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Defining Sexual and Gender-Based Violence in the Refugee Context

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Abstract

The term ‘sexual and gender-based violence’ (SGBV) has gained prominence in international human rights documents and within the academic discourse relating to refugees. The SEREDA project (**SE**xual and Gender Based Violence in the **RE**fugee Context: From **D**isplacement to **A**rrival) aims to understand the incidence and nature of SGBV by refugees who have fled conflict in the Levant Region. This working paper provides an overview of how key terms relating to SGBV have been defined and how these terms may apply in the refugee context. It examines how a broad definition of SGBV has been used to explore current practices in conflict settings, with particular focus on the current conflict in Syria. The international community’s approach to SGBV is examined, with attention paid to definitions in Conventions and under international law. Finally, what gender means in the context of SGBV and the resulting debates about who should be the primary focus of humanitarian intervention are discussed.

Keywords

Sexual and gender-based violence, SGBV, refugees, Syria, international law

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INTRODUCTION

The term ‘sexual and gender-based violence’ (SGBV) has gained prominence in international human rights documents and within the academic discourse relating to refugees. The SEREDA project (**S**exual and Gender Based Violence in the **R**efugee Context: From **D**isplacement to **A**rrival) aims to understand the incidence and nature of SGBV experienced by refugees who have fled conflict in the Levant Region.

This working paper provides an overview of how key terms relating to SGBV have been defined and how these terms may apply in the refugee context. Definitions are important to increase understanding of what is occurring in this context, enable proper data collection, establish legal and other methods of redress and most importantly, to support work towards the prevention of such violence. While there is no consensus at present as to what constitutes SGBV, it appears that a broad definition will best assist for the purposes of redress and prevention.

This introduction outlines different definitions of gender-based violence and sexual violence. The paper then examines how a broad definition of SGBV has been used to explore current practices in conflict settings before turning to concepts of structured and physical violence.

The international community’s approach to SGBV is then set out, with attention paid to definitions in Conventions and under international law. The next section examines recent literature exploring what gender means in the context of SGBV and outlines debates about who should be the primary focus of humanitarian intervention. The final section deals with reports of SGBV related to the current conflict in Syria.

Gender-Based Violence

‘Gender-based violence’ is an umbrella term that has not been universally defined. A narrow interpretation confines the term to meaning rape and related sexual assault.¹ More commonly, the term has been used to cover a spectrum of violence involving a gendered element such as domestic violence, human trafficking, harmful traditional practices (such as female genital mutilation and both early and forced marriage), as well as other forms of physical and emotional abuse.²

A range of institutional factors have been identified as driving gender-based violence, however defined. These factors include gender inequality and discrimination, male-dominated power and control structures, and social and cultural attitudes about women and men.³ Inequality and discrimination embedded in rigid gender power relations foster many social, cultural and economic norms which are discriminatory. This gender inequality lies at

¹ Michelle Hynes and Barbara Lopes Cardozo, ‘Observations From the CDC – Sexual Violence Against Refugee Women’ (2000) 9(8) *Journal of Women’s Health & Gender-Based Medicine* 819-823 at 819.

² Ibid.

³ M Marsh, S Purdin and S Navani, ‘Addressing Sexual Violence in Humanitarian Emergencies’ (2006) 1(2) *Global Public Health* 133-146 at 139.

the core of all forms of gender-based violence in both conflict and non-conflict settings. The impact of this systemic discrimination is heightened at key intersections involving sexual orientation and gender identity, race, ethnicity, religion, economic status and disability, rendering individuals more vulnerable to violence, particularly in zones of conflict. In such conflict settings, existing discriminatory laws and norms are exacerbated, increasing vulnerability to gender-based violence, the severity of harm to survivors and their inability to seek redress.⁴

Globally, refugees experience the full spectrum of gender-based violence throughout the refugee experience, although much of the scholarly and international attention has been focused on sexual violence, such as rape and coerced sex.⁵ While acknowledging that some male refugees experience gender-based violence, research indicates that most female refugees experience some form of it.⁶ While all persons are affected by violence during times of conflict, women and girls are most at risk of gender-based violence due to the lack of social protection, safe access to services and the use of sexual violence as a weapon of war.⁷

The physical consequences of gender-based violence against female refugees may include homicide, serious injury, unwanted or early pregnancy, sexually transmitted infections (including infertility and HIV) and vulnerability to disease. The psychological health consequences include suicide and mental health problems.⁸ Women and girls may suffer severe psychological impacts and physical injury from instances of gender-based violence prevalent within the refugee context. As Pittaway and Bartolomei explain, the consequences of gender-based violence are itself often gendered:

Women ... face the additional consequence of bearing children of rape, and many girls who are too young for child-bearing die. Women and girls are isolated from families or communities, and all bear a burden of stigma. Disabled women are often the target of sexual violence. Lesbian and transgender women are subjected to 'corrective rape' and sometimes killed. Many women are forced to engage in survival sex to feed themselves and their families, with the additional stigma of prostitution. Many face forced marriage. Men are shamed because they cannot protect their female family members, and communities suffer collective guilt.⁹

Sexual Violence

⁴ Lisa Davis, 'ISIL, the Syrian Conflict, Sexual Violence, and the Way Forward: Syrian Women's Inclusion in the Peace Processes' (2016) 48(4) *New York University Journal of International Law and Politics* 1157-1190 at 1173.

⁵ Hynes and Cardozo (n 1) at 819.

⁶ Eileen Pittaway and Linda Bartolomei, 'Enhancing the Protection of Women and Girls Through the Global Compact on Refugees' (2018) 57 *Forced Migration Review* 77-79 at 77.

⁷ Ghida Anani, 'Dimensions of Gender-Based Violence Against Syrian Refugees in Lebanon' (2013) 44 *Forced Migration Review* 75-78 at 75.

⁸ Hynes and Cardozo (n 1) at 820.

⁹ Pittaway and Bartolomei (n 6) at 77-78.

Sexual violence is one key component of the umbrella term gender-based violence.¹⁰ A narrow definition of sexual violence (usually based upon domestic criminal law definitions) is sometimes used. For example, the United States Centers for Disease Control and Prevention defines sexual violence as:

... any nonconsensual completed or attempted contact (between the penis and the vulva or the penis and the anus involving penetration, however slight), nonconsensual contact between the mouth and the penis, vulva, or anus; nonconsensual penetration of the anal or genital opening of another person by a hand, finger, or other object; nonconsensual intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks; or nonconsensual noncontact acts of a sexual nature such as voyeurism and verbal or behavioral sexual harassment. All the above acts also qualify as sexual violence if they are committed against someone who is unable to consent or refuse ...¹¹

The United Nations Secretary-General has described sexual violence more broadly using the language of ‘sexual exploitation’ to encompass “any actual or attempted abuse of a position of vulnerability, differential power, or trust, for sexual purposes, including, but not limited to, profiting monetarily, socially or politically from the sexual exploitation of another”.¹² ‘Sexual abuse’ is then defined as “the actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions”.¹³

Sexual violence may be understood as part of a continuum of violence and discrimination in which gender rights suffer before, during, and post-conflict. Comprehensively addressing the rights and humanitarian needs of survivors of sexual violence in conflict, particularly refugees, requires addressing pre-existing threats to survivors embedded in discriminatory laws and patriarchal social norms.¹⁴

Within the refugee context, sexual violence encompasses a range of damaging behaviour including not only rape and other sexual assaults, but also attempts and offers of food, protection, documents or other assistance in exchange for sexual favours.¹⁵

Sexual assault, exploitation and harassment occurs at every stage of the refugee journey, beginning with violence faced in the country of origin undergoing conflict through to arrival and settlement in the (often European) country of protection. The transactional sex that refugees are reported to be forced to engage in to ‘pay for’ travel documents, border access

¹⁰ Marsh, Purdin and Navani (n 3) at 133.

¹¹ K Basile and L Saltzman, *Sexual Violence Surveillance: Uniform Definitions and Recommended Data Elements* (Atlanta: Centers for Disease Control and Prevention – National Center for Injury Prevention and Control, 2002).

¹² United Nations Secretary-General, *Secretary’s Bulletin: Special Measures for Protection from Sexual Exploitation and Sexual Abuse*, UN Doc ST/SGB/2003/13 (9 October 2003) at 1.

¹³ *Ibid* at 1.

¹⁴ Davis (n 4) at 1173.

¹⁵ CJ Fowler, J Dugan-Mair and PA Bolton, ‘Assessing the Opportunity for Sexual Violence Against Women and Children in Refugee Camps’ (2000) *Journal of Humanitarian Assistance* 1-10 at 1.

or the journey itself, may also be viewed as a form of sexual violence.¹⁶ The United Nations' International Criminal Tribunal for Rwanda (ICTR) provided a comprehensive definition of sexual violence appropriate to refugees in its 1998 *Akayesu* decision as "any act of a sexual nature which is committed on a person under circumstances which are coercive."¹⁷ Such sexual violence, which in some instances may have deep cultural roots and is exacerbated in refugee settings, constitutes violations of refugees' fundamental human rights.¹⁸

SEXUAL AND GENDER-BASED VIOLENCE (SGBV)

Given the prevalence and importance of sexual violence as a key aspect of gender-based violence, the combined term 'sexual and gender-based violence' (SGBV) has gained prominence particularly within the discourse about refugees.

SGBV may be viewed as a global public health issue, a violation of human rights and, in egregious cases, may constitute a crime against humanity. It comprises sexual, emotional-psychological, physical and socio-economic violence as well as harmful cultural practices. In addition to its negative effect on victims' well-being and participation in society, SGBV may have significant consequences on sexual, reproductive, physical and psychological health at the international level,¹⁹ such as the reported occurrence of SGBV afflicting refugees seeking protection from the ongoing crisis in Syria.

In the United Nations Secretary-General's 2017 report, [*Special Measures for Protection from Sexual Exploitation and Abuse: A New Approach*](#), examples of the different kinds of SGBV perpetrated against adults include: rape, sexual assault, other forms of sexual violence, transactional sex, solicitation of transactional sex, exploitative relationships and trafficking for sexual exploitation and abuse. The different kinds of SGBV against children include: child rape, sexual assault, solicitation of child prostitution, trafficking for sexual exploitation and abuse and other forms of sexual violence against children.²⁰

The Gendered Nature of SGBV

While men and boys are subjected to SGBV, research indicates that such acts disproportionately affect women and girls. This appears to be because SGBV stems from male and female gender roles that attempt to relegate women to inferior status. When men and

¹⁶ Sylvia Yazid and Agatha Natania, 'Women Refugees: An Imbalance of Protecting and Being Protected' (2017) 13(1) *Journal of Human Security* 34-42 at 34.

¹⁷ *Prosecutor v Jean-Paul Akayesu*, Trial Chamber I, Case No ICTR-96-4-T, 2 September 1998, [598].

¹⁸ Alice Farmer, 'Refugee Responses, State-Behavior, and Accountability for Human Rights Violations: A Case Study of Sexual Violence in Guinea's Refugee Camps' (2006) 9 *Yale Human Rights & Development Law Journal* 44-84 at 45.

¹⁹ Ines Keygnaert, Nicole Vettenburg and Marleen Temmerman, 'Hidden Violence is Silent Rape: Sexual and Gender-Based Violence in Refugees, Asylum Seekers and Undocumented Migrants in Belgium and the Netherlands' (2012) 14(5) *Culture, Health & Sexuality* 505-520 at 505.

²⁰ *Special Measures for Protection from Sexual Exploitation and Abuse: A New Approach – Report of the Secretary-General*, UN GAOR, 71st sess, UN Doc A/71/818 (28 February 2017).

boys are subjected to sexual violence, the intent itself is often gendered in nature, in that such violence seeks to emasculate and feminise the male victims.²¹

International recognition of the gendered experiences of conflict, forced migration and the refugee experience has gradually developed since the Second World War, and substantively since the 1990s. Within conflict settings there is almost uniformly large-scale increases in SGBV beyond the domestic sphere, including rape, multiple perpetrator rape, and coercive and forced sex for survival. While all social groups and individuals can be subjected to physical, emotional, psychological and structural violence, particularly during times of conflict, women and girls are disproportionately subjected to the perpetration or threat of SGBV, in some or all of these forms.²²

SGBV Within Conflict Settings

The nature of SGBV perpetrated against refugees within conflict settings can be categorised into first, SGBV perpetrated as a method of warfare²³ and secondly, opportunistic violence.

An awareness of the implications of rape as affecting the individual survivor, the family and the community often underlies the use of rape as a strategy of warfare.²⁴ In many cultures, notions of family honour are tied to a daughter's virginity and social concepts of honour may be intricately linked to the female body.

Investigations by the United Nations' International Criminal Tribunal for the former Yugoslavia (ICTY) into sexual violence perpetrated during the 1991-2001 Yugoslav Wars describe rape as a weapon of war designed to terrorise and humiliate communities as well as serve as a tool of genocide. Similar warfare strategies have been deployed in recent conflicts afflicting Somalia, Rwanda, Sri Lanka, the Eastern Democratic Republic of Congo, Sierra Leone, and Sudan.²⁵

SGBV may also encompass opportunistic violence perpetrated within the climate of impunity present in conflict zones where there exists a breakdown of both social and legal systems. Even though not an explicit strategy of warfare, such aberrant acts may be both systematic and large-scale. These crimes do not usually fall within the purview of international tribunals but rather of local justice systems; systems which are usually dysfunctional due to armed conflict where impunity is the norm.²⁶ The international community largely abdicates to domestic law jurisdiction over rape, sexual assault (including murder), forced prostitution and reproductive subordination. Margareth Etienne argues that it is unclear why SGBV abuses in most instances are left to the discretion of (often dysfunctional) domestic judicial systems

²¹ Marsh, Purdin and Navani (n 3) at 134.

²² Victoria Canning, 'International Conflict, Sexual Violence and Asylum Policy: Merseyside as a Case Study' (2014) 34 *Critical Social Policy* 23-45 at 24.

²³ Marsh, Purdin and Navani (n 3) at 135.

²⁴ *Ibid* at 134.

²⁵ *Ibid* at 135.

²⁶ *Ibid*.

while other types of human rights violations are far more commonly dealt with at the international level.²⁷

Structural and Physical SGBV

The SGBV to which refugees are subject can also be categorised by dividing SGBV into two main categories for analytical purposes – structural violence and physical violence.²⁸ Both structural and physical violence against refugees, particularly refugee women, systematically occurs throughout the refugee experience.²⁹

Structural violence occurs when rules or policies systematically discriminate against or degrade specific groups within a community. Inside refugee camps, the administration and physical layout of the camp itself, to policies relating to security, healthcare, shelter, food distribution and sanitation systems specifically discriminate against and degrade women.³⁰ A prominent example of structural violence within the refugee setting is the widespread policy of giving only one ration card per family in the name of the male head of household. Such practices perpetuate women's dependence and strengthen men's control over women, ultimately rendering women more vulnerable to SGBV.³¹ Further, the structural violence that women experience in refugee settings may provide the basis for physical violence perpetrated against them.³²

Physical violence includes the entire spectrum of harmful physical contact, including sexual bartering, public beating, domestic violence, sexual assault and rape.³³ It includes all types of physical assault including attempts and threats of assault as well as harmful traditional practices such as early/forced marriage and female genital mutilation. Emotional and psychological abuse also fall within this category. Physical violence as SGBV is perpetrated by a wide variety of actors and occurs at all levels within refugee communities: from individual and relationship levels to community and societal levels.³⁴

INTERNATIONAL COMMUNITY'S APPROACH TO SGBV

Many scholars and activists have demanded increased recognition of SGBV as constituting violations of basic human rights, arguing that while the international community has long

²⁷ Margareth Etienne, 'Addressing Gender-Based Violence in an International Context' (1995) 18 *Harvard Women's Law Journal* 139-170 at 158.

²⁸ Anne Lise Purkey, 'Whose Right to What Justice – The Administration of Justice in Refugee Camps' (2011) 17 *New England Journal of International and Comparative Law* 121-157 at 134.

²⁹ Malinda M Schmiechen, 'Parallel Lives, Uneven Justice: An Analysis of Rights, Protection and Redress for Refugee and Internally Displaced Women in Camps' (2003) 22(2) *Saint Louis University Public Law Review* 473-520 at 484.

³⁰ *Ibid* at 484.

³¹ Purkey (n 28) at 135.

³² Schmiechen (n 29) at 489.

³³ *Ibid* at 484.

³⁴ Purkey (n 28) at 135.

acknowledged human rights abuses based on race and religion, similar attention has not been paid to gender-based crimes.³⁵

The international community has largely resisted the idea of classifying gender-based abuses within its system of binding international rights protections under international law (a selection of both international and regional human rights instruments with relevance to SGBV are listed in the Appendix). Such a classification, including potentially a dedicated international convention combatting SGBV, would be a key step in addressing SGBV abuses at the global level. The United Nations has instead over its seven decades enacted separate conventions engaging the issue of gender bias in specific arenas: these include the 1949 [*Convention for the Suppression of the Traffic in Persons and Exploitation of the Prostitution of Others*](#), the 1953 [*Convention on the Political Rights for Women*](#), the 1958 [*Convention Concerning Discrimination in Respect of Employment and Occupation*](#), the 1960 [*Convention Against Discrimination in Education*](#), the 1979 [*Convention on the Elimination of Discrimination Against Women*](#) (CEDAW) and the 1990 [*Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*](#).³⁶

However, as Etienne explains, these conventions have failed adequately to address SGBV at the international level:

First, and perhaps most obviously, the behavior that they seek to control or eradicate persists and has not significantly diminished. Violence against women continues to be pervasive. Second, many United Nations member countries have refused to sign these conventions, and those that have signed them do not conscientiously enforce them. Third, few parties outside of the political international community know how to use these bodies and conventions as a means of redress. It is unclear whether the United Nations' commitment to human rights for women is particularly weak in these areas or whether the framework of international law is an inappropriate locus for addressing the particular forms of abuses faced by women.³⁷

However, the continued reliance on such conventions and international public law generally remains justified at least to some extent since, even when this approach of the United Nations to SGBV has had little effect on actual behaviour, it has been instrumental in reconfiguring the way in which the international community thinks about SGBV abuses.³⁸

Declaration on the Elimination of Violence Against Women

The 1993 non-binding [*Declaration on the Elimination of Violence Against Women*](#) provides one of the earlier definitions of SGBV in international law. It defines 'violence against women' as:

³⁵ Etienne (n 27) at 140.

³⁶ Ibid at 143.

³⁷ Ibid at 143-144.

³⁸ Ibid at 146.

any act of gender-based violence that results in, or is likely to result in, physical, sexual, or mental harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.³⁹

The Declaration also states:

[V]iolence against women is a manifestation of historically unequal power relations between men and women [V]iolence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men.⁴⁰

This Declaration is indicative of an increasing recognition that women are subordinated, discriminated against and suffer SGBV and that such practices are legally wrong and should be actionable under international human rights law.⁴¹

Convention on the Elimination of All Forms of Discrimination Against Women

The first article of the [Convention on the Elimination of All Forms of Discrimination Against Women](#) (CEDAW), defines discrimination against women as:

[A]ny distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.⁴²

While CEDAW acknowledges the necessity of a mix of political, economic, social, cultural, and civil freedoms, it continues to define the rights of women in relation to the positive rights of men. For although CEDAW guarantees to women all rights on a basis equal to men, it does not provide women special protection against harms specific to their experiences as women. Some commentators see this as an embedded conceptual defect.⁴³

Many of the human rights and fundamental freedoms CEDAW refers to are defined in other international human rights treaties such as the [International Covenant on Civil and Political Rights](#) (ICCPR) and the [International Covenant on Economic, Social and Cultural Rights](#) (ICESCR). These include numerous rights applicable to refugees such as the right to life, security of person, the right not to be tortured or be subject to degrading treatment, the right to have equal protection before the law and the right to adequate health and well-being

³⁹ *Declaration on the Elimination of Violence Against Women*, GA Res 48/104, UN GAOR, 48th sess, 85th plen mt, UN Doc A/RES/48/104.

⁴⁰ Etienne (n 27) at 151.

⁴¹ Ibid at 146.

⁴² *Convention on the Elimination of All Forms of Discrimination Against Women*, opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981) art 1.

⁴³ For example Etienne (n 27) at 148.

which includes food, clothing, housing, and medical care.⁴⁴ CEDAW also includes some specific articles particularly relevant to refugees and SGBV. For example, Article 6 states that "State Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women." This means that States party should implement legislation safeguarding women from sexual slavery or coercion into prostitution or survival sex. Similarly, CEDAW's Article 12 declares that "State Parties shall take all appropriate measures to ... ensure ... access to health care services, including those related to family planning." This obligates parties to end the sexual bartering that can be widespread in refugee camps. Additionally, this article articulates the right refugee women enjoy to contraception and other reproductive health care.⁴⁵

Despite its shortcomings, CEDAW possesses a powerful declaratory effect, announcing to the world that discrimination against women, including SGBV as the most violent form of such discrimination, is never acceptable. Moreover, the United Nations' identification of human rights for women as an international priority gives notice to potential violators, potentially deters SGBV abuses, and legitimises domestic legislation and punishment. Therefore, the failure of CEDAW and international law to adequately protect women does not negate the crucial role that it plays in establishing positive norms. Even for countries outside of the CEDAW regime, the international legal norms it helps establish provide a measure by which other nations may judge their actions.⁴⁶

UN Committee on the Elimination of Discrimination Against Women & SGBV

In 1992 the Committee on the Elimination of Discrimination Against Women (established by CEDAW) issued its [General Recommendation No. 19](#) dealing exclusively with violence against women. In this document the Committee states that SGBV is a form of discrimination which seriously inhibits a woman's ability to enjoy rights and freedoms on an equal basis with men. It also defines gender-based violence as that which is directed against a woman because she is female or which affects women disproportionately, with "sexual harm or suffering" and "threats of such acts" specifically included as forms of gender-based violence. Therefore, the term used by the Committee of 'gender-based violence' is synonymous with SGBV.⁴⁷ The Committee further notes that "[g]ender-based violence may breach specific provisions of the Convention [on the Elimination of Discrimination Against Women], regardless [of] whether those provisions expressly mention violence".⁴⁸ It also clarified in its [General Recommendation No. 19](#) that discrimination against women, as defined in Article 1 of CEDAW,

⁴⁴ Schmiechen (n 29) at 497.

⁴⁵ Ibid at 498.

⁴⁶ Etienne (n 27) at 160.

⁴⁷ United Nations High Commissioner for Refugees, 'UNHCR, Sexual Violence Against Refugees: Guidelines on Prevention and Response (Extracts)' (1995) 7(4) *International Journal of Refugee Law* 720-755 at 747-748. See: United Nations High Commissioner for Refugees, *Sexual Violence Against Refugees: Guidelines on Prevention and Response* (Geneva: United Nations High Commissioner for Refugees, 1995).

⁴⁸ Ibid.

includes gender-based violence, and that SGBV therefore constitutes a violation of women's human rights.⁴⁹

In its 2017 [General Recommendation No. 35](#), which updates [General Recommendation No. 19](#), the Committee employs the revised language of 'gender-based violence against women' to strengthen the idea that it is a social rather than an individual problem, requiring comprehensive responses, beyond those targeted at specific events, individual perpetrators and victims/survivors.⁵⁰ [General Recommendation No. 35](#) clarifies that the Committee considers SGBV against women constitutes one of the fundamental social, political and economic means by which the subordinate position of women with respect to men and their stereotyped roles are perpetuated. SGBV therefore serves as a critical obstacle to the achievement of substantive equality between women and men and to the enjoyment by women of their human rights and fundamental freedoms, as guaranteed by CEDAW.⁵¹

Reiterating that SGBV is itself a form of discrimination against women as defined in Article 1 of CEDAW, the Committee in [General Recommendation No. 35](#) holds that "[w]omen's right to a life free from gender-based violence is indivisible from and interdependent on other human rights."⁵² These include the rights to life, health, liberty and security of the person, equality and equal protection within the family, freedom from torture, cruel, inhumane or degrading treatment, and freedom of expression, movement, participation, assembly and association.⁵³

As factors associated with the refugee experience, the Committee states in its 2017 [General Recommendation No. 35](#) that:

Gender-based violence against women is affected and often exacerbated by cultural, economic, ideological, technological, political, religious, social and environmental factors, as evidenced, among other things, in the contexts of displacement, migration, the increased globalization of economic activities, including global supply chains, the extractive and offshoring industry, militarization, foreign occupation, armed conflict, violent extremism and terrorism. Gender-based violence against women is also affected by political, economic and social crises, civil unrest, humanitarian emergencies, natural disasters and the destruction or degradation of natural resources.⁵⁴

It also notes in regard to the causes of SGBV that:

[t]he Committee regards gender-based violence against women as being rooted in gender-related factors, such as the ideology of men's entitlement and privilege over

⁴⁹ Committee on the Elimination of Discrimination Against Women, 'General Recommendation No. 35 on Gender-Based Violence Against Women, Updating General Recommendation No. 19' (2017) 6(2) *International Human Rights Law Review* 279-306 at 280.

⁵⁰ *Ibid* at 283.

⁵¹ *Ibid*.

⁵² *Ibid* at 286.

⁵³ *Ibid*.

⁵⁴ *Ibid*.

women, social norms regarding masculinity, and the need to assert male control or power, enforce gender roles or prevent, discourage or punish what is considered to be unacceptable female behaviour. Those factors also contribute to the explicit or implicit social acceptance of gender-based violence against women, often still considered a private matter, and to the widespread impunity in that regard.⁵⁵

The Torture Convention

The UN's 1984 [Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](#) (Torture Convention) requires at its Article 16 that States:

prevent ... acts of cruel, inhuman or degrading treatment or punishment ..., when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

The manner in which the Torture Convention has construed the definition of torture, the paradigmatic human rights abuse, excludes most SGBV related crimes. For a prima facie case for torture under international law requires demonstrating that the actor inflicted torture "at the instigation of or with the consent or acquiescence of" a public official with the purpose of securing "information or a confession, punishing him for an act ... or intimidating or coercing him" (Art I). Although this last clause initially appears applicable to rape, in order to contravene the Torture Convention, the rape must be a means of attaining a larger goal rather than being the goal itself. While the Torture Convention also states that torture can be a result of "discrimination of any kind" (Art I), States party have arguably acquiesced to numerous international SGBV atrocities by failing to use the language of this Convention to address rape and other SGBV related crimes as an act of torture based on gender discrimination.⁵⁶ Ultimately, while torture against women often includes sexual intimidation, much of what is classified as SGBV does not constitute torture under this Convention because, legally defined, torture requires state action or at least acquiescence.⁵⁷

The UN Committee on the Elimination of Discrimination Against Women in its [General Recommendation No. 35](#) has, however, stated that SGBV perpetrated against women may amount to torture or cruel, inhuman or degrading treatment in certain circumstances, including in cases of rape, domestic violence or harmful practices. It goes on to declare that in certain cases, some forms of SGBV against women will constitute international crimes.⁵⁸ It furthermore endorses the view that in determining when acts of SGBV against women amount to torture or cruel, inhuman or degrading treatment, a gender-sensitive approach is required to understand the level of pain and suffering, and that the purpose and intent requirements for classifying such acts as torture are satisfied when acts or omissions are gender-specific or perpetrated against a person on the basis of their sex.⁵⁹

⁵⁵ Ibid at 288.

⁵⁶ Etienne (n 27) at 156-157.

⁵⁷ Ibid at 157.

⁵⁸ Committee on the Elimination of Discrimination Against Women (n 49) at 286-287.

⁵⁹ Ibid at 287.

SGBV UNDER INTERNATIONAL LAW

International law prohibits some forms of SGBV. As detailed in the Appendix, this prohibition is found in various binding provisions of both human rights instruments (international and regional) and instruments of international humanitarian law (namely the Geneva Conventions), as well as in customary international law.⁶⁰

In the past two decades, successful prosecutions of gender-based crimes as violations of international law have advanced in large measure due to the precedents created by the United Nations ad hoc tribunals (namely the International Criminal Tribunals for both Rwanda and the former Yugoslavia) and the International Criminal Court. International law now treats rape (in certain circumstances) as a war crime, a crime against humanity, and/or an instrument of genocide. That is, some sexual assaults, whether perpetrated in international or internal armed conflict, can be prosecuted and punished under international law.⁶¹

Ultimately, however, international law generally requires that States only be held accountable for their own actions and treatment of individuals. States usually do not bear responsibility for the acts of private individuals against one another within their borders. Accordingly, many SGBV abuses most commonly perpetrated, such as sexual assault, domestic violence, rape and constraints on reproductive freedom, commonly fall outside the purview of State action and therefore largely outside the jurisdiction of international law. The requirement that a State must in some way be involved in the perpetuation of SGBV abuses in order to qualify as violations of international human rights – the state action requirement – is a significant impediment in establishing gender-based rights. Consequently, the international community has relegated the majority of SGBV violations to the sphere of domestic state jurisdiction.⁶²

However, the International Criminal Tribunal for Rwanda (ICTR) in its *Akayesu* decision⁶³ expanded the definition of SGBV, finding that non-State actors, as well as State actors, can violate international humanitarian law (that being the law of war largely set out under the Geneva Conventions).⁶⁴ Following the *Akayesu* case, it is possible for a non-military person to be convicted of sexual assault as a violation of Common Article 3 and Additional Protocol II (of the Geneva Conventions) even when physical contact does not occur, but was coerced and sexual in nature such as forcing a person to do activities while naked.

Women and girls who are sexually assaulted by a State or non-State actor in a refugee camp, within a country that is experiencing internal armed conflict, can assert their legal rights under Common Article 3 of the Geneva Conventions and can argue for the broader protections based on Additional Protocol II and the ICTR's *Akayesu* decision as persuasive, non-binding international law. Using these provisions, the rights of refugee women to be free of sexual

⁶⁰ United Nations High Commissioner for Refugees, 'UNHCR, Sexual Violence Against Refugees' (n 47) at 743.

⁶¹ Elizabeth-Merry Condon, 'The Incoherent International Jurisprudence of Rape' (2007) 3 *Eyes on the ICC* 23-32 at 23.

⁶² Etienne (n 27) at 157-158.

⁶³ *Prosecutor v Jean-Paul Akayesu*, Trial Chamber I, Case No ICTR-96-4-T, 2 September 1998.

⁶⁴ Schmiechen (n 29) at 483.

bartering, domestic violence, sexual assault and rape within the refugee camp environment are bolstered by international humanitarian law.⁶⁵

SGBV as Crimes Before the International Criminal Court

In 2014, the Office of the Prosecutor of the International Criminal Court (ICC) launched its [Policy Paper on Sexual and Gender-Based Crimes](#), the first policy paper to be issued by this office. This document represents an important development within the SGBV discourse and has the potential to transform how gendered acts within genocide, mass atrocity and war are prosecuted internationally. The basis for this policy document is the explicit inclusion within the [Rome Statute of the ICC](#) of an expansive list of SGBV crimes, including rape, sexual slavery, enforced prostitution, forced pregnancy and enforced sterilisation. This was the first time in international criminal law that acts of SGBV had been this extensively enumerated as international crimes.⁶⁶

However, under the ICC's *Rome Statute*, to prosecute rape as a crime against humanity, its Article 7(0) requires that the rape occur "as part of a widespread or systematic attack directed against a civilian population, with knowledge of the attack." Similarly, rape may be prosecuted as a war crime pursuant to Article 8(2)(e)(vi), but the scope is again limited to instances where the rape is committed "as part of a plan or policy or as part of a large-scale commission of such crimes". If the language "as part of" is construed narrowly to require a widespread, systematic attack or policy, many rapes committed as crimes of opportunity in conflict and post-conflict settings, rather than as deliberate acts of armed aggression, animated by larger policy objectives, will fall outside of this definition.⁶⁷ For most instances of rape perpetrated against refugees, while occurring within the larger context of armed conflict, may not be committed by government or militia forces or, if committed by those forces, not committed in furtherance of those groups' objectives, thus seemingly not constituting crimes prosecutable before the ICC.⁶⁸

The [Rome Statute of the ICC](#) contains an existing definition of the term 'gender' at Article 7(3): "the two sexes, male and female, within the context of society." This definition was deliberately constructively ambiguous to ensure international acceptance of the *Rome Statute*, particularly by conservative Catholic and Arab States. The subsequent result had seen some confusion within – and outside of – the ICC as to how to properly interpret Article 7(3).⁶⁹ The ICC's [Policy Paper on Sexual and Gender-Based Crimes](#) confronts this ambiguity of the Article 7(3) definition of 'gender'. It does so directly by interpreting "context of society" as acknowledging the social construction of gender and its link to "male and female" as referring to the accompanying roles, behaviours, activities, and attributes assigned to each gender.

⁶⁵ Ibid at 511.

⁶⁶ Valerie Oosterveld, 'The ICC Policy Paper on Sexual and Gender-Based Crimes: A Crucial Step for International Criminal Law' (2018) 24(3) *William & Mary Journal of Women and the Law* 443-458 at 443.

⁶⁷ Condon (n 61) at 23.

⁶⁸ Ibid.

⁶⁹ Oosterveld (n 66) at 450-451.

The Policy Paper also indicates that, in accordance with Article 21(3) of the *Rome Statute*, it interprets and applies the definition of gender “in accordance with internationally recognised human rights” as they evolve over time, and “without any adverse distinction founded, inter alia on gender or other status.” This means that the Office of the ICC Prosecutor considers how international human rights law addresses, for example, SGBV against women and gender inequality. This document confirms that the definition of gender refers to socially constructed norms of femaleness and maleness, with these gender norms often having a tremendous impact on how women and men are treated during periods of armed conflict and mass atrocity. Thus, the constructively ambiguous definition appearing at Article 7(3) of the *Rome Statute* is clarified by this ICC Policy Paper. This clarity seems to have also empowered the Office of the ICC Prosecutor, as it now engages directly on the question of gender in cases such as *Prosecutor v. Ongwen*⁷⁰ and in its public statements. It also means that the constructively ambiguous definition of gender appearing in the *Rome Statute* cannot now ever be used to justify SGBV or gender discrimination.⁷¹

SGBV IN THE HUMANITARIAN AND REFUGEE CONTEXTS

The 1951 [Convention Relating to the Status of Refugees](#) (Refugee Convention) defines a ‘refugee’ as a person forced to flee his or her country and unable to return because of a “well-founded fear of being persecuted for reasons of race, nationality, membership of a particular social group or political opinion”.⁷² This definition, however, does not include persons who fear persecution by reason of their gender.⁷³ During the early years of the Refugee Convention’s operation, women’s claims for refugee status were only viewed as the derivative claims of a spouse accompanying a male refugee.⁷⁴ There are moves internationally to include SGBV as an explicit basis for seeking refugee status.⁷⁵

While SGBV is not yet recognised as specific grounds for seeking refugee status under the Refugee Convention framework, refugees can however apply for protection as a member of a Particular Social Group (PSG). This can encompass women fleeing sexual violence, amongst other social, religious, ethnic and political demographics.⁷⁶ For example, in acknowledgement of experiences of persecution involving SGBV as part of a PSG, the United Kingdom Border Agency has issued the document [Gender Issues in the Asylum Claim](#) to introduce a gendered focus when assessing refugee claims in the UK, particularly in relation to issues such as rape, sexual violence and domestic abuse.⁷⁷ Similarly guidelines from the United Nations High

⁷⁰ This ICC trial of Dominic Ongwen, alleged Brigade Commander of the Sinia Brigade of the Lord’s Resistance Army, began on 6 December 2016. The Prosecution has completed its presentation of evidence, and the Legal Representatives of Victims also called witnesses to appear before the Chamber. The trial resumed on 18 September 2018 with the opening statements of the Defence. See: <https://www.icc-cpi.int/uganda/ongwen>

⁷¹ Oosterveld (n 66) at 451.

⁷² *Convention Relating to the Status of Refugees*, opened for signature 28 July 1951, 189 UNTS 137 (entered into force 22 April 1954) art 1A(2).

⁷³ Etienne (n 27) at 155.

⁷⁴ Farmer (n 18) at 63-64.

⁷⁵ Ibid at 65.

⁷⁶ Canning (n 22) at 26-27.

⁷⁷ Ibid at 27.

Commissioner for Refugees (UNHCR),⁷⁸ as well as the European Union Directive on the standards applicable to refugee protection,⁷⁹ have specified that gender-related persecutions must be considered as legitimate grounds for granting refugee status.⁸⁰

Several countries adhere to a more inclusive refugee definition than that under the Refugee Convention. For example, two regional instruments – the Organization for African Unity’s own 1969 Refugee Convention ([OAU Convention Governing the Specific Aspects of Refugee Problems in Africa](#)) and the 1984 [Cartagena Declaration on Refugees](#) for Latin America – recognise a broader array of grounds for protection, including fleeing "external aggression, occupation, foreign domination or events seriously disturbing public order" or "generalised violence, foreign aggression, [or] internal conflicts".⁸¹ Article 60(1) of the [Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence](#) (Istanbul Convention) also requires parties “take the necessary legislative or other measures to ensure that gender-based violence against women may be recognised as a form of persecution within the meaning of ... the 1951 Convention Relating to the Status of Refugees and as a form of serious harm giving rise to complementary/subsidiary protection”. It also provides that parties shall ensure that a gender-sensitive interpretation is given to each of the grounds outlined in the Refugee Convention and “that where it is established that the persecution feared is for one or more of these grounds, applicants shall be granted refugee status according to the applicable relevant instruments”.⁸²

In 1991, the UNHCR addressed SGBV in the refugee context with its [Guidelines for the Protection of Refugee Women](#).⁸³ These guidelines focused on the “special protection needs” of refugee women and girls and acknowledged that “refugee women who are unable to feed, clothe, and shelter themselves and their children, for example, will be more vulnerable to physical and sexual abuse in order to obtain such necessities.”

These guidelines were revised by the UNHCR in 1995 with the release of [Sexual Violence Against Refugees: Guidelines on Prevention and Response](#). ‘Sexual violence’ is defined in this document as:

a gross violation of fundamental human rights and, when committed in the context of armed conflict, a grave breach of humanitarian law ... There are various forms of sexual violence, rape being the one most commonly referred to. The legal definition

⁷⁸ United Nations High Commissioner for Refugees, *Guidelines on International Protection: Gender-Related Persecution Within the Context of Article 1(A)2 of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees* (Geneva: UNHCR, 2002); United Nations High Commissioner for Refugees, *Sexual and Gender-Based Violence Against Refugees, Returnees and Internally Displaced People: Guidelines for Prevention and Response* (Geneva: UNHCR, 2003).

⁷⁹ *Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 Laying Down Standards for the Reception of Applicants for International Protection*, 2013.

⁸⁰ Jane Freedman, ‘Sexual and Gender-Based Violence Against Refugee Women: A Hidden Aspect of the Refugee “Crisis”’ (2016) 24(47) *Reproductive Health Matters* 18-26 at 24.

⁸¹ Kelsey Kofford, ‘An Examination of the Law, or Lack Thereof, in Refugee and Displacement Camps’ (2012) 35(1) *Hastings International and Comparative Law Review* 173-216 at 185.

⁸² Zeynep Kivilcim, ‘Legal Violence Against Syrian Female Refugees in Turkey’ (2016) 24(2) *Feminist Legal Studies* 193-214 at 199.

⁸³ United Nations High Commissioner for Refugees, *Guidelines on the Protection of Refugee Women* (Geneva: UNHCR, 1991).

of rape varies from country to country. In many societies it is defined as sexual intercourse with another person without their consent. Rape is committed when the victim's resistance is overcome by force or fear or under other coercive conditions. In certain countries 'statutory rape' exists as an offence. This is sexual intercourse with someone under a specified age, which is deemed to be unlawful. The victim is presumed by law to be unable to give consent by reason of his or her tender age. However, many forms of sexual violence do not fall under the strict definition of rape, such as insertion of objects into genital openings, oral and anal coitus, attempted rape and the infliction of other sexually abusive acts. Sexual violence can also involve the use or threat of force in order to have sexual acts performed by third persons.⁸⁴

The term 'sexual violence' is used in these 1995 UNHCR Guidelines to cover all forms of sexual threat, assault, interference and exploitation, including 'statutory rape' and molestation without physical harm or penetration. Perpetrators of sexual violence are often motivated by a desire for power and domination. Given these motivating forces, rape is common in situations of armed conflict and internal strife. An act of forced sexual behaviour can be life-threatening. Like other forms of torture, it is often meant to hurt, control and humiliate, violating a person's innermost physical and mental integrity. Perpetrators of sexual violence can include family members, for example where a parent is sexually abusing a child. Domestic violence often escalates in refugee situations due to the enormous pressures of refugee life, for example, having to live in closed camps.⁸⁵

These 1995 Guidelines recommended preventive measures that both refugees and those responsible for their care should take to help prevent SGBV, as well as discussed both practical and legal measures available when SGBV occurred.⁸⁶

The 1995 Guidelines were updated by the UNHCR in 2003. SGBV is defined in [*Sexual and Gender-Based Violence Against Refugees, Returnees and Internally Displaced Persons: Guidelines for Prevention and Response*](#) as "violence that is directed against a person on the basis of gender or sex. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty."⁸⁷ As the 2003 Guidelines note, this "expanded definition of sexual and gender-based violence used by UNHCR and implementing partners" is "based on Article 1 and 2 of the UN General Assembly *Declaration on the Elimination of Violence Against Women* (1993) and Recommendation 19, paragraph 6 of the 11th Session of the CEDAW Committee".⁸⁸

Gender-based violence as defined in these 2003 UNHCR Guidelines includes any harmful act that is perpetrated against a person's will, and that is based on socially ascribed gender differences between males and females. Accordingly, the term SGBV includes but is not

⁸⁴ United Nations High Commissioner for Refugees, 'UNHCR, Sexual Violence Against Refugees' (n 47) at 722-723.

⁸⁵ Ibid at 723.

⁸⁶ Fowler, Dugan-Mair and Bolton (n 15) at 3.

⁸⁷ United Nations High Commissioner for Refugees, *Sexual and Gender-Based Violence Against Refugees* (2003) (n 78) at 11. See: Carrie Hough, 'Understanding Refugees' Concepts of Sexual and Gender-Based Violence' (2013) 43 *Forced Migration Review* 81-83 at 81.

⁸⁸ Ibid.

limited to acts of sexual violence, including sexual exploitation and/or abuse; forced prostitution; domestic violence; trafficking; forced/early marriage; and harmful traditional practices such as female genital mutilation, honour killings and widow inheritance (a type of marriage in which a widow marries a relation of her late husband, often his brother). Further, these 2003 Guidelines define the health consequences of SGBV as all adverse physical and psychological outcomes related to this form of violence based on gender.⁸⁹

The 2003 UNHCR Guidelines also note the interchangeability and flexibility of terms related to SGBV:

Sexual violence, gender-based violence and violence against women are terms that are commonly used interchangeably. All these terms refer to violations of fundamental human rights that perpetuate sex-stereotyped roles that deny human dignity and the self-determination of the individual and hamper human development. They refer to physical, sexual and psychological harm that reinforces female subordination and perpetuates male power and control.⁹⁰

The UN Security Council also addressed issues of SGBV in its [*Resolution 1325 on Women and Peace and Security*](#) in 2000.⁹¹ This binding international law instrument expressed concern that civilians are increasingly "targeted by combatants" and urge participants in armed conflict "to take special measures to protect women and girls from gender-based violence, particularly rape and other forms of sexual abuse."⁹²

There are also specific guidelines relating to SGBV in humanitarian settings. Established in June 1992, the Inter-Agency Standing Committee (IASC) is a unique forum consisting of both UN and non-UN humanitarian agencies, representing a large proportion of humanitarian stakeholders operating internationally with a corresponding significant responsibility for populations in humanitarian crisis settings. Its first Guidelines on gender-based violence were released in 2005 with the title [*Guidelines for Gender-Based Violence Interventions in Humanitarian Settings: Focusing on Prevention of and Response to Sexual Violence in Emergencies*](#).⁹³ In 2015, the IASC updated these Guidelines pertaining to SGBV with the release of its [*Guidelines for Integrating Gender-Based Violence Interventions in Humanitarian Action: Reducing Risk, Promoting Resilience and Aiding Recovery*](#).

These IASC Guidelines are intended to educate the humanitarian community on the prevalence and nature of SGBV in conflict and emergency situations as a human rights issue requiring urgent attention. They recommend specific actions to incorporate in preventing and responding to SGBV within emergency preparedness, response and post-emergency

⁸⁹ Ramin Asgary, Eleanor Emery and Marcia Wong, 'Systemic Review of Prevention and Management Strategies for the Consequences of Gender-Based Violence in Refugee Settings' (2013) 5(2) *International Health* 85-91 at 85-86.

⁹⁰ United Nations High Commissioner for Refugees, *Sexual and Gender-Based Violence Against Refugees* (2003) (n 78) at 10. See: Fowler, Dugan-Mair and Bolton (n 15) at 3.

⁹¹ SC Res 1325, UN SCOR, 4213th mtg, UN Doc S/RES/1325 (31 October 2000).

⁹² *Ibid* at [10]. See: Condon (n 61) at 30.

⁹³ Chris Dolan, 'Letting Go of the Gender Binary: Charting New Pathways for Humanitarian Intervention on Gender-Based Violence' (2014) 96(894) *International Review of the Red Cross* 485-501 at 490.

planning.⁹⁴ As the 2005 IASC Guidelines explain, they are “designed for use by humanitarian organisations, including UN agencies, non-governmental organisations (NGOs), community-based organisations (CBOs), and government authorities operating in emergency settings at international, national, and local levels”.⁹⁵ The existence of a consistent pattern of sexual violence in humanitarian emergencies supports the position adopted within these IASC Guidelines that the humanitarian community must assume that sexual violence is present in all disaster settings.⁹⁶

While the IASC Guidelines do not establish a binding set of SGBV service delivery standards, they seek to achieve general international consensus among SGBV service providers and advocates around core programme design and service delivery principles that should guide SGBV response and mitigation programming. These include creating safe spaces for women, engaging the community in programme design and implementation, conducting safe referrals, utilising a survivor-centred approach, maintaining clients’ confidentiality and ensuring accessibility of services.⁹⁷ Furthermore, as both international and local organisations are implementing SGBV prevention and response programmes, there is a critical need for guidance and recommendations on best practice to rigorously evaluate these programmes.⁹⁸

The 2015 IASC Guidelines state:

Gender-based violence (GBV) is an umbrella term for any harmful act that is perpetrated against a person’s will and that is based on socially ascribed (i.e. gender) differences between males and females. It includes acts that inflict physical, sexual or mental harm or suffering, threats of such acts, coercion, and other deprivations of liberty. These acts can occur in public or in private. ... The term ‘GBV’ is most commonly used to underscore how systemic inequality between males and females—which exists in every society in the world—acts as a unifying and foundational characteristic of most forms of violence perpetrated against women and girls. ... Gender discrimination is not only a cause of many forms of violence against women and girls but also contributes to the widespread acceptance and invisibility of such violence—so that perpetrators are not held accountable and survivors are discouraged from speaking out and accessing support.⁹⁹

PERPETRATORS AND VICTIMS OF SEXUAL VIOLENCE IN REFUGEE SETTINGS

⁹⁴ Marsh, Purdin and Navani (n 3) at 141.

⁹⁵ Inter-Agency Standing Committee, *Guidelines for Gender-Based Violence Interventions in Humanitarian Settings: Focusing on Prevention of and Response to Sexual Violence in Emergencies* (Geneva: IASC, 2005) at 2.

⁹⁶ Marsh, Purdin and Navani (n 3) at 144.

⁹⁷ Pamela Lilleston et al, ‘Evaluation of a Mobile Approach to Gender-Based Violence Service Delivery Among Syrian Refugees’ (2018) 33(7) *Health Policy and Planning* 767-776 at 767-768.

⁹⁸ N Glass et al, ‘Evaluating the Communities Care Program: Best Practice for Rigorous Research to Evaluate Gender Based Violence Prevention and Response Programs in Humanitarian Settings’ (2018) 12(5) *Conflict and Healthy* 1-10 at 2.

⁹⁹ Inter-Agency Standing Committee, *Guidelines for Integrating Gender-Based Violence Interventions in Humanitarian Action: Reducing Risk, Promoting Resilience and Aiding Recovery* (Geneva: IASC, 2015) at 5.

The perpetrators of sexual violence may differ in refugee settings from those in non-refugee settings. The National Violence against Women Survey, conducted in the United States by the Centers for Disease Control and Prevention and the National Institute of Justice, has found that approximately 90% of rapes in the United States are committed by men known to the women.¹⁰⁰ However, in conflict situations strangers are more likely to perpetrate SGBV. For during both conflict and flight, refugees are at risk of rape and other violence from soldiers, border guards, police, and others in authority. Once they arrive in a refugee camp, they are furthermore at risk from fellow refugees, local residents, and even aid workers. These camps usually lack secure shelter and protection, especially for women, making them even more vulnerable to SGBV.¹⁰¹ Many studies have focused on the issue of rape as a weapon of war, leading to assumptions that armed actors and military personnel are the main perpetrators of SGBV. Yet, perpetrators may include family members, aid and humanitarian workers, trusted individuals, or strangers who take advantage of refugees' heightened vulnerability, particularly within camp settings.¹⁰²

In relation to victims of SGBV, the 2018 [Sexual Exploitation and Abuse in the Aid Sector](#) report of the International Development Committee of the UK House of Commons points out that “globally, it is pretty clear that girls and young women are most frequently the victims of sexual violence.”¹⁰³ Indeed, the risk of experiencing SGBV is exceptionally high among refugee women and girls. For example, among displaced Syrian women in Lebanon 31% report experiencing physical, sexual, and/or psychological violence. Through the displacement process the refugee experience entails, refugee women often lose traditional safety nets provided by friends, family and neighbours. This isolation creates conditions that can lead to SGBV, including verbal threats and intimidation, physical and sexual assault, and early and forced marriage.¹⁰⁴

As the 2015 IASC Guidelines explain:

Women and girls everywhere are disadvantaged in terms of social power and influence, control of resources, control of their bodies and participation in public life—all as a result of socially determined gender roles and relations. Gender-based violence against women and girls occurs in the context of this imbalance. While humanitarian actors must analyse different gendered vulnerabilities that may put men, women, boys and girls at heightened risk of violence and ensure care and support for all survivors, special attention should be given to females due to their documented greater vulnerabilities to GBV, the overarching discrimination they experience, and their lack of safe and equitable access to humanitarian assistance ...¹⁰⁵

¹⁰⁰ Hynes and Cardozo (n 1) at 819.

¹⁰¹ Ibid at 820.

¹⁰² Alexander Vu et al, ‘The Prevalence of Sexual Violence Among Female Refugees in Complex Humanitarian Emergencies: A Systemic Review and Meta-Analysis’ (2014) 18(6) *PLoS Currents Disasters*.

¹⁰³ International Development Committee, UK House of Commons, *Sexual Exploitation and Abuse in the Aid Sector* (2018) at 17.

¹⁰⁴ Lilleston et al (n 97) at 767-768.

¹⁰⁵ Inter-Agency Standing Committee, *Guidelines for Integrating Gender-Based Violence Interventions in Humanitarian Action* (2015) (n 99) at 6.

In all types of GBV, violence is used primarily by males against females to subordinate, disempower, punish or control. The gender of the perpetrator and the victim are central not only to the motivation for the violence, but also to the ways in which society condones or responds to the violence ... widespread gender discrimination and gender inequality often result in women and girls being exposed to multiple forms of GBV throughout their lives, including 'secondary' GBV as a result of a primary incident (e.g. abuse by those they report to, honor killings following sexual assault, forced marriage to a perpetrator, etc).¹⁰⁶

This focus on SGBV perpetrated against women and girls is mirrored in the earlier UNHCR's [*Sexual Violence Against Refugees: Guidelines on Prevention and Response*](#) released in 1995. Although moving to a more gender-neutral title after the UNHCR's earlier 1991 [*Guidelines for the Protection of Refugee Women*](#), these 1995 Guidelines still explicitly make clear its focus remains on women:

The pronouns in these [1995 UNHCR] Guidelines in relation to victims of sexual violence are phrased in the feminine voice and the pronouns in relation to perpetrators of sexual violence are phrased in the masculine voice. This is in recognition of the fact that the majority of reported cases of sexual violence among refugees involve female victims and male perpetrators. Since women and girls appear to be the ones most often subjected to sexual violence, these Guidelines focus on sexual violence against female refugees. Very little is known about the true incidence of sexual violence against male refugees other than in the context of detention and torture.¹⁰⁷

SGBV and Male Victims

This emphasis on women and girls' experience of SGBV in refugee and other humanitarian settings, as exemplified by both the IASC and UNHCR Guidelines, has however been the subject of some criticism. It has been argued that by prioritising SGBV against women and girls this obscures a range of other victims and downplays forms of violence that fall outside a claimed reductivist focus on supposedly asexual 'sexual' violence, violence which nonetheless should be regarded as SGBV and is worthy of humanitarian attention.¹⁰⁸ Among the most vocal critic of this primary SGBV focus on women and girls has been academic Dr Chris Dolan, Director of the Refugee Law Project at Makerere University in Uganda:

There are good grounds for challenging the statement that sexual violence affects women and children primarily; firstly ... humanitarian response should not be restricted to what is seen as the majority of those suffering from a given form of violence. Secondly, evidence is slowly but surely emerging that men are victims of sexual violence in a range of conflict settings. In those places where gender-inclusive

¹⁰⁶ Ibid at 7.

¹⁰⁷ United Nations High Commissioner for Refugees, 'UNHCR, Sexual Violence Against Refugees' (n 47) at 721.

¹⁰⁸ Dolan, 'Letting Go of the Gender Binary' (n 93) at 492.

statistics on sexual violence are available, they tend to confirm that overall more women than men are affected, but they certainly do not show that male victims are so few as to require no attention – instead, they suggest that the numbers of male victims whose needs are currently entirely unaddressed should be a matter of concern and concerted action ... When it comes to abuses of LGBTI persons, the impacts of homophobia and transphobia on LGBTI persons are also increasingly being documented, as is the fact that such violence frequently prompts affected persons to seek protection in humanitarian settings.¹⁰⁹

Dolan argues that a gender binary approach to SGBV should be replaced by a broader perspective on what non-sexual forms of violence should be recognised as SGBV. For example, he points to the possibility of moving beyond recognising solely sexual violence against men as a form of SGBV, but to also include militarisation and a whole range of related forms of violence (abduction, forcible recruitment, gender-specific massacres, landmines, etc) as egregious and complex cases of SGBV, the primary targets of which are male. Such a broadening of SGBV to also include, among other things, homophobia, transphobia and militarisation creates a range of issues within the refugee context which the humanitarian community has to date not emphasised within the SGBV discourse.¹¹⁰

The concept of gender in the context of SGBV is however moving away from viewing men and women as binary and separate categories, and instead the concept is becoming increasingly relational. The reference to gender in the term SGBV is increasingly not a synonym for women, nor is it simply about adding men, but considers both women and men and their interdependent relationships.¹¹¹

However, the archetype of the ‘typical’ victim of SGBV and preferred aid recipients as female continues and is rarely openly contested in international refugee and humanitarian policy.¹¹² As Dolan contends, the continued focus of SGBV primarily on women, as exemplified by the 2015 IASC Guidelines, enables the continued denial of resources and access to services for both male and LGBTQI survivors of SGBV – a denial which he asserts is itself a form of SGBV and an additional harm.¹¹³

Yet Jeanne Ward, a lead author of the 2015 IASC Guidelines, maintains that this specific attention given to women and girls in relation to SGBV should remain paramount. She notes that the language of gender has been central to women’s rights activism and to combatting violence against women as an articulation of the reality of women’s subordination within the prevailing gender order. However, Ward laments that gender is increasingly being used to talk

¹⁰⁹ Ibid at 491-492.

¹¹⁰ Ibid at 497.

¹¹¹ Dorothea Hilhorst, Holly Porter and Rachel Gordon, ‘Gender, Sexuality, and Violence in Humanitarian Crises’ (2018) 42(1) *Disasters* S3-S16 at S5.

¹¹² Ibid at S8-S9.

¹¹³ Chris Dolan, ‘Inclusive Gender: Why Tackling Gender Hierarchies Cannot be at the Expense of Human Rights and the Humanitarian Imperative’ (2016) 98(2) *International Review of the Red Cross* 625-634 at 633-634.

of women's and men's roles, a shift that effectively masks the problems of male privilege and women's oppression.¹¹⁴

Ward notes that the IASC's 2015 Guidelines include data of SGBV prevalence studies where male/female comparisons can be drawn, confirming that women are at significantly higher risk of sexual violence perpetrated by a non-partner, and that they are also exposed to high levels of intimate partner sexual violence. Given that even critics such as Dolan concede that the data "tend[s] to confirm that overall more women than men are affected"¹¹⁵ by sexual violence, compounded with the multiple other forms of SGBV which women and girls uniquely experience not only in the context of humanitarian emergencies but throughout their lives, Ward argues that the continued primary focus on women and girls in the international SGBV discourse is not unwarranted.¹¹⁶

Indeed, the definitions of SGBV that bodies such as IASC and the UNHCR adopt arose within the women's rights movement and these definitions are deliberately intended to articulate women's exposure to violence in the context of patriarchy. As Ward notes, without this provenance within the women's rights movement both the concept and language of 'SGBV' would not exist.¹¹⁷

While this debate over the prioritisation of women and girls when it comes to SGBV within the refugee context yields interesting perspectives, it does not disrupt markedly the discourse whereby women and men are boxed into separate and rather stagnant categories. By focusing upon these gender binary issues, the debate may however be missing the mark regarding gender as relations of power that, like everything else, are cast into disarray during humanitarian crises. Further, the large body of literature on intersectionality indicates that gender intersects with class, ethnicity, and other social characteristics, all of which are also of great relevance to SGBV in the refugee context.¹¹⁸

LGBTQI Persons and SGBV

The Office of the United Nations High Commissioner for Human Rights' (OHCHR) describes violence against LGBTQI (lesbian, gay, bisexual, transgender, queer or questioning and intersex) persons as "a form of gender-based violence, driven by a desire to punish those seen as defying gender norms",¹¹⁹ identifying the nexus of gender, sexuality and SGBV in a manner that has been lacking in much of the current SGBV discourse. This growing recognition of the rights of LGBTQI persons is reflected in increasing efforts by the UNHCR to understand and in

¹¹⁴ Jeanne Ward, 'It's Not About the Gender Binary, It's About the Gender Hierarchy: A Reply to "Letting Go of the Binary"' (2016) 98(1) *International Review of the Red Cross* 275-298 at 285-286.

¹¹⁵ Dolan, 'Letting Go of the Gender Binary' (n 93) at 492.

¹¹⁶ Ward (n 114) at 296.

¹¹⁷ *Ibid* at 289.

¹¹⁸ Hilhorst, Porter and Gordon (n 111) at S9-S10.

¹¹⁹ Office of the United Nations High Commissioner for Human Rights, *Fact Sheet on Homophobic and Transphobic Violence*

<https://www.ohchr.org/Documents/Issues/Discrimination/LGBT/FactSheets/unfe-27-UN_Fact_Sheets_Homophobic_English.pdf>.

some situations respond to the specific needs of LGBTQI asylum seekers and refugees.¹²⁰ Another step is to recognise homophobia and transphobia as forms of SGBV that cannot be adequately addressed through an exclusive focus on sexual violence, and that this requires discarding an oversimplified gender binary.¹²¹ Indeed more recent SGBV literature increasingly takes into account LGBTQI communities, seeking to understand gender beyond the binary categories of men and women, exploring the distinctions between different categories of people and how gender labels not only demarcate, but prioritise some over others through access to resources, rights, responsibilities, authorities and life options.¹²²

The 2015 IASC Guidelines highlight LGBTQI issues of concern throughout. In fact, these updated Guidelines acknowledge the protection rights and needs of many groups, with some arguing these are among the most inclusive Guidelines in the history of humanitarian action.¹²³ Ward, however, contends that it is a misrepresentation of SGBV theory and practice to claim that LGBTQI groups should attract an equal focus in humanitarian programming combatting SGBV. She argues that vitiating the traditional SGBV language of gender in order to refocus the field away from women towards the needs of LGBTQI populations, and other affected groups such as males, is not likely to effectively serve the humanitarian cause against SGBV. Instead, what is required is partnerships by those whose focus is on the needs of LGBTQI populations generally with those working on violence against women and girls.¹²⁴

SGBV IN THE CURRENT SYRIAN CONFLICT

Globally the numbers of refugees, internally displaced people and asylum seekers are at a historic all-time high. Driven largely by the war in Syria, as of 2016 some 65.6 million people (over half of whom were female) had been forcibly displaced by violence, much of which involved SGBV, and other human rights violations.¹²⁵ The ongoing Syrian conflict has been increasingly marked by torture and sexual violence being used as weapons of war, destroying identity, dignity and the social fabrics of families and communities.¹²⁶ As SGBV in Syria has escalated, the accruing accounts of sexual violence atrocities has not gone unnoticed by the international community. Impact assessments on refugees who have fled the Syrian conflict have found high levels of SGBV occurring, specifically rape, assault, intimate partner violence, early marriage and survival sex.¹²⁷ The response to this and other recent conflict-related gender atrocities has been a growing, yet rhetorical, global commitment to reducing SGBV in both the conflict and refugee context.¹²⁸

¹²⁰ Dolan, 'Letting Go of the Gender Binary' (n 93) at 489.

¹²¹ Ibid at 496-497.

¹²² Hilhorst, Porter and Gordon (n 111) at S5.

¹²³ Ward (n 114) at 278.

¹²⁴ Ibid at 297-298.

¹²⁵ Lilleston et al (n 97) at 767-768.

¹²⁶ Davis (n 4) at 1174.

¹²⁷ Lorraine Charles and Kate Denman, 'Syrian and Palestinian Syrian Refugees in Lebanon: The Plight of Women and Children' (2013) 14(5) *Journal of International Women's Studies* 96-111 at 103.

¹²⁸ Davis (n 4) at 1161.

The interconnections between migration, gender, insecurity and violence which exist in all conflict regions, apply also to the Syrian conflict. Different push and pull factors, migration control regimes, as well as social and economic conditions in countries of origin, transit and destination create varying types of insecurity and SGBV for both women and men, depending on their social and economic positions and the power relations between them.¹²⁹ This migration–violence nexus is gendered with women and men affected in different ways and the violence they experience related to their gendered position.¹³⁰ A further widespread consequence of the Syrian Refugee Crisis is that forced migration can also lead to changes in relations of power and gender within families, and in many cases to increasing incidences of domestic violence or to an exacerbation of existing domestic and intra-familial violence.¹³¹

Intimate Partner Violence

Intimate Partner Violence is a form of social control arising from hierarchical systems of power and oppression premised upon gender, race and sexual orientation. Within refugee communities intimate partner violence often increases significantly and brings extra complexities and difficulties to the refugee experience.¹³²

For refugees from Syria the changes in lifestyle and mobility caused by the conflict have forced a repositioning of identity, and consequently a redistribution of power and behaviour. This situation has created not only trauma for individuals but challenged their traditional gendered family life. Syrian society prior to the crisis was firmly patriarchal, despite some gains made by women in the previous twenty years. There has however been a significant shift in the gender dynamics in response to the current conflict and one area in which this has manifested is intimate partner violence. For many Syrian men, this change has triggered hyper masculine behaviour within the family in an attempt to reassert traditional gender roles. However, in reasserting these patriarchal roles, violence is often directed towards women and children within the family unit.¹³³

Medecins Sans Frontières has reported widespread cases of both psychological and physical violence within Syrian refugee families, with many refugee women recounting how they were victims of violence from their husbands during their refugee journey.¹³⁴ These women suffered both the insecurities of their journey and violence at the hands of their own husbands, who simultaneously protected them but also presented a threat. Female refugees in this situation can find it almost impossible to leave their abusive husbands or partners because the idea of continuing the refugee journey alone, or just with their children, is too difficult and dangerous.¹³⁵

¹²⁹ Jane Freedman, ‘Engendering Security at the Borders of Europe: Women Migrants and the Mediterranean Crisis’ (2016) 29(4) *Journal of Refugee Studies* 568-582 at 569.

¹³⁰ Marianne H Marchand, ‘The Violence of Development and the Migration/Insecurities Nexus: Labour Migration in a North American Context’ (2008) 29(7) *Third World Quarterly* 1375-1388 at 1387.

¹³¹ Freedman, ‘Sexual and Gender-Based Violence Against Refugee Women’ (n 80) at 23.

¹³² Charles and Denman (n 127) at 104.

¹³³ *Ibid* at 103-104.

¹³⁴ Freedman, ‘Engendering Security at the Borders of Europe’ (n 129) at 578.

¹³⁵ *Ibid* at 578-579.

Survival Sex

‘Survival sex’ is a form of SGBV where women and children are forced or pressured to engage in sex due to desperation to earn money and/or goods to ease financial pressure from the increased costs of living in a refugee environment. It involves women and children being paid in money or goods (such as food) in return for sex. This violence may occur as a consequence of the lack of services and aid available to refugees or due to aid workers themselves withholding such services and aid for sexual gain. It has been reported that Syrian refugees from as young as 10 years old have been forced to engage in survival sex. This form of SGBV has been reported as occurring on a family level, an individual level and through organised networks, and is not an open choice, frequently occurring due to societal and family pressure.¹³⁶

Statelessness

Statelessness is a critical issue for Syrian refugees when children are born from rape or from religious marriages where the couple never completed the process of legal marriage or birth registration which can be extremely difficult within refugee camps. Similarly, for those who divorce or become single mothers under these conditions, it is extraordinarily difficult to register their children's nationality. Statelessness also exacerbates refugees' vulnerability to a wide range of SGBV, including trafficking, forced labour, and forced or early marriage.¹³⁷

Declaration on Preventing Sexual Violence in Conflict

In response to the current Syrian conflict and other conflict-related SGBV atrocities across the globe, in April 2013 the Group of 8 consortium of states issued its [Declaration on Preventing Sexual Violence in Conflict](#). Known as the G8, this international political forum consisted of Canada, France, Germany, Italy, Japan, Russia, the United Kingdom and the United States, before becoming the G7 from 2014 with the suspension of Russia. This G8 Declaration mandates systems for prevention, treatment, and redress of sexual violence. It is based on a realisation that when resolutions to conflict and their attendant peace agreements lack provisions or commitments towards gender equality, subsequent gender-sensitive measures proposed at the implementation stage of peace agreements may be rejected as outside the scope of the agreed peace mandate. Accordingly, this Declaration notes that future peace agreements where language promoting gender equality is absent may themselves become obstacles to overcoming gender non-discrimination that persists after conflict has ended.¹³⁸

CONCLUSION

¹³⁶ Charles and Denman (n 127) at 106.

¹³⁷ Davis (n 4) at 1182-1183.

¹³⁸ Ibid at 1161.

There is no current consensus as to what definitively constitutes sexual and gender-based violence (SGBV). However, there has been a concerted focus on women and girls in the international SGBV discourse. However, SGBV is increasingly being used as a term to highlight the gendered dimensions of certain forms of violence against men and boys — particularly some forms of sexual violence committed with the explicit purpose of reinforcing gender inequitable norms of masculinity and femininity (for example, sexual violence committed in armed conflict aimed at emasculating or feminising the enemy). This violence against males is based on socially constructed ideas of what it means to be a man and exercise male power.¹³⁹ The term ‘sexual and gender-based violence’ is also used by some actors to describe violence perpetrated against lesbian, gay, bisexual, transgender, queer or questioning and intersex (LGBTQI) persons that is “driven by a desire to punish those seen as defying gender norms”.¹⁴⁰

It remains critically important however to recognise that current data “tend[s] to confirm that overall more women than men are affected”¹⁴¹ by sexual violence and that impact assessments on female refugees who have fled the Syrian conflict have found high levels of rape, assault, intimate partner violence, early marriage and survival sex.¹⁴²

Ramin Asgary, Eleanor Emery and Marcia Wong have called for “collective and collaborative work for better and widely acceptable definitions for different forms of GBV [which encompasses SGBV]”.¹⁴³ A broad and widely accepted definition of the term ‘sexual and gender-based violence’ may help ensure that the prevalence and nature of SGBV that unfortunately is widespread in the refugee context can be better identified, reported, redressed and prevented than is currently the case.

¹³⁹ Inter-Agency Standing Committee, *Guidelines for Integrating Gender-Based Violence Interventions in Humanitarian Action* (2015) (n 99) at 5-6.

¹⁴⁰ *Ibid* at 6.

¹⁴¹ Dolan, ‘Letting Go of the Gender Binary’ (n 93) at 492.

¹⁴² Charles and Denman (n 127) at 103.

¹⁴³ Asgary, Emery and Wong (n 89) at 88-89.

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APPENDIX– BINDING INTERNATIONAL LAW INSTRUMENTS RELEVANT TO SGBV

International Human Rights Instruments

[As listed by the UNHCR’s 1995 [Sexual Violence Against Refugees: Guidelines on Prevention and Response](#)] include the following:¹⁴⁴

[The Universal Declaration of Human Rights \(1948\)](#)

- Article 3 *Everyone has the right to life, liberty and security of person.*
Article 5 *No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.*

[The International Covenant on Civil and Political Rights \(1966\)](#)

- Article 7 *No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.*
Article 9 *1. Everyone has the right to liberty and security of person ...*
Article 10 *1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.*

[The International Covenant on Economic, Social and Cultural Rights \(1966\)](#)

- Article 12 *The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.*

[The Convention on the Elimination of All Forms of Discrimination Against Women \(1979\)](#)

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

[The UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment \(1984\)](#)

- Article 16 *requires, inter alia, that the State “prevent ... acts of cruel, inhuman or degrading treatment or punishment ..., when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity ...”*

[The Convention on the Rights of the Child \(1989\)](#)

- Article 19 *Protection from Abuse and Neglect*

¹⁴⁴ United Nations High Commissioner for Refugees, ‘UNHCR, Sexual Violence Against Refugees: Guidelines on Prevention and Response (Extracts)’ (1995) 7(4) *International Journal of Refugee Law* 720-755 at 747-749.

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Article 24 Health and Human Services

1. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

Article 34 Sexual Exploitation

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate, national, bilateral and multilateral measures to prevent;

(a) The inducement or coercion of a child to engage in any unlawful sexual activity.

(b) The exploitive use of children in prostitution or other unlawful sexual practices.

(c) The exploitive use of children in pornographic performances and materials.

Article 37 Torture and Deprivation of Liberty

(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment.

(c) Every child deprived of liberty shall be treated with humanity and respect of the inherent dignity of the human person

Article 39 Rehabilitative Care

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

Regional Human Rights Instruments

[As listed by the UNHCR's 1995 [Sexual Violence Against Refugees: Guidelines on Prevention and Response](#)] include the following:¹⁴⁵

Europe:

[The European Convention for the Protection of Human Rights and Fundamental Freedoms \(1950\)](#)

Article 3 *No one shall be subjected to torture or to inhuman or degrading treatment or punishment.*

Article 5 1. *Everyone has the right to liberty and security of person*

Americas:

[The American Convention on Human Rights \(1969\) \('Pact of San José, Costa Rica'\)](#)

Article 5 *Right to Humane Treatment*
1. *Every person has the right to have his physical, mental, and moral integrity respected.*
2. *No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.*

Article 7 *Right to Personal Liberty*
1. *Every person has the right to personal liberty and security.*

[The Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women \(Convention of Belém do Para\) \(1994\)](#)

Article 7 *sets out State obligations in regard to the eradication of gender-based violence.*

Article 8 *sets out additional obligations regarding education and the development of a mass consciousness in relation to violence against women.*

Article 10 *obliges the States parties to include in their national reports to the Inter-American Commission of Women information on measures adopted to prevent and prohibit violence against women and to assist women affected by violence, as well as any difficulties they observe in applying those measures, and the factors that contribute to violence against women.*

¹⁴⁵ Ibid at 749-750.

Article 12 provides for an individual right of petition and a right for non-governmental organizations to lodge complaints with the Inter-American Commission of Human Rights.

Africa:

[The African Charter on Human and Peoples' Rights \(1981\)](#)

Article 4 Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.

Article 5 Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.

Article 6 Every individual shall have the right to liberty and the security of his person

International Humanitarian Law Instruments – International Armed Conflicts

[As listed by the UNHCR's 1995 [Sexual Violence Against Refugees: Guidelines on Prevention and Response](#)] include the following:¹⁴⁶

[The Geneva Convention Relative to the Protection of Civilian Persons in Time of War \(The Fourth Geneva Convention\) \(1949\)](#)

Article 27 [Protected persons] ... shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof and against insults and public curiosity. Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault.

[Protocol I Relating to the Protection of Victims of International Armed Conflicts \(1977\)](#)

Article 51.2 The civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited.

Article 75.2 Fundamental Guarantees

¹⁴⁶ Ibid at 750-752.

The following acts are and shall remain prohibited at any time and in any place whatsoever, whether committed by civilian or by military agents:

(a) violence to the life, health, or physical or mental well-being of persons, in particular:

(i) murder,

(ii) torture of all kinds, whether physical or mental,

(iii) corporal punishment; and

(iv) mutilation;

(b) outrages upon personal dignity, in particular humiliating and degrading treatment, enforced prostitution and any form of indecent assault ...

(e) threats to commit any of the foregoing acts.

Article 76 *Protection of women*

1. Women shall be the subject of special respect and shall be protected in particular against rape, forced prostitution and any other form of indecent assault.

Article 77 *Protection of children*

1. Children shall be the object of special respect and shall be protected against any form of indecent assault.

International Humanitarian Law Instruments – Non-International Armed Conflicts

[As listed by the UNHCR's 1995 [Sexual Violence Against Refugees: Guidelines on Prevention and Response](#)] include the following:¹⁴⁷

The Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (1949) (The First Geneva Convention)

Article 3 *... the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to [persons taking no active part in the hostilities ...]:*

(a) violence to life and person, in particular ... mutilation, cruel treatment and torture; ...

(c) outrages upon personal dignity, in particular, humiliating and degrading treatment; ...

¹⁴⁷ Ibid at 750-752.

Protocol II Relating to the Protection of Victims of Non-International Armed Conflicts (1977)

Article 4 *Fundamental guarantees*

2. ... the following acts against [all persons who do not take a direct part in or who have ceased to take part in hostilities] are and shall remain prohibited at any time and in any place whatsoever:

(a) violence to the life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment; ...

(e) outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault; ...

(h) threats to commit any of the foregoing acts.