN

With the sectarian violence reaching its peak in the aftermath of the bombing of Al-Askari Mosque in Samarra in February 2006, the Iraqi tragedy continued in another form, this time with the massive displacement of Iraqis from their homes in conflict zones. The following case study highlights the plight of forcibly displaced Iraqi women, together with the efforts of UNHCR and other United Nations agencies to address their specific protection needs.

A. OVERVIEW OF THE SITUATION OF DISPLACED IRAQI WOMEN

The civilian population in Iraq has experienced one of the most complex and violent situations in the world. Sectarian, ethnic, and political violence, explicitly targeting civilians, has caused forced displacement both within and outside of the country. It is estimated that more than 4 million Iraqis were displaced from their homes, including some 2.7 million internally displaced persons (IDPs) in Iraq and some 1.6 million people seeking refuge in neighbouring countries, such as the Syrian Arab Republic (1.1 million as estimated by the Syrian Government) and Jordan (450,000-500,000 according to a survey conducted in May 2007 by the Norwegian research institute FaFo). Some 900,000 of these Iraqi refugees are women. Of the 205,754 Iraqi refugees registered by UNHCR by May 2009 in the Syrian Arab Republic, 52,353 in Jordan and 10,345 in Lebanon, 49, 45 and 29 per cent, respectively, are women.

Repeated evidence has shown that women are disproportionately affected by violence and economic instability during and after conflict situations. This is clearly the case for Iraqi refugee women in the Middle East, where some 24,000 principal applicants for asylum are female. Out of these applications, 7,700 (including 5,400 in the Syrian Arab Republic and 1,490 in Jordan) are identified as women at risk, including single women heads of households, women in polygamous relationships and women unaccompanied by an adult male family member. Special assistance is needed for high-risk groups, such as survivors of sexual and gender-based violence (SGBV), women in detention, elderly women, trafficking victims and pregnant and lactating women. Furthermore, a growing number of young Iraqi girls in the Syrian Arab Republic and Jordan are denied the opportunity for an education because they have to work to support their families, often through domestic work or engaging in survival sex. A survey conducted among displaced Iraqi persons in the Masaken Barzeh district of Damascus indicates that many of the women seeking work for the first time and living in a country with high unemployment are obliged to prostitute themselves in order to ensure their survival and the survival of their families.

As a result, Iraqi women refugees face economic, social and physical, legal gender-specific challenges. These challenges are identified and addressed in the case study in the hope that ESCWA member countries, humanitarian organizations and UNHCR can meet the needs of Iraqi refugee women and girls more effectively.

B. ECONOMIC CHALLENGES

1. *Overview*

“I depend on a monthly allowance of US\$ 200 which I receive from my sister and mother in Iraq. With rising costs of rent and food, I am not making ends meet. With no father for my daughter and also the responsibility of taking care of my sister's child, I am desperate for assistance.” Fatima Ahmad, a divorced Iraqi mother running a female-headed household in Jordan, is barely coping to raise her 6-year old daughter, while also serving as guardian of her sister's 10-year old daughter. The \$200 a month which she receives from direct family members is no longer sufficient to cover even the most basic expenses.

While the Governments of the Syrian Arab Republic and Jordan have demonstrated a remarkable degree of generosity over the past few years in hosting such large numbers of Iraqi refugees, the economic

challenges facing Iraqi refugee women and girls reflect the problems that have to be dealt with by countries in the region in general, and the Iraqi refugee community in particular. These challenges are exacerbated for female heads of households or single females, many of whom lack social or financial support and a steady source of income and may have to provide for several children and extended family members. Most of the 14,800 female principle applicants for registration in the Syrian Arab Republic, and 6,600 in Jordan, are single, unaccompanied women or female heads of households. There are also reports that women are at a lower risk of being stopped by the police, detained or deported, and therefore – even in male-headed families – many women are taking over the role of the main breadwinner. This changed role creates an imbalance in the traditional family structure and further exacerbates the frustrations within the family and the sense of disempowerment felt by men, often resulting in domestic violence and abuse. In some cases, parents send their children to work to help provide for the family, believing that children are at the lowest risk of being arrested.

2. Main challenges

(a) *Significantly reduced employment opportunities*

Outside Iraq, in the Syrian Arab Republic and Jordan, Iraqi refugees are denied the right to work legally and this severely reduces their income-generation opportunities. In Lebanon and the Syrian Arab Republic, for example, only 20 per cent of Iraqi women work.⁵² As most Iraqis living in neighbouring countries have exhausted their savings, in specific cases they have no choice but to work illegally in order to survive. This puts them at risk of being detained if caught and of being subject to exploitation in their workplaces. Some female refugees are harassed by their employers or colleagues, underpaid, denied basic labour rights and forced to work long hours in unhealthy environments. In some cases, employers will hold the passport of refugees as a form of guarantee, hence restricting their freedom of movement. Because of their illegal status, refugees are unable to report such exploitation to the police. And although it is difficult to provide exact figures, many female minors are also working under abusive and exploitative conditions. In addition to working illegally, the only other option for many Iraqi refugee women is to return to Iraq, which poses even graver threats to their health and security. As one refugee couple described, in Iraq, “we have no house anymore, no doctor and the security situation is bad. If we go back we will be killed in the first minute”.⁵³ UNHCR is of the opinion that even though there have been notable, though relative, improvements in the overall security situation in many parts of the country since mid-2007, return cannot be promoted as a sustainable solution at this point in time. Iraqi authorities are not yet able to provide residents with basic protection from violence and violations of human rights. Furthermore, basic services are not available in some parts of the country. In addition, the country suffers from high unemployment and chronic fuel, electricity and water shortages, which, combined with serious shortcomings in health and educational services, creates the potential for major social hardship and unsustainable reintegration. Also, destruction or occupation of property make any possible returns less likely to be successful and may result in situations of new displacement.

⁵² See Danish Refugee Council. 2007. *Iraqi Population Survey in Lebanon*. United Nations High Commissioner for Refugees (UNHCR), United Nations Children’s Fund (UNICEF), World Food Programme (WFP). 2006. *Assessment on the Situation of Iraqi Refugees in Syria*.

⁵³ Zeinab and Arafat, a refugee couple from Baghdad, were interviewed at a UNHCR Branch Office in the Syrian Arab Republic in May 2008.

Within Iraq, access to the labour market is generally difficult for women,⁵⁴ partly due to the increasing pressure for people to adopt conservative behaviour in some parts of Iraq.⁵⁵ The number of public sector jobs will have to be reduced after the sharp drop in oil prices and other budget constraints. The United Nations Office for Humanitarian Affairs (OCHA) warned in its recent Iraq Labour Force Analysis 2003-2008 that the country cannot sustain the high number of public sector employees⁵⁶ and women are often the first to be laid off. In many rural areas, the illiteracy rate is high among women, and this makes it much more difficult for them to find employment. In some parts of Iraq, the precarious security situation makes it far too dangerous for women to leave their houses to work. These conditions are obviously exacerbated and compounded by internal displacement within or across governorates. Some women may be compelled to engage in prostitution, begging or marriage to elderly men, including in so-called temporary or pleasure marriages (*muta'a*), in order to ensure their own and their children's livelihoods.⁵⁷ There is also a risk that they fall victim to forced prostitution, trafficking or forced recruitment by armed groups.⁵⁸ Widows and divorcees and displaced women are particularly affected.⁵⁹ For example, a significant number of female household heads among the IDPs monitored by UNHCR in 2008 do not have any source of income, while others either have employment themselves, or rely on relatives/friends, charities or their children working.⁶⁰

(b) *Increased cost of living*

“The situation is impossible. All the prices are doubling: rent, prices, transport and food. Refugees are facing such a tough financial situation and now it is getting worse. We used to pay SYP10 to reach the city center, now I have to pay SYP 40 due to fuel prices. I used to buy 4 packs of bread for SYP 10, now 4 packs cost double, SYP 20. What can we do? Beg?” Omar, a 68-year old Iraqi refugee living in the Syrian Arab Republic since 2005.⁶¹

⁵⁴ More information is available in United Nations Assistance Mission for Iraq (UNAMI), Human Rights Office (HRO). 2008. *Human Rights Report, 1 January – 30 June 2008*, December 2008, available at: http://www.uniraq.org/documents/UNAMI_Human_Rights_Report_January_June_2008_EN.pdf. Generally, the level of women engaged in paid employment is low. According to the Iraq Family Health Survey 2006/7, over 86 per cent of the women are not working. The Multiple Indicators Cluster Survey (MICS) III 2006 (COSIT, UNICEF, 2007) provided a similar result (89.8 per cent). World Health Organization, Ministry of Health, Ministry of Planning and Development Cooperation. 2007. *Iraq Family Health Survey 2006/7*, p. 17, available at: http://www.emro.who.int/iraq/pdf/ifhs_report_en.pdf.

⁵⁵ The strict Islamic rules, which have increasingly been introduced by Sunni and Shi'ite Islamists since 2003, have affected women's ability to access employment, as extremists require women not to engage in employment outside the house and have branded certain types of employment as “un-Islamic”. See United Nations High Commissioner for Refugees (UNHCR). 2009. *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum-Seekers*. April 2009, pp. 149, 191-192, available at: <http://www.unhcr.org/refworld/docid/49f569cf2.html>.

⁵⁶ According to OCHA, public sector employment, which has doubled since 2005, currently makes up for 60 per cent of all full-time jobs in Iraq. The report noted that Iraq's private and public sectors are ill-equipped to provide jobs for 450,000 new entrants yearly into the labour force; Susman, T. 2009. Iraq's young jobless threaten stability, report says. *LA Times*. 16 February 2009, available at: <http://www.latimes.com/news/nationworld/iraq/complete/la-fg-iraq16-2009feb16.0.1693723.story>. *LA Times*, 2009. *IRAQ: Unemployment bad and getting worse*, Babylon & Beyond, <http://latimesblogs.latimes.com/babylonbeyond/2009/02/iraq-iraqunemp.html>. Agence France-Presse (AFP). 2009. Too Many Iraqis in Government Jobs: UN, 15 February 2009, available at: http://www.iraqupdates.com/p_articles.php/article/45294

⁵⁷ See United Nations High Commissioner for Refugees (UNHCR). 2009. *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum-Seekers*. April 2009, p. 150, available at: <http://www.unhcr.org/refworld/docid/49f569cf2.html>.

⁵⁸ *Ibid*, pp. 150-151.

⁵⁹ See United Nations Assistance Mission for Iraq (UNAMI) Human Rights Office (HRO). 2008. *Human Rights Report, 1 January – 30 June 2008*, December 2008, p. 15, available at: http://www.uniraq.org/documents/UNAMI_Human_Rights_Report_January_June_2008_EN.pdf. IDP Working Group. 2008. *Internally Displaced Persons In Iraq update*. October 2008, p. 17, available at: [http://www.internal-displacement.org/8025708F004CE90B/\(httpDocuments\)/D877BC914C6A92B3C125750D004BBF6B/\\$file/IDP+WG+Update+on+IDPs_returnees_Sep08.pdf](http://www.internal-displacement.org/8025708F004CE90B/(httpDocuments)/D877BC914C6A92B3C125750D004BBF6B/$file/IDP+WG+Update+on+IDPs_returnees_Sep08.pdf).

⁶⁰ *Ibid*, p. 18.

⁶¹ Omar was interviewed in a clinic in the Syrian Arab Republic in May 2008.

Basic necessities, such as rent, food items, medical care and transportation, have become extremely difficult to afford due to inflation. The prices of food and basic commodities have already risen by 15 per cent and are expected to rise further this year. Although the Syrian Government provided coupons for subsidized diesel to its citizens as the cost of diesel has recently increased by 70 per cent, this offer has not been extended to Iraqi refugees.⁶² Many female refugees are required to prioritize their basic needs and end up either having to forfeit one basic need for another or having to choose quantity over quality. These drastic price hikes are exacerbating the financial burdens borne by Iraqi women and are pushing more of them to risk their physical safety by working illegally or returning to Iraq.

(c) *Depleted savings*

Most refugees who fled Iraq for neighbouring countries are now finding that, after years of living away from their homes, the savings that they brought with them are almost completely exhausted. Combined with unemployment and rising costs of basic necessities, many Iraqis are seeing their savings depleted at an even faster rate than in previous years.

Even those who try to sell their property in Iraq to earn some money return to find that their houses are either destroyed or occupied by others. The International Organization for Migration (IOM) reported in March 2008 that almost half of returnees to Iraq either found their property partially or completely destroyed, or that their homes had been occupied by others.

(d) *Lower wages than men*

Women, and particularly those living in Iraq, receive considerably lower wages than their male counterparts and are given fewer opportunities for promotion within the formal employment sector. Similarly, in Lebanon, labour laws, administrative procedures and company practices discriminate between men and women employees.

(e) *Limited prior work experience*

Since many Iraqi women refugees are widows or women whose husbands have either abandoned them or remained in Iraq, they now have to work outside of their homes and financially support themselves for the first time. With only limited prior work experience, it is harder for them to find employment, which may make them more susceptible to exploitation by employers.

C. SOCIAL AND PHYSICAL CHALLENGES

1. *Overview*

Perhaps the most critical challenges facing female Iraqi refugees are of social and physical nature. These challenges affect their physical and mental health, and range from the hostility of host communities to inadequate access to healthcare and as far as SGBV. While male refugees also struggle with many of these issues, women are disproportionately affected by such challenges.

2. *Main challenges*

(a) *Sexual and gender-based violence (SGBV)*

In conflict situations, the incidence of SGBV rises significantly and violence is predominantly perpetrated against women and girls. SGBV is often perpetrated within the home; when men experience feelings of disempowerment, shame and frustration from losing their jobs and property through conflict, they often take these emotions out on women, using violence as a means of regaining a sense of control. SGBV can range from psychological abuse to physical violence and rape. As of June 2008, UNHCR has recorded

⁶² See United Nations High Commissioner for Refugees (UNHCR). 2008. *Syria Update, May 2008*.

over 5,000 reported SGBV cases across the region. 4,500 of these cases took place in Jordan and almost 600 in the Syrian Arab Republic. This number includes those cases reported to and assessed by the office. However, UNHCR in Damascus acknowledges that thousands of women and girls have not reported such incidents. As SGBV cases are frequently underreported due to cultural taboos and fear of further attacks, the actual numbers of SGBV survivors across the region is likely to be significantly higher.

Unstable economic conditions, lack of community protection and the illegal status of female Iraqi refugees in host countries make them particularly vulnerable to SGBV. Many Iraqi women in neighbouring countries are unwilling to report SGBV crimes to the police for fear of being detained or deported. As hospitals are also obliged to report to the police any medical condition caused by accident or crime, refugee survivors of SGBV are often reluctant to visit hospitals or other national bodies entrusted with their protection. Furthermore, because of the social stigma involved in discussing such issues and a general lack of awareness of SGBV among Iraqi refugee populations, many Iraqi women are unaware of the benefits of medical care after rape.⁶³ In this way, SGBV poses severe mental and physical health risks to Iraqi refugee women. There is evidence that some survivors of rape among Iraqi refugee women are turning to prostitution because they feel that they have already lost their honour. Hence, the danger to their physical and mental health remains.

Despite recent security improvements, “(t)he broader situation regarding women’s rights and conditions has (...) shown no significant overall improvement (...)”.⁶⁴ According to Yakin Ertürk, the United Nations Special Rapporteur on Violence against Women, the rights of Iraqi women have been eroded in all areas of life. She reported that:

“The ongoing conflict, high levels of insecurity, widespread immunity, collapsing economic conditions and rising social conservatism are impacting directly on the daily lives of Iraqi women and placing them under increased vulnerability to all forms of violence within and outside their home.”⁶⁵

Women in Iraq are victims of societal, legal and economic discrimination, abductions and killings for political, sectarian or criminal reasons, rape, forced displacement, domestic violence,⁶⁶ including honour killings⁶⁷ and other harmful traditional practices,⁶⁸ trafficking, prostitution and forced recruitment by armed

⁶³ See Women’s Commission for Refugee Women and Children, “Iraqi Refugee Women,” 7.

⁶⁴ United Nations. 2008. *Report of the Secretary-General pursuant to paragraph 6 of resolution 1830 (2008)*. 6 November 2008, p. 11, available at: http://www.uniraq.org/FileLib/misc/SG_Report_S_2008_688_EN.pdf. A database containing more than 400 published reports revealed more than 21,000 cases of gender-based violence in Iraq over the past five years. Given the severe and often fatal consequences for victims who report acts of sexual violence, the analysis indicates that only a fraction of the incidents are known; United Nations. 2008. *United Nations Report of the Secretary-General pursuant to paragraph 6 of resolution 1770 (2007)*. 28 July 2008, p. 8, available at: http://www.uniraq.org/FileLib/misc/SG_Report_S_2008_495_EN.pdf.

⁶⁵ United Nations. 2008. “Violence Against Iraqi Women Continues Unabated”, says UN expert. 25 November 2008, available at: <http://www.unhcr.ch/hurricane/hurricane.nsf/view01/FB6D94EF5507000DC125750C002E3654>.

⁶⁶ Domestic violence against women is reportedly on the rise in Iraq. According to the World Health Organization, Ministry of Health, Ministry of Planning and Development Cooperation. 2007. *Iraq Family Health Survey 2006/7*, available at: http://www.emro.who.int/iraq/pdf/ifhs_report_en.pdf, 83 per cent of the women said that their husbands controlled their behaviour, one third reported that they had suffered emotional violence and more than 20 per cent had endured physical violence (among these, almost 14 per cent during pregnancies). UNICEF reported that “*violence against women and girls is widespread, with 21.2 per cent of women reporting experiencing physical violence in the home.*” World Health Organization, Ministry of Health, Ministry of Planning and Development Cooperation. 2007. *Iraq Family Health Survey 2006/7*, pp. 3 and 24-25, available at: http://www.emro.who.int/iraq/pdf/ifhs_report_en.pdf. United Nations Children’s Fund (UNICEF). 2009. *UNICEF Humanitarian Action Update – Iraq*. 19 January 2009, available at: http://www.unicef.org/infobycountry/files/HAU_Iraq_19_Jan09.pdf.

⁶⁷ So-called honour killings, i.e. murders committed by a family member to protect the family’s honour, are reportedly also on the rise. Amnesty International. 2008. *The State of the World’s Human Rights, Report – Iraq*, available at: <http://thereport.amnesty.org/eng/Regions/Middle-East-and-North-Africa/Iraq>. See also United Nations High Commissioner for Refugees (UNHCR). 2009. *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum-Seekers*. April 2009, pp. 145-147, available at: <http://www.unhcr.org/refworld/docid/49f569cf2.html>.

⁶⁸ Including female genital mutilation (FGM) and forced and/or early marriage; *Ibid.*, pp. 147-149.

groups.⁶⁹ Iraqi women face violence at the hands of a range of actors, including party militias, insurgents, Islamic extremists, members of law enforcement agencies, their families and the community.⁷⁰ According to Human Rights Watch, prosecutions are rare, even in high-profile cases.⁷¹ Women also fall victims to the disproportionate use of force by members of the Iraqi Security Forces and the Multi-national Force-Iraq.⁷² With the rise in religious extremism since 2003, both Muslim women and women of other religious groups have increasingly been pressured to conform to strict Islamic dress and morality codes.⁷³ Institutions providing legal advice, social counselling, mediation programmes or shelters for women at risk of domestic violence, including honour killings, are often non-existing or lack resources, lack political support and outreach capacities and often do not provide women with the means to protect themselves from SGBV.⁷⁴ Furthermore, as in neighbouring host countries, broaching the issue of gender-based violence is sensitive and socially frowned upon. Those in situations of internal displacement face similar challenges to those in neighbouring countries.

In some parts of Iraq, militias are specifically targeting women. Many women have been verbally abused, stoned, kidnapped or even murdered for what extremist militias deem as inappropriate or immoral behaviour, such as wearing make-up or being seen in public without a headscarf. Women in Iraq are hesitant to report SGBV crimes out of fear of repeat attacks and because of widespread suspicion that the police force is heavily infiltrated by militias. Furthermore, there are insufficient numbers of institutions providing legal advice, social counselling, mediation programmes or shelter for women at risk of domestic violence, including so-called honour killings. Furthermore, as is the case in neighbouring host countries, broaching the issue of gender-based violence is sensitive and socially frowned upon. Internally displaced refugees face similar challenges to those in neighbouring countries.

(b) *Trauma*

Many Iraqi refugee women suffered trauma from witnessing and surviving extreme violence while they were still in Iraq. This trauma makes it difficult for them to adjust to life in a new country, but may also make them more susceptible to exploitation and abuse. These women require specific psychosocial counselling, but this is not always available or easily accessible.

(c) *Inadequate shelter*

As their economic situation worsens, and as rental prices increase, Iraqi refugees face even greater challenges in obtaining adequate shelter. With rents having doubled in Jordan and increased up to six times in Syria, fewer Iraqi refugees can afford decent accommodation. Many end up living in small, badly-constructed flats with moisture problems and water leakages. Families sometimes share the same accommodation trying to save money; this lack of privacy leads to increased tension and squabbling between adults or their children. Refugee women who cannot afford to pay the rent risk being exploited by their landlords. If women cannot find affordable and safe accommodation, they are at a high risk of sexual abuse.

⁶⁹ Ibid., pp. 144, 195-196.

⁷⁰ See United Nations. 2008. Op. cit. <http://www.unhcr.ch/hurricane/hurricane.nsf/view01/FB6D94EF5507000DC125750C002E3654>.

⁷¹ Human Rights Watch. 2009. *World Report 2009 – Iraq*. January 2009, available at: <http://www.hrw.org/en/node/79254>.

⁷² See United Nations. 2008. “Violence against Iraqi women continues unabated”, says UN expert. 25 November 2008, available at: <http://www.unhcr.ch/hurricane/hurricane.nsf/view01/FB6D94EF5507000DC125750C002E3654>.

⁷³ Ibid., pp. 144, 195-196.

⁷⁴ See United Nations High Commissioner for Refugees (UNHCR). 2009. *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum-Seekers*. April 2009, pp. 158-159, available at: <http://www.unhcr.org/refworld/docid/49f569cf2.html>.

It is not traditionally acceptable for unmarried females to live alone, even if a woman is no longer very young. This makes it particularly difficult for female heads of households and single women to rent accommodation. Those that have extended family members must continue to live with them. In cases where a woman is abused by family member(s), such cultural constraints pose a further threat to her well-being.

(d) *Inadequate access to health care*

Although medical care is heavily subsidized in both the Syrian Arab Republic and Jordan, many refugees continue to experience difficulty in this regard. As mentioned above, fear of deportation also discourages many refugees from seeking appropriate medical care. Considering that UNHCR has recognized over 34,000 Iraqi refugees in the Syrian Arab Republic, and 6,400 in Jordan, as having serious or chronic medical conditions, the scope of this problem is evident.

(e) *Survival sex*

The dire economic situation and the lack of legal employment opportunities are pushing many Iraqi refugee women to resort to prostitution in order to survive. UNHCR in Damascus has reported that this phenomenon is now on the increase among female heads of households and young girls. Out of financial desperation, some parents are pushing their daughters, some as young as 12 years old, into prostitution or are selling them to nightclub owners.

Social taboos against prostitution and lack of awareness among Iraqi refugee women and girls about sexual health make this a form of employment a particularly serious health risk for women and girls.

There are also reports from refugees within the Syrian Arab Republic of organized groups who are involved in forcing women and girls into prostitution. They target women and girls in need of financial assistance and/or accommodation, as well as women who are alone in the Syrian Arab Republic. Refugee women also reported that young girls have been trafficked into the Syrian Arab Republic through marriages, partly fake ones, in order to bring them into the country.

According to the Coalition Against Trafficking of Children (CATCH), child trafficking is increasing in Iraq due to extreme political chaos, poverty and war; however, it is not possible to know how extensive the problem is as reliable information is difficult to obtain. CATCH reported that thousands of young Iraqi women and girls are engaged in prostitution in the Syrian Arab Republic and Yemen “under conditions that constitute severe forms of trafficking in persons”. It also stated that orphans, including at least 5,000 in Baghdad alone, are particularly vulnerable to many forms of exploitation and abuse.⁷⁵ Families are also reported to sell their children out of poverty.⁷⁶

(f) *Hostility from host communities*

Neighbouring countries, especially the Syrian Arab Republic and Jordan, have shown considerable generosity to Iraqi refugees since the beginning of the war in 2003. Both countries have opened the doors of

⁷⁵ See Coalition Against Trafficking of Children (CATCH). 2008. *About Child Trafficking*, available at: http://catchconference.org/about_trafficking.htm. Also the State Department of the United States of America stated that “Iraqi children are trafficked within the country and abroad for commercial sexual exploitation; criminal gangs may have targeted young boys, and staff of private orphanages may have trafficked young girls for forced prostitution.” It further assessed that the Iraqi Government did not acknowledge the problem and did not take any meaningful action to address it. During the reporting period, no traffickers were prosecuted. There are also no governmental protection services available to victims of trafficking; See United States of America. Department of State. 2008. *Trafficking in Persons Report – Iraq Country Narrative*, available at: <http://www.state.gov/documents/organization/105660.pdf>.

⁷⁶ For more information see Sarhan, A. 2007. *Sex for Survival*. *Al Jazeera*. 16 August 2007, available at: <http://english.aljazeera.net/news/middleeast/2007/08/2008525183626816642.html>; Sarhan, A. 2008. *Iraqis resort to selling children*. *Al Jazeera*. 5 January 2008, available at: <http://english.aljazeera.net/news/middleeast/2008/01/200852519439276159.html>. Integrated Regional Informational Networks (IRIN). 2006. *Iraq: Concern over reports of child trafficking*. 29 June 2006, available at: <http://www.irinnews.org/report.aspx?reportid=27083>.

their schools and hospitals to Iraqis. Local communities have, overall, been welcoming. However, the drawn-out crisis and the recent rise in the prices of food and commodities have caused this hospitality to gradually wear thin. There have been reports of Iraqi children receiving hostile treatment at school, abrupt changes in rental fees for refugees, and demeaning attitudes towards Iraqis.

Hostility from the local community towards Iraqi women, especially single female heads of households, is particularly evident. Many of these women are alone in the Syrian Arab Republic or Jordan due to both heightened scrutiny and frequent restriction of the entry of males into the country. While their husbands, fathers or brothers remain in Iraq, these women live precariously as single women in countries where women are usually accompanied in public by male family members. Fear of stigmatization by the local community deters many Iraqi women from reporting or speaking out about SGBV.

D. LEGAL CHALLENGES

1. *Overview*

Zahra Ahmad is an Iraqi survivor of SGBV currently living in Lebanon. From the time they got married in Iraq, her husband has been sexually abusing her regularly, and this violence has increased since the family moved to Lebanon. She and her two young children are now living alone in Lebanon, but she has stopped short of asking for a divorce because she fears her family would disapprove. She currently works illegally as a cleaning lady three times a week, but barely has enough money to provide food and transportation costs for her children. Working illegally puts her at a high risk of being arrested and, if she is detained, her children may be required to return to living with their abusive father.⁷⁷

The main legal challenge facing most Iraqi refugees in neighbouring countries is that they do not have a legal status within their respective host countries, either because they have overstayed their visa or because they entered the country illegally. These refugees face considerable restrictions, but repercussions are especially grave for female refugees whose freedom, due to social customs, is often already more restricted than is the case for men. Additionally, the risk of deportation prevents many women and girls from reporting cases of SGBV. A number of women and girls, after being deported, were forced to re-enter into the country illegally using fake documents and were then forced into prostitution by organized networks. Women and girls often even accept such dire conditions in order not to return to Iraq due to well-founded fears.

2. *Main challenges*

(a) *Legal challenges for SGBV survivors*

Iraqi female refugees who have survived sexual or domestic violence may be subjected to further harassment and abuse by the authorities when they seek help from the law enforcement system at police stations in their host countries. Women who have been raped, or otherwise sexually assaulted, may be further insulted and treated as if they were the guilty party and not the victim. In cases of domestic violence, the police may dismiss complaints, either refusing to believe the allegations made by the woman, or failing to recognize domestic violence as a crime. Such attitudes strongly deter many SGBV survivors to filing an official report of the crime.

Even those female survivors who have been able to register a case of rape or domestic violence may face additional obstacles from the criminal justice system. At the trial stage, judges frequently consider the behaviour of the woman as a factor when weighing the evidence and, if there is a conviction, when determining how the defendant should be punished.

⁷⁷ Zahra was interviewed by UNHCR in Lebanon in 2007.

Specialized national bodies dealing with SGBV in Jordan, such as the Family Protection Unit (FPU), which is part of the Public Security Directorate, play a pioneering role in addressing SGBV issues, regardless of the legal status of survivors. The FPU also plays a key role in advocacy and awareness-raising activities, targeting public and private schools, universities, and the ministries of Health and Planning and International Cooperation. In addition, the FPU organizes radio and television campaigns and disseminates information by other means, for example in brochures.

Within Iraq, many human rights violations go unpunished and protection is rarely available from national law enforcement agencies, security bodies or the judiciary.⁷⁸ Police stations seldom have female members of staff, nor are there any female lawyers or health advisers available for women to speak to, and this deters displaced women from coming forward to present their cases or to pursue legal action.

(b) *Detention and/or deportation*

If Iraqi women or girls are found to be engaged in prostitution or forced into prostitution, they are often detained. The numbers of women and girls in detention fluctuates, and it is not unusual for women to become pregnant while in detention.

In the Syrian Arab Republic, overstaying one's visa does not automatically lead to deportation; however, those persons are at highest risk of deportation who have been arrested, have seen their documents destroyed, have entered the country illegally, or who have committed crimes, including prostitution.⁷⁹

Any foreigner who overstays his or her residency permit in Jordan must pay overstay fines. In theory, those who do not pay may be deported and not allowed to re-enter Jordan for a period of five years. Given the fragile financial situation of many Iraqi refugee women, most cannot afford to pay the fines. The Government, however, has shown more flexibility on this issue recently, and asylum-seekers and refugees are rarely deported when overstaying their visa. In Lebanon, foreigners wishing to enter Lebanon must either hold legal documents and carry a travel document showing entry and exit stamps, or hold a residence permit issued by a representative abroad, or from an authorized reference in charge of Lebanese interests and of the General Security in Lebanon, according to Article 6 of the 1962 law. The 1962 law, which regulates entry and exit of foreigners to and from Lebanon, criminalizes illegal entry and illegal stays in Lebanon (Articles 32/33). Foreigners who do not abide by the regulations set out in the aforementioned law are liable to prison sentences, fines and deportation.

(c) *Marriage and custody*

Iraqi refugee women married to Jordanian and Syrian men have been known to have difficulties obtaining custody of their children and travel permits.⁸⁰ Additionally, it is reported that there has been an increase in the numbers of convenience marriages between Iraqi women seeking residency permits and possible citizenship and men from host countries; it is also reported that young Iraqi girls are getting married to older men from various Arab countries for other reasons. When divorced, however, Iraqi women may end up with invalid residence permits and are at risk of deportation or exploitation. UNHCR in Amman has called on the Ministry of Interior and religious authorities to address the issue of divorced Iraqi wives who are at risk of deportation following their divorce. If, on the other hand, Iraqi men marry a Jordanian or Syrian woman, they are not entitled to citizenship or residency rights, nor are their children.

⁷⁸ See United Nations High Commissioner for Refugees (UNHCR). 2009. *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum-Seekers*. April 2009, pp. 156-159, available at: <http://www.unhcr.org/refworld/docid/49f569cf2.html>.

⁷⁹ See United Nations High Commissioner for Refugees (UNHCR). 2008. *Syria Update, May 2008*.

⁸⁰ See United Nations High Commissioner for Refugees (UNHCR). 2008. *Jordan Situation Report, 15-30 April 2008*.

(d) *Lack of awareness of legal rights*

Most Iraqi women refugees are unaware of their legal rights in their respective host countries. For example, many Iraqi women refugees do not know that, according to Jordanian law, a non-Jordanian can file a lawsuit or police report, regardless of his or her residency status. Furthermore, many Iraqis may not know that both the Syrian Arab Republic and Jordan are committed to a policy of *non-refoulement* and are, in principle, safe from deportation.

E. OTHER CHALLENGES

Overview

There are several other groups within the female Iraqi refugee population who face specific additional challenges:

(a) *Elderly women*

Elderly Iraqi women refugees face certain challenges which places them in a particularly risky situation. Many are chronically ill or suffer from serious medical conditions and, therefore, face the additional financial burden of having to pay for transportation to and from clinics and related medical costs. Their age and ill-health also make it difficult or impossible for them to find work, and those with no families to support them face particularly dire situations and are at risk of exploitation.

(b) *Female victims of torture*

Over 23,000 registered Iraqi refugees in the Syrian Arab Republic, and 1,500 in Jordan, have been identified as victims of torture. In addition to requiring psychological counselling and medical attention, victims of torture may have a particularly difficult time settling in in host communities and keeping their jobs. For female victims of torture who are in host countries without their families or usual support networks, adjusting to life and coping financially may be even more difficult. If they do not receive assistance, they may be at risk of further abuse and exploitation.

(c) *Women with severe/chronic medical illnesses*

Forty-two thousand Iraqi refugees across the region have been identified as suffering from a severe or chronic medical condition. Those refugees with medical conditions also experience financial and emotional strain; it also makes it difficult to find employment and may restrict movement and participation in community life.

(d) *Disabled women and women with disabled children*

Fatimah is a single Iraqi mother who sold everything to move to the Syrian Arab Republic to seek treatment for her two children, both of whom suffer from muscular atrophy. Although UNHCR subsidizes most of the medical costs, she still has to pay \$12 per month plus transportation costs. As her children will continue to need treatment for at least a year, she is very concerned about how she will obtain medical care for her children.⁸¹

Over 4,000 disabled Iraqi refugees are registered in the Syrian Arab Republic and almost 600 in Jordan. Many were physically disabled through violence and torture in Iraq. Disabled Iraqi women refugees and those with disabled children face considerable medical and financial challenges in their respective host

⁸¹ Fatimah and her family were interviewed by UNHCR in Syria in March 2008.

countries. In many cases, disabled Iraqi women refugees may find it particularly difficult to feel integrated in the countries they have taken refuge. Ensuring access to education for disabled children is also a problem for their mothers. If a single mother has to stay home to take care of her disabled children, she cannot find employment easily and the financial situation of her family is likely to deteriorate quickly.

V. CONCLUSIONS AND RECOMMENDATIONS

A. OVERCOMING THE ECONOMIC AND DISABILITY CHALLENGES OF IRAQI REFUGEE WOMEN

To assist refugee women overcome financial burdens, many United Nations agencies and regional and local NGOs have offered vocational training activities to help women build income-generating skills. During 2007, UNHCR in Jordan promoted self-reliance activities and conducted several vocational training activities for women, men and youth (both boys and girls) to enhance their ability to become more self-reliant. In 2007, implementing partners conducted English and computer courses, sessions on basket-weaving and beauty skills for women, which enabled many to work from their homes.

In December 2007, UNHCR began providing cash assistance (in the form of bank cards) to Iraqi refugees in the Syrian Arab Republic. This allowed beneficiaries to access funds without having to go to UNHCR office and wait in long lines. With access to bank cards, vulnerable Iraqi women also achieved some level of financial independence and control over how the family's funds are spent. As of June 2008, UNHCR had provided bank cards to 28,800 Iraqi refugees in the region, the majority of these being in the Syrian Arab Republic and Jordan.

UNHCR also provides food assistance to almost 128,000 Iraqis in the Syrian Arab Republic, Jordan and Lebanon, somewhat reducing the financial burden on refugee families. So far, food distribution and cash assistance have been successful and refugees claim that the food distribution covers between 50-70 per cent of their household spending.⁸² UNHCR also provides financial assistance to further subsidize the medical costs of extremely vulnerable groups. Through its implementing partners, UNHCR provides equipment, such as wheelchairs, crutches and ear pieces, to disabled Iraqi refugees. UNHCR also provides peer-support workshops for families with disabled members. In 2008, UNHCR in Jordan focused on ensuring access to education for all children with disabilities.

For the States concerned, it is important to assist Iraqi refugees in overcoming economic challenges by providing enhanced legal protection to help alleviate the precarious conditions in which they live, and ensure easier access to medical services, basic food items, education and transportation. The Governments of the Syrian Arab Republic and Jordan provide free basic health care to Iraqi refugees. International donors need to recognize the additional plight of host countries, and increase their assistance in implementing programmes aimed at alleviating the financial burden of refugee women, particularly women with disabilities.

B. ENDING SGBV AMONG IRAQI REFUGEE WOMEN

Despite the existing human rights legal framework, States' commitment to eradicating violence against women remains weak. This failure is exacerbated by States continuing to minimize the scope of the problem. Therefore, there is an urgent need to focus on the full and effective implementation of human rights laws and principles at the international and national levels.

Ending SGBV among Iraqi refugees requires a holistic approach and interventions at the legal, structural and behavioural levels. First, laws prohibiting SGBV have to be enacted and enforced with special mechanisms ensuring protection and remedies for survivors. Friendlier State structures are needed in order to raise awareness among police officers and judges on gender issues and to sensitize them to the rights of women in general, and victims in particular.

⁸² Interviews with Iraqi refugees in UNHCR office in the Syrian Arab Republic, May 2008.

Some Iraqi refugee women are unable to report abuses to the police because they fear deportation and because of their illegal status; it is therefore necessary to raise awareness of the legal rights of women, in addition to providing them with other channels to enable them to report abuses and the violations of rights to the authorities on their behalf. In this context, States hosting refugees can provide Iraqi women refugees with free legal and social services, and the necessary legal experts and social workers. The provision of shelters, hot lines, and physical and psychological rehabilitation programmes following SGBV continue to be essential. At the behavioural level, campaigns on ending SGBV need to be launched among the refugees and the public at large.

UNHCR in the Syrian Arab Republic has developed a set of Standard Operating Procedures (SOPs) for dealing with SGBV cases, which include setting up referral mechanisms in order to ensure access to medical, legal or psychosocial services. In Jordan, UNHCR also developed SOPs for SGBV which were signed and adopted by 14 implementing partners in May 2009. UNHCR has assisted almost 4,000 SGBV survivors in Jordan and 600 in the Syrian Arab Republic.⁸³ Currently, identified SGBV cases are referred to a clinic for a medical examination and consequently to professional psychologists.

In 2007, UNHCR in the Syrian Arab Republic signed a Memorandum of Understanding on a joint SGBV project with the United Nations Population Fund (UNFPA). In the spirit of a new inter-agency initiative – UN Action against Sexual Violence in Conflict – UNHCR and UNFPA will take specific action to prevent and respond to SGBV against Iraqi women and girls residing in the Syrian Arab Republic. As part of this collaborative work, UNFPA has established a mobile clinic for women at the Douma registration centre; the clinic will be staffed by a gynecologist, midwife and pediatrician. During registration, women and girls that are suspected to have suffered from SGBV in Iraq are referred to the clinic to have a health check-up, if deemed necessary. Safe houses have been set up which provide food, shelter, schooling and professional skills training. Some safe houses also provide social, psychosocial and legal counselling. On a larger scale, and in order to enhance prevention of SGBV, women at heightened risk of exploitation, such as single female heads of households, will be targeted with financial and material assistance, as well as alternative livelihood opportunities. Legal counselling and representation are also extended to women and girls, especially to those in detention.

UNHCR is appealing to Governments to provide more financial assistance to countries hosting Iraqi refugees. Overall, UNHCR has provided medical assistance to over 335,000 Iraqi refugees throughout the region. The provision of psychosocial counselling and medical support by UNHCR has helped many female Iraqi refugees; however, if its funding is reduced, it will no longer be able to provide such services to Iraqi women.

C. OVERCOMING THE LEGAL CHALLENGES FACING REFUGEE WOMEN

Although law enforcement officers have been well trained on penal procedures, they are not always willing to apply the correct procedures due to cultural taboos about SGBV. This renders the task of providing legal protection to Iraqi SGBV survivors even more difficult.

Due to a lack of bilateral support, increasing economic burdens and ongoing security concerns, host countries are adopting more restrictive approaches to accepting and hosting Iraqi refugees.

UNHCR is adopting the following measures to help overcome the precarious situation of women and to raise awareness of their legal rights:

(a) It is negotiating the release of women and girls being held in detention and is running rehabilitation programmes for them;

⁸³ The figure of 600 in the Syrian Arab Republic refers only to cases that have been assessed (due to a shortage of staff and capacity issues), and does not include all identified cases or all those at risk, which amount to almost 2,500 persons.

(b) It is providing non-food items, legal counselling, medical and psychosocial support to women and girls in detention. UNHCR in Beirut also works closely with family members of detainees in order to have a more holistic social approach in case of interventions (e.g. if minor children are left behind, or if the detainee is the only breadwinner);

(c) It is launching awareness-raising campaigns on the legal rights of women amongst Iraqi refugees;

(d) It is providing legal advice and representation to Iraqi refugees, particularly with regard to SGBV survivors.

D. RECOMMENDATIONS

Based on the findings of the case study in Iraq and in line with those rights enshrined in CEDAW and other human rights and humanitarian law instruments examined in this report, ESCWA member countries are urged to adopt the following recommendations to guarantee the rights of women living in conflict situations in the ESCWA region:

1. *Economic and social rights*

- Increase the political representation of women at all levels;
- Involve women in peace talks, conflict resolution and post-conflict reconstruction efforts;
- Reduce excessive military expenditure, focus on development projects for the empowerment of women;
- Provide countries hosting refugees with donor funding aimed at the establishment of programmes targeting the needs of women in conflict and post-conflict situations;
- Raise awareness of gender issues among United Nations personnel, peacekeepers, and humanitarian aid personnel;
- Amend family laws pertaining to custody of children and freedom of movement;
- Provide access to legal advice and free representation;
- Provide psychological counselling to victims of torture and gender-based violence;
- Provide medical attention to women with chronic medical illness and disability;
- Combat and criminalize trafficking in women and girls.

2. *Refugee women*

- Raise awareness among women of their legal right to *non-refoulement*;
- Undertake measures to prevent the abuse of employers who retain the passport of refugees as a form of guarantee, hence restricting their freedom of movement;
- Amend nationality laws in order to allow women married to foreigners to pass on their nationality to them and to secure for them residency permits;
- Ensure the rights of refugee women to return to their country or territory of origin;

- Ensure equal access to food, shelter, water, education, social and health services for women in refugee camps and when providing aid;
- Involve women in camp management operations;
- Provide capacity-building training to refugee women to ensure their economic empowerment. Capacity-building, training and access to livelihood opportunities (vocational training or access to micro-credit individual/group loans) can also be helpful in this regard;
- Offer special assistance to high-risk groups such as single-headed households, women in polygamous relationships and those unaccompanied by an adult male family member;
- Provide capacity-building training programmes for refugees women;
- Offer refugee women vocational and computer training activities;
- Sensitize host communities to the rights of refugees.

3. Combating of SGBV

- Enact laws prohibiting SGBV coupled with special mechanisms ensuring enforcement, protection and remedies for victims of SGBV;
- Provide full redress and assistance to survivors of SGBV who are physically and mentally injured;
- Ensure that police officers and judges are better aware of gender-related issues and the rights of women in general and survivors of SGBV in particular;
- Provide women refugees with free legal and social services through legal experts and social workers;
- Create infrastructures to assist victims of SGBV, such as setting up shelters, and hot lines;
- Provide victims of SGBV with physical and psychological rehabilitation programmes;
- Launch campaigns on ending SGBV among the refugee community and the public at large. The inclusion of refugees in national prevention and response mechanisms can also be useful. Providing necessary training to volunteer groups on SGBV prevention and response and involving both men and women in the awareness sessions on SGBV are also essential.

4. Enactment of legislation

- Abolish laws that support impunity for violence against women and laws that discriminate against women;
- Abolish the passing of sentences that involve the flogging, amputation or stoning of women as they constitute acts of torture;
- Enact and implement effective laws, policies and practices to protect women from violence in conflict and post-conflict situations and ensure that impunity is ended for combatants that commit acts of violence against women and their commanders;

- Hold States individually and collectively accountable for their existing obligations under international law to prevent, investigate, punish and redress all acts of gender-based violence, regardless of whether in times of peace or armed conflict;
- Increase the representation of women in judicial bodies, including international tribunals;
- Ratify war and conflict-related conventions such as the Geneva conventions and their additional protocols;
- Ratify CEDAW and its Optional Protocol to ensure the observance of women's rights in both peace or conflict situations;
- Criminalize belligerents who undertake acts of torture, imprisonment, mass arrests, collective punishments, destruction of dwellings, and forcible eviction of the civilian population;
- Ensure that royal pardons and presidential decrees of amnesty shall not include the perpetrators of crimes against women;
- Prosecute criminals responsible for war crimes and crimes against humanity, including rape.

5. Launching of awareness-raising campaigns

- Secure effective action to stop violence against women at the community level by local Governments and civil society, including religious bodies, traditional and informal authorities;
- Prevent abuse by raising awareness on the rights of women, including legal rights, such as the right to file a lawsuit, regardless of residency status;
- Raise gender awareness among judges and prosecutors in charge of cases of violence against women;
- Raise awareness of gender issues among the police and military in order to safeguard the rights of women in conflict situations.

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