



INTEGRATING THE GENDER PERSPECTIVE IN THE OPERATION OF PUBLIC SECURITY FORCES IN NON-INTERNATIONAL ARMED CONFLICTS, OTHER SITUATIONS OF VIOLENCE AND POST-CONFLICT: GUIDELINES AND RULES

Handbook developed in the framework of the Project
"Women and public forces in conflict and post-conflict situations:
guidelines and rules"

INTEGRATING THE GENDER PERSPECTIVE IN THE OPERATION OF PUBLIC SECURITY
FORCES IN NON-INTERNATIONAL ARMED CONFLICTS, OTHER SITUATIONS OF
VIOLENCE AND POST-CONFLICT: GUIDELINES AND RULES

**Handbook developed in the framework of the Project "Women and public forces in
conflict and post-conflict situations: guidelines and rules"**

Roberto Augusto Moreno

Director

Marcos Pablo Moloeznik

Coordinator

Working Team

María Eugenia Suárez de Garay

Claudio Bertin Wiehoff

José Gabriel Paz

This work was created within the framework of the project "Women and law enforcement in conflict and post-conflict situations: guidelines and rules" developed by the Department of Special Projects and Training Activities for Latin America of the International Institute of Humanitarian Law of Sanremo (Italy), with the financial support of the General Directorate for Political and Security Affairs of the Italian Ministry of Foreign Affairs and International Cooperation.

Project Manager: Professor Fausto Pocar
Project Director: Prof. Roberto Augusto Moreno

TRANSLATIONS (English and Italian): Grad. Lina María Munar Guevara; MA Penélope Elizabeth Gambi and Prof Roberto A. Moreno.

“INTEGRATING THE GENDER PERSPECTIVE IN THE OPERATION OF PUBLIC SECURITY FORCES IN NON-INTERNATIONAL ARMED CONFLICTS, OTHER SITUATIONS OF VIOLENCE AND POST-CONFLICT: GUIDELINES AND RULES” a Training Handbook; directed by Roberto Augusto Moreno; Coordinated by Marcos Pablo Moloeznik. International Institute of Humanitarian Law, Sanremo, Italy, 2021. 238 pages; 24 x 17 cm. ISBN 978-88-944935-9-7:

1. Gender Perspective, 2. Law Enforcement, 3. International Human Rights Law, 4. International Humanitarian Law. Sponsored by the Italian Ministry of Foreign Affairs and International Cooperation. This handbook may be reproduced in whole or in part, distributed, communicated to the public, or transmitted in any form or by any means, electronic, mechanical, photocopying or otherwise, provided that the authorship of the original work is acknowledged, with express reference to the source. All chapters were submitted to double blind review to guarantee the originality, thoroughness and quality of the works included in the Handbook

Table of contents

ACRONYMS.....	5
FOREWORD BY PROFESSOR FAUSTO POCAR, HONORARY PRESIDENT OF THE INTERNATIONAL INSTITUTE OF HUMANITARIAN LAW	7
FOREWORD BY PROFESSOR ROBERTO AUGUSTO MORENO	11
INTRODUCTION.....	17
Conceptual Framework And Legal Instruments.....	20
Fundamental Concepts Within The Framework Of The Three Studied Scenarios	26
CHAPTER I — INTEGRATING THE GENDER PERSPECTIVE IN THE OPERATION OF PUBLIC SECURITY FORCES IN NON-INTERNATIONAL ARMED CONFLICTS, OTHER SITUATIONS OF VIOLENCE AND POST-CONFLICT: GUIDELINES AND RULES.....	35
Conceptual Framework.....	37
General Considerations Regarding The Gender Mainstreaming Guidelines	42
Non-International Armed Conflicts.....	42
Other Situations of Violence.....	44
Post-Conflict.....	45
CHAPTER II - SEXUAL EXPLOITATION AND ABUSE.....	51
Conceptual Framework.....	51
Types Of Sexual Exploitation And Abuse: Triggers, Contributing And Risk Factors.....	54
International Norms Regarding Sexual Exploitation And Abuse.....	57
Guidelines And Recommendations.....	63
Final Remarks.....	70
CHAPTER III - CONFLICT-RELATED SEXUAL VIOLENCE.....	73
Conceptual Framework.....	73
Cases Of Conflict-Related Sexual Violence.....	81
Sexual Violence In The Light Of International Human Rights Law (Ihrl) And International Humanitarian Law (Ihl).....	85
Guidelines And Recommendations.....	90
Final Remarks	94
CHAPTER IV - TRAFFICKING IN HUMAN BEINGS.....	97
Conceptual Framework.....	97
Emblematic Cases.....	100
Guidelines To Address Trafficking In Human Beings.....	102
Elements For A Comprehensive Approach To Trafficking In Human Beings With A Gender Perspective In The Context Of Niac, Osv And Poc.....	105
Protection And Assistance For Victims Or Possible Victims Of Trafficking.....	107
Investigation And Prosecution.....	108
Guidelines For The Identification Of The Distinctive Elements Between The Trafficking In Human Beings And The Smuggling Of Migrants In The Ibero-American Context.....	109
International Cooperation Mechanisms To Investigate And Prosecute Trafficking In Human Beings.....	111
Final Remarks.....	113

CHAPTER V - TERRORISM.....115

- Conceptual Framework And Legal Instruments.....115
- International Humanitarian Law (Ihl) And The Distinction Between The Legal Frameworks Regulating Actions Against Terrorism.....117
- Analysis Of Cases From The Legal Categorization Of Ihl To Other Situations Of Violence (Osv).....118
- Sexual And Gender-Based Violence Associated With Terrorism.....128
- Guidelines And Recommendations.....129

CHAPTER VI – DETENTION.....133

- Conceptual Framework133
- Guidelines.....138
- Prevention Mechanisms (Niac).....146
- Control And Repression Mechanisms (Niac).....148
- Prevention Mechanisms (Osv).....149
- Control And Repression Mechanisms (Osv).....149

CHAPTER VII - WOMEN'S ENGAGEMENT IN PEACE PROCESSES.....155

- Conceptual Framework.....115
- International Agreements And Women's Participation In Peace Processes.....159
- Case Study.....164
- Guidelines And Recommendations.....165
- Final Remarks173

ANEX 1 — WOMEN AND LAW ENFORCEMENT IN CONFLICT AND POST-CONFLICT SITUATIONS: GUIDELINES AND RULES.....179

ANNEX 2 —HIGHLIGHTS AND KEY IDEAS ADDRESSED DURING THE WEBINAR OF OCTOBER 20 AND 22, 2021.....210

Acronyms

ACHR	American Convention on Human Rights
AIAMP	Ibero-American Association of Public Prosecutors/ Asociación Iberoamericana de Ministerios Públicos
Belém do Pará	Inter-American Convention on the Prevention, Punishment, And Eradication of Violence against Women
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CRSGBV	Conflict Related Sexual and Gender-Based Violence
CRSV	Conflict-related Sexual Violence
IAC	International Armed Conflict
IACHR	Inter-American Commission of Human Rights
IACtHR	Inter-American Court of Human Rights
IASHR	Inter-American System of Human Rights
IHL	International Humanitarian Law
IHRL	International Human Rights Law
IIHL	International Institute of Humanitarian Law
LEO	Law Enforcement Officials
LEI	Law Enforcement Institutions
NGO	Non-Governmental Organization
NIAC	Non-International Armed Conflict
OAS	Organization of American States
OSAGI	Office of the Special Adviser to the Secretary-General on Gender Issues and Advancement of Women
OSV	Other Situations of Violence
POC	Post-Conflict
REDTRAM	Ibero-American Network of Specialized Prosecutors against Trafficking in Persons and Smuggling of Migrants
SEA	Sexual Exploitation and Abuse
SGBV	Sexual and Gender-Based Violence
SOFA	Status of Forces Agreement
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
UNCTC	United Nations Counter Terrorism Committee
UNICEF	United Nations Children's Fund
UNOCT	United Nations Counter-Terrorism Office
UNODC	United Nations Office on Drugs and Crime

FOREWORD BY PROFESSOR FAUSTO POCAR, HONORARY PRESIDENT OF THE INTERNATIONAL INSTITUTE OF HUMANITARIAN LAW¹

In August 2019, while serving as president of the International Institute of Humanitarian Law (IIHL) in Sanremo (Italy), I was pleased to present the handbook on "Integrating Gender Perspectives into International Operations".

That annotated training handbook was the result of a project on "Enhancing Women, Peace and Security (WPS) Training", implemented in the framework of Italy's Third Action Plan in accordance with United Nations Security Council Resolution (UNSCR) 1325 (2000), 2016-2019, funded by the Italian Ministry of Foreign Affairs and International Cooperation.

As I pointed out in the foreword of said work, the idea of putting it together arose in 2017 while creating the program for the Institute's customary Round Table which, on that occasion, dealt with the projections of International Humanitarian Law (IHL) forty years after the 1977 Additional Protocols to the Geneva Conventions of 1949.

The research carried out at that time in order to identify aspects that would entail the need for a progressive interpretation and implementation of the Protocols, highlighted - among other things - the issues of gender-based violence in armed conflict and the integration of a gender perspective in IHL. Hence, the problem of integrating a gender perspective into IHL, in particular at the level of its implementation, came up for consideration.

These considerations and the discussion that followed the Round Table led to the approval of a project that foresaw the preparation of the training manual, focused on the integration of a gender perspective in international operations, as a tool to improve training on WPS issues and to support the development of training courses on WPS, IHL and Human Rights.

The overall responsibility for the project fell on me, as President of the IIHL, while the task of its implementation was assumed, as Project Director, by Professor Gabriella Venturini, with the assistance of an Advisory Board composed of experts in the field and, at a later stage, of an Editorial Team, which drafted the rules and their comments under the supervision of the Advisory Board itself.

July 2019 saw the completion of the training manual, which the IIHL made available to the public (in several languages) and, in particular, to all those conducting or participating in international operations, whether categorized as military, police or civilian missions, in the hope that the training it recommends would contribute to resolving or mitigating the problems that had arisen up to that point, in the absence of a gender perspective in the planning and implementation of those operations.

However, from the outset, we were aware that the handbook dealt exclusively with the field of international operations while leaving aside a wide range of conflict scenarios in which the problem is still relevant and, in some cases, even more intense.

¹ Honorary President of the International Institute of Humanitarian Law (IIHL), Sanremo, Professor Emeritus of the University of Milan (Italy) and former President of the International Criminal Tribunal for the former Yugoslavia.

This situation rapidly prompted the IIHL's "Department of Special Projects and Training Activities for Latin America" to promote a new project aimed at extending gender mainstreaming to military, police or civilian operations carried out in contexts of internal or non-international armed conflicts (NIAC), other situations of violence (OSV) or post-conflict (POC), which are common in the Latin American region, as well as in many other parts of the world.

This project was once again sponsored by the Italian Ministry of Foreign Affairs and International Cooperation, within the framework of the Third National Action Plan in accordance with UNSC Resolution 1325 (2000) on "Women, Peace and Security" (2019).

Among the project's expected activities, was the realization of a workshop, to be held online between July 31 and September 11, 2020. In this workshop, facilitators and participants joined virtually and were selected and empowered to work collaboratively to produce a document indicating the modifications to be made to the first handbook, in order to extend its application to NIAC, OSV and POC scenarios. This document (hereafter referred to as the "initial document") was translated into English and Italian and posted on the IIHL website.

I was responsible for the project, which was directed by Professor Roberto Augusto Moreno — in charge of special projects and training activities for Latin America—, with the collaboration of a large and prestigious group of specialists and experienced participants.

This "initial document" was revised, corrected, updated and expanded, giving rise to the work I now prologue, when, by the same Department of Special Projects and Training Activities for Latin America, a new project was submitted in 2021 to the Italian Ministry of Foreign Affairs and International Cooperation and its financial support was obtained within the framework of the Fourth National Action Plan adopted in accordance with UNSC Resolution 1325 (2000) on "Women, Peace and Security". This project was entitled: "Women and Law Enforcement in Conflict and Post-Conflict Situations: Guidelines and Rules" and, as in the previous project, its responsibility was assumed by me -now as honorary president of the IIHL- and the general direction was assumed by Professor Moreno.

Among the various activities included in the project there was a workshop, in Spanish, also conducted online on the Institute's platform, over a period of four weeks (August 20 to September 17, 2021).

It had a diverse composition made up of women or representatives of women's organizations (including former combatants) and members of law enforcement. It was completed with participants in a course held prior to the workshop (also part of the project) whose professional background, work performance or life experiences ensured they would provide valuable contributions.

The Workshop focused on the main obstacles that prevent the full and effective application of the basic guidelines of UNSCR 1325 (2000), as well as other subsequent and parallel resolutions, particularly —though not exclusively— in Latin American scenarios.

It concluded with the drafting of a document of "guidelines", aimed at women or organizations representing them, to guarantee the implementation of international obligations regarding the

prevention, participation, and protection of women in scenarios of armed conflict or other situations of violence, as well as listing the main "rules of conduct", in terms of gender, that bind law enforcement members when carrying out operations in the framework of the scenarios defined above.

The content of this new work, which includes the aforementioned guidelines and rules, was incorporated and distributed within the "initial document", which underwent a rigorous process of revision and expansion. This publication entitled "Integrating the Gender Perspective in the Operation of Public Security Forces in Non-International Armed Conflicts, Other Situations of Violence and Post-Conflict: Guidelines and Rules" is the result.

As I expressed previously in the prologue of the 2019 training handbook on "Integrating Gender Perspectives into International Operations", I hope and trust that this new work published by the International Institute of Humanitarian Law will provide a solid contribution to mitigate if not solve the serious problems caused by the omission of a gender perspective in the planning and implementation of law enforcement operations in scenarios of non-international armed conflict, other situations of violence and post-conflict situations.

Finally, on behalf of the Institute as well as on my own behalf, I would like to express my deep gratitude to the IIHL's Department of Special Projects and Training Activities for Latin America and, in general, to all those who have contributed, with different tasks and roles, to the completion of this work. A special acknowledgment is in order to the Directorate General for Political and Security Affairs of the Italian Ministry of Foreign Affairs and International Cooperation for its support in financing the project that gave rise to it.

Sanremo, December 6, 2021

**PROF FAUSTO POCAR
HONORARY PRESIDENT
INTERNATIONAL INSTITUTE OF HUMANITARIAN LAW**

FOREWORD BY PROFESSOR ROBERTO AUGUSTO MORENO²

It is with great pleasure that I join in this project's presentation. This work is the result of an extensive and laborious effort made by the Department of Special Projects and Training Activities for Latin America.

Professor Fausto Pocar has elaborated, in the preceding foreword, a detailed description of this text—which serves as a handbook—, explaining with great clarity its genesis, structure and scope. I shall therefore limit myself to highlighting just a few aspects.

First of all, I would like to point out that this publication is motivated by the need to offer resources for gender mainstreaming for agents in non-international armed conflict scenarios, other situations of violence or periods of transition.

It is worth mentioning that these scenarios are commonplace in Latin America, but are not exclusive to it, since they can be frequently found in different parts of the world. Hence, although the work has been carried out focusing primarily on Latin American, its results can be applied far beyond this region's confines.

Secondly, regarding the structure of this publication, I think it is appropriate to highlight that it follows the expository order used in the training handbook published by the Institute in 2019 ("Integrating Gender Perspectives into International Operations"). This not only allows for an appropriate distribution of the main issues tackled, but it also allows those interested in both publications to follow a parallel structure, thus facilitating their reading and comprehension.

Finally, it is a pleasing fulfillment of my duties to express my wide and deep gratitude to all those who have made it possible to bring this publication to its fruition and, fundamentally, successfully carry out the activities that gave rise to it.

Thus, I must express a special acknowledgement to the International Institute of Humanitarian Law, as well as its leaders: President, Prof. Edoardo Greppi; Vice-president General Giorgio Battisti; Secretary-General Dr. Stefania Baldini and Deputy Secretary-General Dr. Gianluca Beruto. And, of course, to my excellent collaborators Dr. Sara Rossi and MA Penelope E. Gambi. Without the support and cooperation of a prestigious organization with over fifty years of work, such as the Institute, it would have been difficult to effectively undertake an endeavor of this nature.

Heartfelt acknowledgments are in order for an illustrious figure who inspires, promotes and helms not only this publication and the project that sparked it, but each and every one of the activities that are carried out from this Department of projects and activities for Latin America: Professor Fausto Pocar, a guide and role model in our academic work.

² Professor Roberto Augusto Moreno is the Director of the Department of Special Projects and Training Activities for Latin America at the International Institute of Humanitarian Law (Sanremo, Italy). He was in charge of the project "Women and law. enforcement in conflict and post-conflict situations: guidelines and rules" in the context of which this handbook was created. He was also project director for this endeavor.

I would also like to express my gratitude to the Directorate General for Political and Security Affairs of the Italian Ministry of Foreign Affairs and International Cooperation for its financial support, provided on more than one occasion, which has enabled us to successfully face various socially relevant challenges.

I would also like to thank Dr. Pedro S. Páez Pirazán for the many successful efforts he has made to make it possible to carry out the proposed activities.

In a more specific context, my gratitude goes to those who have been a part of, either as facilitators or participants, the two workshops that preceded this publication and whose contributions gave rise to the final material. The lists of attendees for both events have been added below. In particular, I would like to thank Colonel Eduardo Bittencourt Cavalcanti, Professor Ruth M. Abril Stoffels and Dr. Marcos P. Moloeznik, who coordinated the first workshop, and Prof. Daira Arana Aguilar, who coordinated the second one.

Now, in direct relation to this publication, I must especially thank Dr. Marcos P. Moloeznik, with whom I have shared the review of the "initial document" prepared during the first workshop and who assumed the role of coordinator and co-author of this work. He has been accompanied by a work team formed by Professor María Eugenia Suárez de Garay and Lieutenant Colonel Claudio Bertin Wiehoff as co-authors and by Doctor José Gabriel Paz in the role of advisor. To all of them I wish to express my gratitude.

That said, all that is left for me is to express my wish that this handbook fulfills its purpose, in this way, it will make an effective and concrete contribution to overcome or eventually mitigate the serious human rights violations resulting from the inapplicability, in the aforementioned scenarios of violence, of a gender perspective in the military, police or civilian operations carried out in these areas.

Sanremo (Italy), December 7, 2021

PROF ROBERTO AUGUSTO MORENO
DIRECTOR
SPECIAL PROJECTS AND TRAINING ACTIVITIES FOR LATIN AMERICA
INTERNATIONAL INSTITUTE OF HUMANITARIAN LAW

WORKSHOP
“INTEGRATING THE GENDER PERSPECTIVE”
(07-31-202 / 09-11-2020)

COORDINATORS

ABRIL STOFFELS, Ruth María (Spain)
BITTENCOURT CAVALCANTI, Eduardo (Brazil)
MOLOEZNİK, Marcos Pablo (Mexico)

FACILITATORS

ABRIL STOFFELS, Ruth María (Spain)
ARANA AGUILAR, Daira (Mexico)
BERMEO TAPIA, Gabriela (Ecuador)
CAMPOS CORENA, Miriam Lissette (El Salvador)
GONZALEZ JAUREGUI, Víctor Jesús (Peru)
LANZ RAGGIO, Mario (Spain)
LOPEZ PEÑA, Luisa Fernanda (Colombia)
MARENCO, Dyanne (Costa Rica)
MOLOEZNİK, Marcos Pablo (Mexico)
MONCADA NAVARRO, Liacier Fidelina (Honduras)
ORDEÑANA SERRA, Patricia Tatiana (Ecuador)
PÁEZ PIRAZÁN, Pedro Steve (Colombia)
ROCCA ERQUIAGA, Luis (Peru)

PARTICIPANTS

BARCO, Corina (Ecuador)
BELENTANI LEME, Williams (Brazil)
CALAMBAS ULCHUR, Yenni Rocío (Colombia)
CAMARENA ROMERO, Luz Celina (Mexico)
CAVALCANTI, Denise (Brazil)
CHAVERRI SOTO, Milton (Costa Rica)
CUBILLO ALFARO, Gabriel (Costa Rica)
DI DOMENICO, Paula (Argentina)
DOMÍNGUEZ, Cristiana (Argentina)
GARCÍA LAZO DE LA VEGA, Liliana (Peru)
GARMENDIA PIZARRO, Rubén (Peru)
GÓMEZ RINCÓN, Diana Milena (Colombia)
HERNÁNDEZ TAPIA, Arisabeth (Mexico)
HUAPAYA RUEDA, Angelita (Peru)
LÓPEZ HERRERA, Viridiana (Mexico)
MACHADO GOMES PORTELA, Virlane (Brazil)
MARTÍNEZ ANTELIZ, Luisa Fernanda (Colombia)
OBANDO, Andrea (Ecuador)

OTINIANO REYES, José Manuel (Peru)
RIVERA CABRIELES, Leticia (Mexico)
ROJAS, Diana (Colombia)
SOTO DOMÍNGUEZ, Irelyd (Mexico)
TAVARES CRUZ, Luiz Jorge (Brazil)
VARGAS GARCÍA, Elizabeth (Mexico)
VARGAS SARMIENTO, Omar Orlando (Peru)
VERA SALDANI, Heidi (Peru)
VILLAREAL SOTELO, Karla (Mexico)
VIVIANO CARPIO, Herbert Jesús (Peru)
ZAMORA OVARES, Marcela (Costa Rica)

WORKSHOP
"WOMEN AND PUBLIC FORCES IN CONFLICT AND POST-CONFLICT
SITUATIONS: GUIDELINES AND RULES"
(08-20-2021 / 17-09-2021)

COORDINATOR

ARANA AGUILAR, Daira (Mexico)

ADVISOR

MOLOEZNİK, Marcos Pablo (Mexico)

PUBLICATION WORK TEAM

BERTIN WIEHOFF, Claudio (Chile)
PAZ, José Gabriel (Argentina)
SUÁREZ DE GARAY, María Eugenia (Mexico)

FACILITATORS

ABRIL STOFFELS, Ruth María (Spain)
DURÁN MURILLO, Digna Isabel (Switzerland)
GONZÁLES JÁUREGUI, Víctor Jesús (Peru)
LÓPEZ HERRERA, Viridiana (Mexico)
LÓPEZ PEÑA, Luisa Fernanda (Colombia)
MOJICA, Jhenifer (Colombia)
MOLOEZNİK, Marcos Pablo (Mexico)
PÁEZ, Marcela (Colombia)
VARGAS GARCÍA, Elizabeth (Mexico)

PARTICIPANTS

AMAYA MÁRQUEZ, Glenthys Hinelsy (Colombia)
ARAQUE GRANADILLO, Betilde (Venezuela)
ARAUJO VEGA, Claudia Daniela (Peru)
ÁVILA PAZ Y MIÑO, Ramiro Emiliano (Ecuador)
BERTIN WIEHOFF, Claudio (Chile)
BOTETANO VILLAFUERTE, Gustavo Adolfo (Peru)
CÓRDOVA CANAL, Jessica (Peru)
D'AGATA, Valeria (Argentina)
GALVÁN RODRÍGUEZ, Alejandra Vianey (Mexico)
GARCÍA CHAVEZ, Gabriel (Mexico)
GIL FONS, Antonio (Mexico)
GONZÁLEZ DEL PLIEGO DORANTES, Elvia (Mexico)
HUAPAYA RUEDA, Angelita (Peru)
LÓPEZ ORNELAS, Jasiel Anahí (Mexico)
LÓPEZ TORO, Sandra Liliana (Colombia)

LOZANO MEDINA, Laura (Colombia)
MALDONADO CRUZ, Cintya Alexandra (Colombia)
MARTÍNEZ ANTELIZ, Luisa Fernanda (Colombia)
MARTÍNEZ TÉLLEZ, Montserrat (Mexico)
MIRANDA DE LA BARRA, Camila Constanza (Mexico)
MONZÓN PORTANERI, Silvia Gabriela (Argentina)
PALACIOS AGUILAR, Álvaro (Peru)
PEÑA MONTERO, Verónica (Ecuador)
RIVERA PÉREZ, Yennifer Lorena (Colombia)
ROMERO REAL, María Dolores (Mexico)
SOTELO ÁVILA, Jefer Esteban (Colombia)
SUÁREZ DE GARAY, María Eugenia (Mexico)
VILLALOBOS ANDRADE, Marcela (Mexico)

INTRODUCTION

The document that the reader holds in their hands is the result —as previously mentioned— of the project "Women and Law Enforcement in Conflict and Post-Conflict Situations: Guidelines and Rules", which was carried out by the International Institute of Humanitarian Law³ with the sponsorship and financial support of the Italian Ministry of Foreign Affairs and International Cooperation.

This work targets, especially but not exclusively, law enforcement members in Latin America, and covers gender mainstreaming in the following scenarios: Non-International Armed Conflict (NIAC), Other Situations of Violence (OSV) and Post-Conflict (POC), ranging from combat operations, operations for the maintenance or reestablishment of public order and peace building. The latter two scenarios (OSV and POC) are highly complex, given that they tend to be a "gray areas" between war and peace, often coexisting, mingling or occurring simultaneously, and usually affecting vulnerable social groups, particularly women.

In this way, we seek to extend the scope of the previous training handbook entitled "Integrating Gender Perspectives into International Operations", published by the IIHL in 2019⁴, and, just like with said work, we aim to create a practical tool to facilitate gender mainstreaming in the education and training of military, police and civilian institutions or agencies in Latin America; all of this since these agents participate or will participate directly on behalf of the State as the legitimate and exclusive source of the use of force, in contexts that differ from international operations: NIAC, OSV and POC.

The differences between international operations and these scenarios include factors such as their geographic scope, the nationality of the participants and their legal relationship with the State, the duration and extent of the operations, the political and administrative organization of the States, the application of the principle of jurisdictional unity of the States, and the idiosyncrasies or cultural aspects of those involved, among others.

Extending gender mainstreaming to these scenarios entails hard work in the training and professionalization of the intervening law enforcement personnel, who must understand the different situations they will face, in order to provide a more effective protection in accordance with the needs and vulnerabilities of the people involved. In these situations, all law enforcement personnel who intervene must take into account a gender perspective and must be aware that any plan or operation they carry out will affect men, women and children differently and, in this sense, they must adapt their actions in accordance with these specificities.

Essentially, this handbook is limited to the experience of Latin America, as this region has been and continues to be a frequent reflection of the aforementioned scenarios of violence, in

³ Since its genesis, half a century ago, the IIHL has earned recognition within the international society for its commitment to humanitarian causes and the unrestricted defense of International Humanitarian Law and International Human Rights Law. See; Marcos Pablo Moloeznik (2020) "Assessment of the International Institute of Humanitarian de Sanremo, Italy, 50 years after its creation (1970-2020)"; in, *Revista Jurídica Jalisciense*, No. 63. July-December 2020. ISSN 1405-1451. pp. 89-111.

⁴ Available at: https://iihl.org/wp-content/uploads/2020/01/handbook_ENG.pdf

which women —as a vulnerable social group— are some of the main victims⁵. Thus, according to the statistics of the 2019 Global Study on Homicide by the United Nations Office on Drugs and Crime (UNODC, 2019), 37.4% of the murders that take place in the entire planet take place in the American continent, and almost all of them are committed in Latin America, which represents only 8% of the world's population. For this reason, as the most violent region in the world, Latin America demands the application of a gender perspective in the actions of its authorities and officials.

In order to establish general criteria and not to leave room for ambiguous interpretations, the Project "Women and Law Enforcement in Conflict and Post-Conflict Situations: Guidelines and Rules" defined the term "gender" by citing the Rome Statute: "[...] the term 'gender' refers to the two sexes, male and female, within the context of society. The term 'gender' does not indicate any meaning different from the above" (official document, International Criminal Court, 1998, art. 7, para. 3)⁶.

The structure of this book mirrors the one used in the Institute's mentioned handbook on International Operations. Chapter I —Integrating the Gender Perspective in the Operation of Public Security Forces in Non-International Armed Conflicts, Other Situations of Violence and Post-Conflict: Guidelines And Rules— provides a general presentation of the topics that will be discussed throughout the Handbook, while giving an account of the regulations applicable to each of the three scenarios considered, taking into account the different circumstances in which they unfold, as well as the status of the personnel in charge of the coercive response of the State. The definitions proposed, as well as the general considerations on gender perspective presented in the first chapter, constitute the starting point for gender training for the mentioned scenarios.

Additionally, the role of military officers and police commanders and, in general, of higher authorities, is analyzed as a *guide* for establishing criteria for compliance with gender-related issues in their actions.

Chapters II to VII present a homogeneous structure: the first section of each chapter offers a conceptual framework, as well as —where appropriate— references to the applicable legal or regulatory provisions. The second section illustrates the central issue with illustrative cases. The third part proposes "Guidelines" for instructors, complemented by specific "Commentary".

Chapter II —Sexual Exploitation and Abuse— and III —Conflict-Related Sexual Violence— address and delve into sexual violence, sexual exploitation and abuse in the NIAC, OSV and POC scenarios. The definitions offered in these chapters explain the nature of these acts and elaborate on why different terms are often used to describe similar situations. The second section of both chapters provides guidelines and comments on gender training to prevent and combat this type of violence.

⁵ In addition, IIHL's "Department of Special Projects and Training Activities for Latin America", in charge of the Project that led to the Handbook's creation, deals directly with this region of the world.

⁶ Available at: <https://www.icc-cpi.int/resource-library/documents/rs-eng.pdf>

Chapter IV —Trafficking in Human Beings— deals with a crime in which context and the gender perspective play a vital role within International Law.

Chapter V tackles acts of terrorism and how social practices and cultural dynamics affect them, particularly regarding the different roles of women as victims, recruiters, facilitators or perpetrators. While a gender perspective is important to identify risks and raise awareness of terrorist threats, the role of women in countering and preventing violent extremism is also relevant.

Chapter VI —Detention— studies deprivation of liberty as a repeated and prolonged measure in the three studied scenarios, which leads to an exponential increase in abuses or human rights violations. It highlights the importance of effective mechanisms for prevention, control and repression with a gender perspective, and with respect for the guarantees that prevent possible transgressions.

Chapter VII deals with Women's Engagement in Peace Processes. It analyzes relevant definitions in terms of prevention, conflict resolution, peacebuilding and post-conflict reconstruction. It also proposes guidelines for action to raise awareness of the fundamental importance of women's participation for the success, sustainability and quality of peace processes.

Finally, by way of Annexes, the document *Women and public forces in conflict and post-conflict situations: guidelines and rules*, product of the similarly titled Workshop, as well as the report of the Webinar sessions that took place online and within the framework of the same Project on October 20 and 22, 2021, are included.

In sum, this document is intended to *serve as a guide* for the training of military, police or civilian personnel who participate or intervene in NIAC, OSV and POC scenarios, considering the responsibility that emanates from international standards and that binds the line of command and the competent disciplinary authorities.

Following the above, this Handbook is consistent with United Nations (UN) Resolution 1325⁷, which considers issues specifically related to women and armed conflict and expresses concern that civilians, particularly women and children, constitute the vast majority of those harmed by armed conflict. This includes their condition as refugees and internally displaced persons, and the fact that they are increasingly targeted by combatants and other armed actors, which jeopardizes the achievement of a durable peace and reconciliation.

However, it should be noted that this Resolution not only applies to armed conflict, for it can be extended to cover other violent scenarios, such as other situations of violence (OSV) and post-conflict (POC), with a focus on Latin America.

⁷ Adopted by the United Nations Security Council at its 4213th meeting, held on 31 October 2000; available at: <http://unscr.com/en/resolutions/doc/1325>

Conceptual framework and legal instruments

First of all, it is necessary to provide an overview of what International Humanitarian Law is and, subsequently, to describe the three scenarios that are prevalent throughout the region.

-International Humanitarian Law (IHL)

A branch of Public International Law, made up of a set of conventional and customary norms, whose specific purpose is to solve problems of a humanitarian nature directly derived from armed conflicts and which, for humanitarian reasons, restricts the use of certain methods and means of combat. It is also known as the International Law of Armed Conflict (ILAC), *Jus in Bello*, or the Law of War.

-Women and IHL

Since 1929, women have enjoyed special protection under IHL under the Convention relative to the Treatment of Prisoners of War, which includes the following two provisions: "Women shall be treated with all consideration due to their sex" (official text, art. 3). "Differences of treatment between prisoners are permissible *only* if such differences are based on the military rank, the state of physical or mental health, the professional abilities, or the sex of those who benefit from them" (official text, emphasis added, art.4). Subsequently, the Third Geneva Convention of 12 August 1949, relative to the Treatment of Prisoners of War, and the Fourth Convention, relative to the Protection of Civilian Persons in Time of War, contain some thirty articles concerning women in particular; these were later supplemented by Additional Protocols I and II of 8 June 1977.

IHL endorses equality between men and women as a fundamental principle, and specifies it in several non-discrimination clauses.

Article 12 of Conventions I and II, 16 of Convention III, 27 of Convention IV, as well as Articles 75 of Additional Protocol I and 4 of Additional Protocol II (hereinafter referred to as I, II, III, IV Geneva Conventions and Additional Protocols I, II, respectively), provide: "They shall be treated [...] without any adverse distinction founded on sex" (official text).

It is also specified that "women [...] shall in all cases benefit by treatment as favorable as that granted to men (official text, art. 14, III Geneva Convention). Thus, women may invoke all the rights and freedoms proclaimed in said Conventions. Thus, any discriminatory measure not resulting from the application of the Conventions is prohibited.

However, the prohibition to discriminate is not a prohibition to differentiate; hence, distinctions are prohibited only to the extent that they are unfavorable. Equality could easily turn into injustice if it is applied to situations that are unequal in nature and without taking into account circumstances relating to the state of health, age and sex of the persons involved.

The principle according to which "Women shall be treated with all the regard due to their sex" (official text, art. 12, I Geneva Convention and II Geneva Convention art. 14, III Geneva Convention) aims at ensuring equal treatment. Also, "these particular considerations may not be defined by the law; but whatever the status is accorded to women, it should consider

certain factors, namely: physiological specificity; honor and modesty; pregnancy and childbirth" (Kril, F., 1985).

-The spatial dimension of IHL

This is an important factor to address, since it refers to where the events that make up the three most common scenarios in Latin America (NIAC, OSV, POC) take place. All of them occur within the territory of a State, which is an entity made up of a people, a territory, a sovereign power, a government and a Law. The State exercises, through instruments of coercion, the legitimate monopoly of force, and is the subject of rights and obligations within International Law. Therefore, it is responsible for the acts of its authorities and representatives, whether they act in an official capacity or as *de facto* agents (of the State) in any of the three scenarios that take place within its territory.

-Non-International Armed Conflict (NIAC)

To understand the concept of non-international armed conflict, it is necessary to differentiate it from an international armed conflict. The latter takes place between two or more States, including the case in which the population of a territory has an armed resistance to a foreign occupying force. Meanwhile, the non-international armed conflict develops between groups of the same State, this can take the form of segments of the armed forces themselves confronting each other (rebellion), public forces fighting armed civilian groups or other armed groups confronting each other.

Basically, then, the existence of a NIAC requires that an "armed" conflict takes place in the territory of a single State, giving rise to "hostilities" which can be directed against a "government" or "other contending party". In any event, as stated in Article 3 common to the four Geneva Conventions of 1949, the existence of a conflict of this nature requires the identification of "parties". This implies that the groups involved in the conflict must have at least a minimum level of organization, a collective purpose and a certain capacity of control. The level of intensity of the fighting is, in turn, a factor to be considered since it must exceed that attributable to isolated and sporadic acts of violence.

It is appropriate to quote the basic considerations of humanity of common article 3, which, among others, protects "persons taking no active part in the hostilities" by prohibiting the following practices (official text, subparagraph 1):

- a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
- b) taking of hostages;
- c) outrages upon personal dignity, in particular humiliating and degrading treatment;
- d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

It also states that persons not taking an active part in hostilities "shall in all circumstances be treated humanely," without discrimination based, among others, on sex (subparagraph 1), and that "the wounded and sick shall be collected and cared for" (subparagraph 2).

The International Court of Justice stated in *Nicaragua v. United States of America* that common Article 3 contained the fundamental general principles of humanitarian law, adding that "in the case of an international armed conflict, these rules also constitute a basic criterion" of conduct for the parties to the conflict. While the International Criminal Tribunal for the former Yugoslavia added that common Article 3 is "applicable to armed conflicts in general" (unofficial translations).

Common Article 3 is further developed and supplemented by Additional Protocol II of 1977 to the Geneva Conventions. However, its application depends on a NIAC meeting additional conditions aside from those required by that article, which are:

- a) it must take place in the territory of a High Contracting Party;
- b) it must confront its armed forces with dissident armed forces or organized groups;
- c) the latter must be under the control of a responsible command;
- d) they must exercise control over a part of said territory;
- e) they must carry out sustained and concerted military operations;
- f) the control over dissident armed forces or organized armed groups must enable them to implement Additional Protocol II.

The Inter-American Commission on Human Rights (IACHR), in its Report on the Merits No. 55/97 (Case 11. 137, *Juan Carlos Abella v. Argentina*, November 18, 1997), references for the first time the Additional Protocol II to the Geneva Conventions of 1977. The case follows the violent events that took place the 23rd and 24th of January, 1989, at La Tablada barracks, located in the province of Buenos Aires. "The Commission does not believe that the violent acts at the La Tablada military base on January 23 and 24, 1989 can be properly characterized as a situation of internal disturbances. What happened there was not equivalent to large scale violent demonstrations, students throwing stones at the police, bandits holding persons hostage for ransom, or the assassination of government officials for political reasons—all forms of domestic violence not qualifying as armed conflicts. "What differentiates the events at the La Tablada base from these situations are the concerted nature of the hostile acts undertaken by the attackers, the direct involvement of governmental armed forces, and the nature and level of the violence attending the events in question. More particularly, the attackers involved carefully planned, coordinated and executed an armed attack, i.e., a military operation, against a quintessential military objective—a military base"⁸ (Official translation).

-Other Situations of Violence (OSV)

Confrontations with a certain degree of severity or duration, which include sporadic acts of violence that are below the threshold of an armed conflict. These acts can take on variable forms, such as riots or other similar acts, and can occur between violent groups or against government authorities. They usually take the form of internal "tensions" and "disturbances", often called social uprisings.

The term *internal disturbances* refer to serious and violent disruptions of the public order, while *internal tensions* describes a similar situation in which acts of violence may not occur, but the

⁸ Full document available at: <https://www.cidh.oas.org/annualrep/97eng/Argentina11137.htm>
Paragraphs 154-155.)

State may resort to practices such as mass arrests of members of the opposition or the suspension of certain human rights, with the intention of preventing the situation from getting out of control. In the case of OSV, International Human Rights Law (IHRL) and the State's domestic law apply.

First example:

On October 18, 2019, there was internal unrest in the Republic of Chile, following the decision to raise the price of subway tickets. Afterwards, mass evasions took place on said transport, in protest people jumped the turnstiles to avoid paying, the streets of Santiago de Chile were taken over, several metro and bus stations were burnt, and many public facilities and supermarkets were looted or attacked. A state of emergency was declared, the military were deployed, and a curfew was instated. The government decided to suspend the public transportation fare increase, but protests spread to Valparaíso and Concepción, which included damages to public buildings and spaces, strikes and roadblocks.

The Chilean Army informed that “considering the violence that has been registered in Santiago, which has been growing in regard to magnitude, the presence of vandalism, and the damage that has been registered to private property, a curfew has been decreed from 7:00 p.m. today, October 20, until 6:00 a.m. tomorrow, October 21, in order to ensure the integrity and security of the inhabitants of the Region. (Unofficial translation. See: <https://www.bbc.com/mundo/noticias-america-latina-50115798>).

“The country's medical emergency services attended to 11,564 people injured in connection with the demonstrations between October 18 and November 22, of these 1,100 had moderate or serious injuries; according to the Ministry of Health”. 1,896 carabineros were injured and 127 of them were seriously injured, according to data from the General Directorate of Carabineros.” (Unofficial translation.)

(See: <https://atalayar.com/content/abusos-policiales-y-violaciones-de-derechos-humanos-en-chile-seg%C3%BAAn-human-rights-watch>).

Second example:

After a wave of violence in Brazil, at the end of 2017 —early 2018—, the Executive Power decreed, for the first time, an intervention from the Armed Forces in order for them to assume the activities of public security in the State of Rio de Janeiro. In this way, the Armed Forces came to have operational control of all public security bodies: civil and military police, fire department, prison system and intelligence services. While the Armed Forces had already been performing police functions in that city, under the constitutional mission of Guarantee of Law and Order (GLO), unlike previous interventions, on this occasion they were given the effective exercise of command and, therefore, the capacity to make operational decisions involving all coercive instruments of the State of Rio de Janeiro and its auxiliary organs.

(See: https://www.clarin.com/mundo/ejercito-asume-control-seguridad-rio-janeiro_0_ByFtOUNvM.html <https://www.youtube.com/watch?v=4P-C68RFMVk> <https://www.pagina12.com.ar/96241-temer-decreto-la-intervencion-militar-de-rio>

It is important to note that this sort of violence can be externalized in various ways: by carrying batons, destroying furniture or other property, setting fire to objects, tires, cars, etc., throwing stones, other objects or Molotov cocktails, or using other weapons, etc. (Cf., Nowak, 2005: 487). Wearing masks or other facial garments should not be prohibited, as long as the intention is not to avoid being identified or to create an imminent danger of unlawful acts (Cf. OSCE, 2010: paragraph 98).

These modalities are often evidenced in the blocking of streets, roads or highways, and this violence finds no legal shelter in any national or international regulation. Without going further, Article 15 of the American Convention on Human Rights enshrines the right of “peaceful assembly without arms” (Domínguez, C. 2018: volume 3: 461, 462, 481, 498).

-Post-Conflict

The period of time following the total or partial cessation of armed conflict that can be understood as having a single attribute, which is the reduction of conflict-related deaths below a certain threshold. In this scenario, operations to maintain order are carried out to guarantee tranquility and public order —as there may be situations of violence that do not reach the threshold of being considered an armed conflict— by members of law enforcement, and to which the norms of IHRL are applicable.

For Cárdenas Rivera, M. E (2003), it is the “[...] Period that begins from the very moment in which the dialogues of agreement and negotiation of the internal armed conflict acquire a character of inalterability, until when certain public elections are held following the different covenants and conditions agreed upon in the negotiations. In this way, the institutional recognition of the irregular armed agents arises, and the government promotes the creation and execution of public policies aimed at the reconciliation of the society as a whole” (unofficial translation).

One post-conflict scenario is the period following the military dictatorship in Argentina (1976-1983). With the return to democracy, a phase of transitional justice began with the creation of the National Commission on the Disappearance of People (Spanish acronym CONADEP) by Executive Decree No. 187/83, to clarify the facts and determine those responsible for human rights violations during the dictatorship.

Its final report, “Nunca Más” (Never Again), served as an “unparalleled corpus of evidence” to later judge those responsible of the violations in the trial against the military *juntas* and as a model for other Latin American truth commissions. Shortly thereafter, the laws of Punto Final (End Point) (23.492) and Obediencia Debida (Due Obidience) (23.521) were enacted, and years later, pardons were granted to high military commanders.

It was only until 2005 that the Supreme Court of Justice declared these laws unconstitutional and the crimes imprescriptible (see CSJN, Simón, Julio Héctor and others illegitimate deprivation of liberty, etc. Case No. 17.768, Recurso de Hecho, S. 1767, XXXVIII, at www.csjn.gov.ar) (See also: <http://www.saij.gov.ar/conadep-treinta-anos-despues-investigacion-sobre-desapariciones-forzadas-argentina-conadep-treinta-anos-despues->

investigacion-sobre-desapariciones-forzadas-argentina-nv9583-2014-11-14/123456789-0abcd38-59ti-lpssedadevon as well as:
<http://servicios.infoleg.gob.ar/infolegInternet/anexos/260000-264999/263505/norma.htm>)

In particular, Colombia stands as a living laboratory of the obstacles and challenges of peacebuilding: "...in addition to the immediate challenges of transition, the main challenge of post-conflict will be to reduce the risk of the reproduction of violence and relapse into conflict. To this end, it will be crucial to contain the market of violence, to block the possibilities and occasions for ex-combatants to reoffend, and to prevent the re-emergence of an insurgent faction or the persistence of remnants of the guerrillas that are marginalized from the process and insist on the pursue of armed struggle, probably in connection with criminal activities" (Unofficial translation. Prieto; in, Molano-Rojas, 2015: 8).

Among the measures developed by the Colombian government, the following should be noted:

- a) the promotion of dialogue and negotiation.
- b) the rebuilding of the social fabric enabling communities affected by armed violence to resume and improve their quality of life.
- c) the redefinition of the concept of national security and the drafting of a citizen security strategy, excluding the internal armed conflict as the central focus of attention.
- d) the reorientation of the roles of the Armed Forces and the National Police as well as the consequent restructuring of the security sector.
- e) the reinsertion of a large number of people from the guerrillas with experience in the economy of violence.
- f) the care of victims and, particularly, those affected by forced displacement.
- g) the creation of projects for social and economic development.
- h) the protection of human rights, the guarantee of peaceful coexistence and the restoration of patrimonial assets, among others.

A key component of the Colombian post-conflict period is the denominated "transitional justice", created as a democratic conception of justice, whose purpose is to analyze the way in which societies affected human rights violations originating from civil wars, violent conflicts or dictatorial regimes, manage to move towards democratic governments that guarantee stability and peace in a society. In other words, transitional justice seeks to balance the issue of peace and justice by recognizing the rights of victims of atrocious crimes, providing reparations, and establishing the truth, while at the same time ensuring that those responsible for such crimes lay down their arms and answer to the crimes committed. Transitional justice includes aspects such as reconstruction, rehabilitation, humanitarian assistance, truth, justice and reparation, it also addresses total post-conflict (full compliance with the agreements and surrender of all armed actors) or partial post-conflict (partial compliance with the agreements or partial surrender of the actors).

(See: Acevedo Suárez. A and Rojas Castillo, Z.M. 2016: 37)

Fundamental Concepts within the Framework of the Three Studied Scenarios

-State of exception

Different countries have different denominations for it, such as 'state of emergency', 'state of alarm', 'state of siege', 'state of calamity', etc. For the purposes of this Handbook, the term state of exception refers to a situation in which a State, in the presence of a declared situation of war, non-international armed conflict, public danger, or other emergency that threatens its independence or security, may adopt provisions that, to the extent and for the time strictly necessary to meet the needs of the situation, suspend certain human rights, provided that these measures are not in conflict with any obligations under International Law and do not involve any discrimination based on race, sex, language, religion, or social origin.

The Inter-American Court of Human Rights has stated in its Advisory Opinion OC-07/87, "Habeas Corpus in Emergency Situations (Arts. 27(2), 25(1), and 7(6) of the American Convention on Human Rights," of January 30, 1987), that "under certain circumstances the suspension of guarantees may be the only way to deal with emergency situations and, thereby, to preserve the highest values of a democratic society. The Court cannot, however, ignore the fact that abuses may result from the application of emergency measures not objectively justified in the light of the requirements prescribed in Article 27 and the principles contained in other relevant international instruments. Therefore, given the principles upon which the inter-American system is founded, the Court must emphasize that the suspension of guarantees cannot be disassociated from the "effective exercise of representative democracy" referred to in Article 3 of the OAS Charter..." (Official translation. paragraph. 20). "(...) no right guaranteed in the Convention may be suspended unless very strict conditions —those laid down in Article 27(1)— are met. Moreover, even when these conditions are satisfied, Article 27(2) provides that certain category of rights may not be suspended under any circumstances. Hence, far from adopting a philosophy that favors the suspension of rights, the Convention establishes the contrary principle, namely, that all rights are to be guaranteed and enforced unless very special circumstances justify the suspension of some, and that some rights may never be suspended, however serious the emergency." (Official translation, paragraph. 2) "The guarantees must be not only essential but also judicial. The expression 'judicial' can only refer to those judicial remedies that are truly capable of protecting these rights. Implicit in this conception is the active involvement of an independent and impartial judicial body having the power to pass on the lawfulness of measures adopted in a state of emergency" (Official translation, paragraph. 30). Likewise, the Inter-American Court has considered that "judicial guarantees essential for the protection of the human rights not subject to derogation, according to Article 27(2) of the Convention, are those to which the Convention expressly refers in Articles 7(6) and 25(1), considered within the framework and the principles of Article 8, and also those necessary to the preservation of the rule of law, even during the state of exception that results from the suspension of guarantees." (Official translation. Judicial Guarantees in States of Emergency (Articles 27.2, 25 and 8 American Convention on Human Rights). Advisory Opinion OC-9/87 of October 6, 1987. Series A No. 9, paragraph 38).

For the ICRC (2015), "The state of exception must be officially declared by a competent national body. This allows the population to know exactly the material, territorial and temporal

scope of the emergency measures and prevents *de facto* suspensions, as well as subsequent attempts to justify human rights violations” (Unofficial translation).

States of Exception in Chile have been established in the country’s Constitution, its art. 39 states that “The exercise of the rights and guarantees that the Constitution ensures to all persons may only be affected under the following situations of exception: external or internal war, internal commotion, emergency and public calamity, when they seriously affect the normal development of the institutions of the State” (unofficial translation), thus establishing the States of Assembly, in case of external war, State of Siege in case of internal war or serious internal commotion, State of Catastrophe in case of public calamity and State of Emergency in case of serious alterations to public order or harm to the Nation’s security.

As in Chile, the Political Constitution of Peru, in its article 137, establishes two States of Exception which correspond to the State of Emergency in case of disturbance of the peace or internal order, catastrophe or serious circumstances affecting the life of the Nation and the State of Siege, in case of invasion, foreign war, civil war, or imminent danger of their occurrence (Congress of the Republic of Peru, 1993).

In Colombia, the Constitution establishes the following States of Exception: State of Foreign War, during a conflict of said nature; the State of Internal Commotion in case of serious disturbance to the public order that imminently threatens institutional stability, the security of the State, or citizen coexistence, and that cannot be avoided through the use of the ordinary powers of the police authorities, and finally State of Emergency when there are events that disturb or threaten to seriously and imminently disrupt the economic, social and ecological order of the country, or that constitute a serious public calamity (Superior Council of the Judiciary, Colombia, 2016).

The Rules on the Use of Force in State of Exception of the Republic of Chile establish, among others, that “the detainees shall not be subjected to acts of intimidation, humiliation, mistreatment, or abuse. Each person must be treated individually and with respect. In the case of children and teenagers, the use of force must be limited to the minimum necessary, considering the best interests of the child. The detainee must be informed of the reasons for his or her detention”. (Unofficial translation, see Rules on the Use of Force for the Armed Forces in State of Exception, Ministry of Defense, Under-secretariat for the Armed Forces, No. 8, January 21, 2020, Official Gazette, No. 42,586, Section I, February 22, 2020, pages 1/4). Available in Spanish at: <https://www.diarioconstitucional.cl/noticias/contraloria-general-de-la-republica/2020/03/06/cgr-tomo-razon-del-decreto-que-regula-el-uso-de-fuerza-para-las-fuerzas-armadas-durante-estados-de-excepcion-constitucional/>).

-Force

The means used by law enforcement personnel at different levels, within the framework of the law, to assume control of a situation that constitutes a threat to or an attack on security, public order, integrity, or people’s lives; it is the compulsory way of enforcing the law, even against a person’s will, because in a democratic society the rights of individuals are limited by the rights

of others, by the security of all, and by the just demands for the common good (American Convention on Human Rights, Article 32 (2), 1969).

-Law enforcement

It refers to all the coercive instruments a State has as a holder of the legitimate monopoly of force, this is, institutions that are integrated by the armed and auxiliary forces (such as gendarmerie corps and militarized police) engaged in a NIAC, through law enforcement officers (LEO), and other state officers, whether appointed or elected, who exercise police functions, especially the powers of arrest or detention, as well as the military instruments used to perform these activities. Therefore, it includes those cases in which the legislation contemplates the participation of the military in missions and functions of a police or parapolice nature or, exceptionally, when a state of exception, siege or emergency is declared.

This means that public force includes the armed forces, and public or citizen security institutions such as police and security or intermediate forces (militarized police such as gendarmerie), and security personnel in the prison or penitentiary system.

Good practices for the integration of women in law enforcement
In the framework of Resolution 2945 (XLIX-O / 19) of the OAS General Assembly, on June 30, 2020, the Inter-American Defense Board held a seminar on Gender Integration in Defense and Security in the Americas. Good practices and progress regarding the integration of women in the countries of the hemisphere were exchanged. See: https://www.jid.org/?p=27949

-Organized Armed Group (OAG)

It is made up of a plurality of individuals acting on the national territory of a State and meets three conditions: (i) they are minimally organized; (ii) they have the capacity and determination to confront the State, in a prolonged manner, by means of firearms; and, (iii) they participate directly in the hostilities or collaborate in them. It includes dissident armed forces, which are understood as a part of a State's armed forces that have turned against the government on which they previously depended on.

Members of said groups which participate directly in hostilities no longer benefit from the protection afforded to civilians and can therefore be subject to direct attacks by the armed forces of the State (in a broad sense that includes both regular armed forces as well as other groups or units organized under the direction of command under the State).

These groups, in turn, go by many different names, such as 'armed group', 'organized nongovernmental armed group', 'insurgent group', 'subversive group', 'guerrilla group', 'dissident armed forces', or 'terrorist organization', among others, but for the purposes of this document, the term to be used is 'organized armed group' (OAG), since that is the name used by Additional Protocol II of 1977, which implements and supplements common Article 3 of the Geneva Conventions of August 12, 1949.

-Maintenance of order

During OSV —which do not constitute a NIAC— operations to maintain order are carried out by the police or security forces and, in some cases, by the military forces, forming a body that for the purposes of this document will be called 'law enforcement'.

The maintenance of order includes various tasks to safeguard public order, which involves guaranteeing the stability and normal functioning of the political and legal institutions of the State. The guarantee of order and public tranquility requires provisions and actions that the state must adopt permanently, implicitly including the possibility of declaring the state of exception provided for in the corresponding constitutional norms.

The tasks for safeguarding public order include three aspects: a) citizen security: which entails the protection of life, physical and moral integrity of people, and the respect for public and private property, among others. b) stability of the political organization: which refers to the maintenance of public peace and tranquility, as well as respect for legitimate authority. c) Safeguarding essential public facilities and services: which includes public buildings and infrastructure that provide primary services for the community, such as the ones used for supplying water and electricity, among others; also known as 'critical infrastructure' by the universally accepted doctrine.

In this sense, the protection of the population during OSV is a part of the safeguarding of public order and in these situations civil servants/authorities in charge of maintaining public order exercise the following basic powers: arrest, detention, search and seizure, and the use of force and firearms. (ICRC 2015).

-Military operations

Combat operations carried out by armed forces to confront the armed capacity of organized non-governmental groups or dissident armed forces.

-Use of force by State security bodies

Force should only be applied when strictly necessary and to the extent required for the police function taking place. Such use of force must comply with standards of legality, necessity, proportionality and accountability. Legality, insofar it is protected by national and international norms and follows legally authorized procedures and means; necessity, insofar as it is resorted to when other means are unsuccessful; proportionality, insofar as there is a balance between the intensity of the use of force and the degree of resistance or aggression suffered by the law enforcement official; and responsibility, insofar as the force used outside the legal parameters generates individual responsibility. (Cf, Ministry of the Interior and Public Security of Chile, 2019:2)

According to the international doctrine of 'differentiated use of force', the level of response by law enforcement officials (LEO), must adapt to the corresponding level of resistance or threat displayed by the citizen.

Moreover, the 'progressive use of force' refers to the permanent evaluation by the LEO of the evolution of the situation in terms of its intensity and risk, so that the force can escalate or deescalate according to the corresponding increase or decrease of the intensity or threat, and thus a series of intermediate levels could be obviated if the threat or resistance increases or decreases its intensity, drastically and substantially (Villanueva, 2017). In these delicate situations in which force will have to be used, there must be gender mainstreaming, making the training of LEO even more demanding.

Regarding the use of force, the Inter-American Court of Human Rights has held the following:

"The use of force by governmental security forces must be grounded on the existence of exceptional circumstances and should be planned and proportionally limited by government authorities. In this aspect, the Court has established that force or coercive means can only be used once all other methods of control have been exhausted and failed" [In the same vein: *Case of Zambrano Vélez et al. v. Ecuador. Merit, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166; para. 83*] (Official translation)." "The use of firearms and lethal force against people by law enforcement officers—which must be generally forbidden—is only justified in even more extraordinary cases. The exceptional circumstances under which firearms and lethal force may be used shall be determined by the law and restrictively construed, so that they are used to the minimum extent possible in all cases (...)"

"So, domestic law must establish standards clear enough to regulate the use of lethal force and firearms by members of the State security forces. Following the "Principles on the Use of Force and Firearms by the Law Enforcement Officials (...)" (Official translation. Source: *Case of Montero Aranguren et al. Preliminary Exception, Merits, Reparations and Costs. Judgment of July 5, 2006. Series C No. 150, paras. 67, 68, 75*).

In these scenarios, International Human Rights Law, which protects people at all times, both in peace and in war, is applied; it benefits everyone, and its main objective is to spread a mantle of protection over people against the arbitrary acts of States. In order for these protections to be effective, international provisions must be incorporated into national legislations (Moloeznik, 2018: 590-591).

Domestic criminal law is also applied through the investigation and prosecution of crimes under the respective Criminal Codes or Codes of Military Justice, in addition to soft law which can be integrated through Codes of Conduct for Law Enforcement Officials, and the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. These are situations in which, if the military intervenes, they execute 'police' functions and are considered 'law enforcement officials'.

At an international level, the following legal instruments also apply: Universal Declaration of Human Rights; Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and its Optional Protocol; International Convention on the Elimination of All Forms of Racial Discrimination; International Covenant on Economic, Social and Cultural Rights and its Optional Protocol; International Covenant on Civil and Political Rights and its two Optional Protocols; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol; Convention on the Rights of the Child and its three

Optional Protocols; Convention on the Rights of Persons with Disabilities and its Optional Protocol; International Convention for the Protection of All Persons from Enforced Disappearance; Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children; and, Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime.

At a regional level, the Inter-American System for the Protection of Human Rights forms an applicable legal and interpretative framework. Thus, the Inter-American Commission on Human Rights, in accordance with Article 106 of the Charter of the Organization of American States, promotes the observance and defense of human rights through its various reports, monitoring and other functions. It also analyzes petitions submitted for alleged violations of the human rights enshrined, as the case may be, in the American Declaration of the Rights and Duties of Man, the American Convention on Human Rights “Pact of San José”, the Additional Protocol to the American Convention on Human Rights in the Area of Economic Rights, Social and Cultural Rights “Protocol of San Salvador”, the Protocol to the American Convention on Human Rights to Abolish the Death Penalty, the Inter-American Convention to Prevent and Punish Torture, the Inter-American Convention on Forced Disappearance of Persons or the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women “Belém do Pará Convention”.

The final interpreter of the American Convention on Human Rights, through its contentious and consultative functions, is the Inter-American Court of Human Rights, which is the jurisdictional body of the Inter-American System. Hence, it has the power to resolve provisional measures, contentious cases, and emit advisory opinions.

If there are States that have not ratified the American Convention on Human Rights, have not recognized the contentious jurisdiction of the Inter-American Court, or have denounced the Convention, they are not exempt from their obligations to respect the rights emanating from the American Declaration of the Rights and Duties of Man.

It is worth highlighting the reentry of Venezuela to the contentious jurisdiction of the Inter-American Court of Human Rights with a ratification on July 31, 2019, thus leaving without effect the denunciation of the American Convention on Human Rights, which occurred on September 10, 2013. (See ratification status, available at: http://www.oas.org/dil/esp/tratados_B-32_Convencion_Americana_sobre_Derechos_Humanos_firmas.htm)
Currently, the only State that has ratified the ACHR in a timely manner and does not recognize the contentious jurisdiction of the Court is Trinidad and Tobago.

-On the role of commanders or superior authorities

It is vital for military and civilian commanders and superiors to actively participate in gender mainstreaming for the three scenarios under consideration, as they are responsible for verifying and enforcing the directives issued in this regard.

Law enforcement institutions, especially military, police or gendarmerie (militarized police), have vertical structures based on a strong system of discipline. In addition, they have within their organization a control or disciplinary body, called inspectorates or ombudsman bodies, which carry out the functions of supervision, control, analysis, investigation, and evaluation of military, operational, and disciplinary activities.

In this sense, these organizations can take advantage of their own structure to carry out permanent functions of verification of the training of their members in the knowledge and internalization of gender mainstreaming, that is to say, there would be preventive mechanisms as well as a subsequent control through these inspectorates. In this way, the effects of applying disciplinary sanctions for the violation of gender mainstreaming measures would serve as lessons learned, to ensure they will not be repeated in the future.

On the other hand, an indispensable foundation in the training of members of law enforcement is doctrine, which is conceived as a set of principles and concepts of relative permanence in time applied to a given field and considering its characteristics and peculiarities. Doctrine is the basis for policies, strategies, methods and procedures that regulate the actions aimed at achieving specific goals.

If doctrine were internalized in the forces of law and order, it would serve as a useful tool to incorporate a gender perspective in its teaching and training procedures, in a global and permanent way, hoping that, with time, its application will be seen as something natural within these institutions and in accordance with the principles of International Humanitarian Law and International Human Rights Law.

All of this applies to the three scenarios discussed as well as other circumstances that may derive from them; there is applicable doctrine for all. Therefore, it is vital to forge doctrines that incorporate a gender perspective into law enforcement operations.

That said, gender perspective in NIAC, OSV and POC situations has a different nature to that applied in international operations, as it takes place at the internal or domestic level of States with effects that are felt in the medium and long term.

References

Acevedo Suárez, A. and Rojas Castillo, Z. M. (2016) "Generalities of the conflict, peace processes and post-conflict"; in. *Revista de la Facultad de Derecho y Ciencias Políticas - UPB*, Vol. 46 / No. 124 January - June 2016 / Medellín.

American Convention on Human Rights (1969) signed in San José, Costa Rica, on November 22, 1969. Available at:

<https://www.cidh.oas.org/basicos/english/basic3.american%20convention.htm>

Cárdenas Rivera, M. E. (Ed.) (2003). *La construcción del posconflicto en Colombia: enfoques desde la popularidad*. Bogotá: FESCOL- CEREC.

Code of Conduct for Law Enforcement Officials, approved by Resolution 34/169 dated 17 December 1979 by the United Nations General Assembly. See: <https://www.ohchr.org/en/professionalinterest/pages/lawenforcementofficials.aspx>

Dominguez, Cristiana (2018), "Derecho a la Protesta"; in, *Tratado de control de constitucionalidad y convencionalidad*, Tomo 3, Buenos Aires: Astrea.

González, Víctor, (2019), *Dimensiones de la participación de las Fuerzas Armadas en los nuevos contextos de violencia y criminalidad en América Latina: Funciones de las Fuerzas Armadas en el Perú*, in Contextualizaciones Latinoamericanas, Proceso de Militarización de la Seguridad en América Latina, Mexico: Universidad de Guadalajara. Available at: <https://www.casede.org/index.php/biblioteca-casede-2-0/seguridad/seguridad-publica/432-el-proceso-de-militarizacion-de-la-seguridad-publica-en-america-latina>

Inter-American Commission on Human Rights. Report on the Merits No. 55/97 (Case 11. 137, Juan Carlos Abella v. Argentina, November 18, 1997).

Inter-American Court of Human Rights. Advisory Opinion OC-07/87, "Habeas Corpus in Emergency Situations (Articles 27(2), 25(1) and 7(6) of the American Convention on Human Rights)," January 30, 1987. Available at: https://www.corteidh.or.cr/docs/opiniones/seriea_08_esp.pdf

Inter-American Court of Human Rights. Case of Montero Aranguren et al. v. Venezuela. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 5, 2006. Series C No. 150. Available at: https://www.corteidh.or.cr/docs/casos/articulos/seriec_150_esp.pdf

Inter-American Court of Human Rights. Judicial Guarantees in States of Emergency (Articles 27.2, 25 and 8 American Convention on Human Rights). Advisory Opinion OC-9/87 of 6 October 1987. Series A No. 9. Available at: https://www.corteidh.or.cr/docs/opiniones/seriea_09_esp.pdf

International Committee of the Red Cross (2015) "Violence and the use of force". Geneva: ICRC; available at: https://www.icrc.org/en/doc/assets/files/other/icrc_002_0943.pdf
International Committee of the Red Cross C, (2008) "How is the Term "Armed Conflict" Defined in International Humanitarian Law?" Geneva: ICRC; available at: <https://www.icrc.org/en/doc/assets/files/other/opinion-paper-armed-conflict.pdf>

Kril, F. (1985) La protección a la mujer en el derecho internacional humanitario, International Review of the Red Cross, Geneva. 01/11/1985; available at: <https://www.icrc.org/es/doc/resources/documents/misc/5tdlea.htm>

Ministry of the Interior and Public Security of Chile (2019) Official Gazette No. 42.295, March 4, 2019, Circular No. 1832, Section I, "Use of force: updates instructions in this regard", Santiago, Chile.

Molano-Rojas, Andrés (Compiler) (2015), *El posconflicto en Colombia: Reflexiones y propuestas para recorrer la transición*, Bogotá: Instituto de Ciencia Política Hernán Echavarría Olózaga and Fundación Konrad Adenauer. Available at:

https://www.kas.de/c/document_library/get_file?uuid=77f6019c-b05d-acc3-c39e-d1ebc6198b32&groupId=287914

Moloeznik, M. P. (2018), "Orden público y seguridad", Sección B Entradas; en, Dražan Djukić y Niccolò Pons (Editores) *The Companion to International Humanitarian Law*, Leiden/Boston: Brill | Nijhoff, International Humanitarian Law Series, Volumen: 55, pp. 590-591.

Nowak, M. (2005) "UN Covenant on Civil and Political Rights: CCPR Comments", 2nd edition revised, Kehl, N.P. Engel Publishers.

Organization for Security and Co-operation in Europe (2010), *Guidelines of Freedom of Peaceful Assembly*, OSCE; available from: French version: <http://www.osce.org/fr/odihr/119674?download=true>; as well as English version: <http://www.osce.org/odihr/73405?download=true>

Sanremo Handbook on "Integrating Gender Perspectives into International Operations. A Training Handbook with Commentaries" (2019) Sanremo, Italy: International Institute of Humanitarian Law. Available at: https://iihl.org/wp-content/uploads/2020/01/handbook_ENG.pdf

Sanremo Handbook on Rules of Engagement (2009) Sanremo, Italy: International Institute of Humanitarian Law. Available at: <https://iihl.org/wp-content/uploads/2017/11/ROE-HANDBOOK-ENGLISH.pdf>

United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990), adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Havana, Cuba, dated August 27 to September 7, 1990; available at:

<https://www.ohchr.org/sp/professionalinterest/pages/useofforceandfirearms.aspx>

United Nations Office on Drugs and Crime of the United Nations (2019) *Global Study on Homicide 2019*, Vienna: UNODC.

Villanueva, P (2017) *Reasonable employment of firearms in the control of public security*. Lima: Instituto de Democracia y Derechos Humanos de la Pontificia Universidad Católica del Perú IDEHPUCP; available at: https://idehpucp.pucp.edu.pe/lista_publicaciones/empleo-razonable-de-las-armas-de-fuego-en-el-control-de-la-seguridad-publica/

CHAPTER I — INTEGRATING THE GENDER PERSPECTIVE IN THE OPERATION OF PUBLIC SECURITY FORCES IN NON-INTERNATIONAL ARMED CONFLICTS, OTHER SITUATIONS OF VIOLENCE AND POST-CONFLICT: GUIDELINES AND RULES

The gender perspective is a filter through which it is possible to identify and understand various situations of inequality that exist between women and men at all levels of social life, inequalities that are derived from the social attributes and opportunities associated with being a man or a woman. Policy making through this filter has resulted in more sensitive and inclusive police for women and men.

Hence, integrating a gender perspective allows for paradigmatic and substantive changes towards non-discrimination and a life free of violence. Since states are obliged to respect and guarantee International Humanitarian Law (IHL) and Human Rights, security forces face new challenges to ensure that their actions comply with the law and are guided by this objective perspective, aimed at respecting the rights and guarantees of women, especially those who experience discrimination and violence in situations of Non-International Armed Conflict (NIAC), Other Situations of Violence (OSV) and Post-Conflict (POC).

It should be noted that there is a complementarity between IHL and IHRL, as highlighted by the Inter-American Court of Human Rights:

-Inter-American Court of Human Rights. Case of the Serrano Cruz Sisters v. El Salvador. Preliminary Objections. Judgment of November 23, 2004. Series C No. 1181.

-112. Regarding the complementarity of international human rights law and international humanitarian law, the Court considers it should emphasize that all persons, during internal or international armed conflict, are protected by the provisions of international human rights law, such as the American Convention, and by the specific provisions of international humanitarian law. Consequently, there is a convergence of international norms protecting those who are in such situations. In this regard, the Court stresses that the specificity of the provisions of international humanitarian law that protect individuals subject to a situation of armed conflict do not prevent the convergence and application of the provisions of international human rights law embodied in the American Convention and other international treaties (Official translation).

115. Likewise, in Article 3 common to all the Geneva Conventions of 12 August 1949, international humanitarian law establishes the complementarity of its norms with international human rights law, when it establishes, inter alia, the obligation of the State in the case of armed conflict not of an international nature to provide humane treatment, without any adverse distinction to persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by any cause. In particular, international humanitarian law prohibits, at any time or in any place, violence to the life, integrity and dignity with regard to the above-mentioned persons (Official translation).

-116. Moreover, the Additional Protocol to the Geneva Conventions of 12 August 1949, relating to the protection of victims of non-international armed conflicts (Protocol II),

acknowledges in its preamble the complementarity or convergence of the norms of international humanitarian law and those of international human rights law, when it states that “[...] international instruments relating to human rights offer a basic protection to the human person”. And, Article 75 of Protocol I to these Conventions, on the protection of victims of international armed conflicts (when referring to fundamental guarantees for all persons who are in the power of a Party to the conflict and who do not benefit from more favorable treatment under the said Conventions or under that Protocol), and Article 4 of Protocol II (when referring to the fundamental guarantees of all persons who do not take a direct part or who have ceased to take part in hostilities, whether or not their liberty has been restricted), indicate that such persons are entitled to such guarantees, thus embodying the complementarity of international human rights law and international humanitarian law⁹ (Official translation).

This has also been acknowledged by the International Committee of the Red Cross (ICRC):

“International Human Rights Law (IHRL) and International Humanitarian Law (IHL) are both part of international law, this means they have their own principles and characteristics within an integrated system of rules. This entails that, despite their particularities, within each subsystem the norms are created by the same mechanisms or sources, which can be both conventional and customary. Moreover, the violation of any of its norms renders operative the rules of general international law relating to the international responsibility of both States and individuals. Since both human rights and IHL are currently regulated by international law, both subsystems tend in essence to limit or restrict the State's sovereign powers. These limits to State sovereignty focus on the necessary protection of the individual against arbitrary acts of the State that undermine the rights of the people or inflict unnecessary suffering on them.

The primary objective of human rights is directly related to the enjoyment of individual freedoms and guarantees of human beings and to their well-being and protection in general. On the other hand, the central objective of IHL is related to the protection due to the victims of armed conflicts.

The convergence and complementarity of human rights and IHL is thus focused on a shared interest through their specific norms relating ultimately to the protection of the individual in all circumstances (Vinueza, R. E., 1998).”

In order to fulfill its objective, this chapter, is divided into three sections. The first deals with key concepts and their definitions, with the aim of understanding and grasping the concept of gender perspective; it also presents considerations of the Inter-American Court of Human Rights (IACtHR) on the subject. In the second section, different guidelines are developed for NIAC, OSV and POC, which show the importance of gender mainstreaming in training, operational planning, decision making and execution; basic guidelines are also established to learn about the contributions and actions of women in different public institutions and the relevance of their incorporation in all organized spheres.

⁹ See Inter-American Court of Human Rights and International Committee of the Red Cross, 2021.

In a final section, it is recommended, as an additional guideline, to reinforce gender mainstreaming in institutions, promote the creation of observatories, specialized gender units or affirmative actions that allow immediate attention to the problems faced both in the public forces and in situations of NIAC, OSV and POC, to safeguard women's right to life, security and peace.

Conceptual Framework

In accordance with the Handbook titled "Integrating Gender Perspectives into International Operations", the following concepts should be kept in mind¹⁰:

-Sex

The biological (e.g., chromosomes, anatomy and hormones) and physiological characteristics of a person, marking them as male or female. The sex of a person is biologically defined; determined by birth; and universal.

-Gender

The way in which differences between women and men are culturally and socially perceived and understood. Such differences transform over time and across contexts (Lamas, 1999). It is linked to socially constructed roles, behaviors, activities, and attributes that a given society at a given time ascribes as appropriate for men and women. The gender of a person is socially constructed and, therefore, learned and can be unlearned and changed; it differs and varies within and across cultures and over time; it results in different roles, responsibilities, opportunities, needs and constraints for women, men, girls and boys.

However, as highlighted in this Handbook's Introduction, Article 7, Section 3 of the 1998 Rome Statute defines it as follows: "For the purposes of this Statute, the term 'gender' shall be understood to refer to both sexes, male and female, in the context of society. The term 'gender' shall have no meaning other than the foregoing." In other words, for the normative foundations of the International Criminal Court, gender is synonymous with sex (International Criminal Court, 1998).

-Gender stereotypes

The classification of the human species following an individual's sex, which often entails a differentiated treatment for being male or female. It refers to the most evident traits or reiterates the essentialized characteristics and functions of women and men based solely on their sex. Gender stereotypes can have the perverse effect of harming people who do not fully comply with the contextual parameters of femininity or masculinity, generating in turn complementary stereotypes. This marks the beginning of a segregation process that denies the expression of all the potentialities of children, women and men (Cook and Cusak, 2010).

¹⁰ Taken from 2.1. Definitions - CHAPTER 2 GENDER MAINSTREAMING; from, International Institute of Humanitarian Law (2019) Integrating Gender Perspectives into International Operations. A Training Handbook with Commentaries, pages 15-18; available at: https://iihl.org/wp-content/uploads/2020/01/handbook_ENG.pdf

The Inter-American Court of Human Rights on gender stereotypes

"[This] refers to a preconception of personal attributes, characteristics or roles that correspond or should correspond to either men or women. (...) [T]he subordination of women can be associated with practices based on persistent socially dominant gender stereotypes, a situation that is exacerbated when the stereotypes are reflected, implicitly or explicitly, in policies and practices and, particularly, in the reasoning and language of the judicial police authorities (...) The creation and use of stereotypes becomes one of the causes and consequences of gender-based violence against women". (Official translation. Gonzalez et al. Case ("Campo Algodonero") vs Mexico.

It also highlights that "gender stereotypes are incompatible with international human rights law and measures must be taken to eliminate them" (Official translation. Artavia Murillo et al. (In vitro fertilization) vs Costa Rica.

Notable cases:

- a) Gonzalez et al. Case ("Campo Algodonero") vs. Mexico. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 16, 2009, paragraph 401
- b) Artavia Murillo et al. (In vitro fertilization) v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 28, 2012. Series C no. 257, para. 302

-Gender roles

The social expectations surrounding male and female behavior. They are social constructs that dictate certain behaviors for women and men. Gender roles encompass self-perception, psychological characteristics, as well as family, occupational and political roles that are assigned to each sex according to a binary that separates them and frames them as opposites. Thus, women are expected to be passive, dependent and affectionate, while men are expected to be aggressive, competitive and independent. In this context, men are conceived as the model against which the other group, women, are compared to (Guzmán Stein, n/d).

-Gender relations

Relations between men and women that are socially determined by culture, religion or by socially acceptable ways of thinking or being. These relationships are characterized by the marginalization of women in decision-making processes, in power sharing in the household and in the exercise of authority.

-Gender gap

The deficit in both the number and the importance of roles played by women in any operational environment. The gender gap is substantially perpetuated by the existence of gender discriminatory institutions, policies and laws.

-Gender dimensions

These can be understood as the phenomenon in which situations, needs and challenges faced by women and men (and girls and boys) are examined from different perspectives, with the aim of eliminating inequalities and preventing their perpetuation, as well as promoting gender equality within the scope of legislative and policy measures as well as action programs.

-Gender mainstreaming

The process of integrating a gender perspective into the preparation, design, implementation, monitoring and evaluation of institutions, policies and investment programs that govern all State action, in pursuit of promoting equality between women and men and reducing discrimination. It is a strategy aimed at ensuring that the different interests and experiences of both women and men are adequately considered, so that an integral dimension can be attributed to the design, implementation, monitoring and evaluation of ongoing plans and programs in all political, economic and social areas, so that women and men can benefit equally, and discrimination is not perpetuated.

-Gender analysis

A tool to emphasize gender disparities and the challenges they pose; it indicates exactly what the likely impact will be and proposes alternative courses of action. Gender analysis is a systematic analytical process based on the use of sex-disaggregated and gender-sensitive information used to identify, understand and describe gender differences and the relevance of gender roles and power dynamics in a given context.

—Gender awareness

The knowledge women and men have of their gender and of the conditions of oppression and asymmetries derived from gender inequalities. In the political sphere, gender awareness has an individual and a collective dimension. The individual aspect refers to a person's construction of their own gender identity. The collective dimension refers to the social recognition of sexual differences and the mechanisms through which these differences are translated into gender inequalities. Both dimensions are closely intertwined and are part of a process resisting discrimination based on sex (PRODEMU, 2020).

-Gender budget analysis

Refers to the way in which financial resources are allocated according to gender criteria, paying special attention to how the distribution impacts gender equality or inequality.

-Gender equality

The situation in which women and men enjoy equal rights and opportunities in all areas of society, including economic participation and decision-making, and the different behaviors, aspirations and needs of women and men are equally valued and favored.

-Gender equity

Equitable outcomes for women and men in terms of gender. It also introduces an ethical component to ensure real parity that somehow compensates for the historical inequality that the female gender has endured in terms of political representation and in the workplace, among others (PRODEMU, 2020).

-Equal opportunities

It consists of giving each person, regardless of their sex, race or creed, the same opportunities to access the resources and benefits provided by public policies. It is a conception based on a set of principles whose purpose is to eliminate inequalities among individuals (PRODEMU, 2020).

Additionally, in the case of Latin America, it is suggested that the following concepts be taken into account:

-Gender violence

It is a type of violence that is exercised against people (adults as well as children) on the bases of being a woman, a man or a non-binary person. This violence is intertwined with other variables that might aggravated its severity such as the person's age, cultural origin, socioeconomic conditions, educational level, sexual orientation, etc. It results in physical, sexual or psychological harm or suffering based on a person's gender (Inmujeres-PNUD, 2006).

The violent act is committed because of the victim's sex or because of socially assigned gender roles. It is also one of the clearest manifestations of the inequality, subordination and power relations of men over women, which is based on and exercised by the subjective difference between the sexes (Women's Institute and for Equal Opportunities, n/d). The United Nations defines violence against women as "any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm to women, including the threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life" (Unofficial translation).

In accordance with Article 2 of the UN General Assembly Declaration on the Elimination of Violence against Women, this type of violence includes, but is not limited to, the following acts:

- a) Physical, sexual and psychological violence occurring within the family, including battering, sexual abuse of girls in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, acts of violence perpetrated by other family members and exploitation.
- b) Physical, sexual and psychological violence perpetrated within the community at large, including rape, sexual abuse, sexual harassment and intimidation at the workplace, within educational institutions or elsewhere, trafficking of women and forced prostitution.

- c) Physical, sexual and psychological violence perpetrated or tolerated by the State, wherever it occurs.

-Femicide/femicide

This term describes the homicide of women or girls because of their status as female. This crime often involves domestic and family violence, discrimination or hate towards women and sexual violence. According to the United Nations Women in Colombia (2017) femicide refers to the murder of a woman for being a woman, it constitutes the end of a *continuum* of violence and the most brutal manifestation of a patriarchal society. This phenomenon has been categorized, according to the relationship between the victim and the victimizer, into four types: i) Femicide by intimate partners, ii) Femicide by family members, iii) Femicide by other acquaintances, and iv) Femicide by strangers; all of these traversed by the different oppressions that women experience on a daily basis. Femicide is part of the multiple and complex types of violence women can experience, and cannot be understood only as an individual murder, but as the ultimate expression of a violence in which the subjugation of women's bodies and the extinction of their lives is aimed at maintaining the discrimination and subordination of all women.

Understanding how gender relations manifest themselves in any society and in any conflict-related situation whether NIAC, OSV or POC is key. The gender stereotypes evident in different societies and the inevitable gender roles that emanate from them shape how men, boys, women and girls experience conflict and how it manifests itself. Traditional patriarchal stereotypes often portray women and girls as submissive, passive, and less valuable than men. Women and girls may also be stereotyped as symbols of family, honor and purity, and as such become "natural" victims. The models described above can play a role in encouraging the commission of violent sexual acts against women and shape their different manifestations and motivations. Particularly in the scenarios of NIAC, OSV and POC, sexual violence is prevalent and its particular characteristics in these contexts must be considered in this Handbook.

-Androcentric culture

This refers to the culture in which men, their interests and experiences are at the center of the universe. This conception of reality is based on the idea that the male gaze is the only possible and universal one, and is therefore generalized for all humanity, be they men or women (Mujeres en Red, 2021). This leads to a diminished role for women in society and, therefore, allows and perpetuates inequality between women and men. Androcentrism entails the invisibility of women and their world, the denial of a feminine gaze and the obscuring of the contributions made by women.

-Patriarchy

A system of social organization that justifies male domination on the basis of the supposed biological inferiority of women, where the key positions of political, religious, social and military power are exclusively and generally in the hands of men (Proyecto Equal, 2007). It has its historical origin in the family, whose leadership is traditionally exercised by the father and is

projected throughout the social order. Women are considered "others" and there is no sense of reciprocity with men, which can be illustrated with the following example:

The Inter-American Court of Human Rights on forced sterilization

In this case the Court considered that: "the medical decision to perform the sterilization procedure on I.V. without her prior, free, full and informed consent was prompted by a logic of paternalist care and under the preconception that the sterilization had to be performed while I.V. was in the peri-operative period following a caesarean section – even though her case was not urgent or a medical emergency – based on the idea that she would not take proper decisions in the future to avoid another pregnancy. The physician acted in this way in an unjustified paternalistic manner, by failing to acknowledge her as a moral decision-making agent and considering that, based on his medical opinion, he had to protect I.V., by taking the decision that he considered pertinent, without giving her the opportunity to weigh the options available to her; thus, annulling her ability to decide based on her autonomy". (Official translation. Case of I.V. vs. Bolivia. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 30, 2016. Series C No. 329, para. 236).

General considerations regarding the gender mainstreaming guidelines

The incorporation of a gender perspective in the development of Non-International Armed Conflicts (NIAC), Other Situations of Violence (OSV) and Post-Conflict contexts (POC) requires, firstly, identifying the particularities of each scenario and its repercussions on men and women, both when they actively participate as agents of the State, and when they are in a situation of vulnerability, as current or former victims of the diverse modalities of violence present in these situations. Below some particularities of each scenario can be found:

Non-International Armed Conflicts

All parties to a conflict shall fully respect the applicable international law for the protection of the rights of women and girls, especially as they are vulnerable civilians. They shall also adopt special measures to protect women and girls from gender-based violence, particularly rape and other forms of sexual abuse, and all other forms of violence in NIAC situations. While respecting the civilian and humanitarian nature of camps and internment facilities, they should consider the special needs of women and girls, when designing said measures.

Guidelines for gender mainstreaming in Non-International Armed Conflicts (NIAC)

-Training on IHL and International Human Rights Law (IHRL), with an emphasis on civilian population and vulnerable groups.

The training of military and law enforcement officials (LEO) directly involved in hostilities must include knowledge and tools on IHL and IHRL to ensure they know the proper way to proceed when faced with vulnerable groups and civilian victims in general.

It should be noted that the States as well as the LEO and military members who engage directly in hostilities are responsible of respecting and protecting IHL and IHRL norms. The

fact that non-State armed groups participating in NIAC eventually do not respect these obligations on the matter does not justify, at any time, retaliations that go against IHL as a whole.

The education and training of the military and LEO that actively participate in NIAC scenarios must include, at least, basic aspects of gender perspective as well as its importance in relation to of IHL and IHRL norms, exemplifying with practical and concrete cases, the prohibitions that operate during hostilities and the criminal sanctions that could be imposed for violating them. In addition, it is important to create practical exercises, maneuvers and drills in controlled scenarios.

The training provided to both the military and LEO must emphasize that sexual violence against women who have directly participated in hostilities is legally prohibited and that, at all times, those responsible must be arrested and their acts prosecuted, in accordance with applicable national and international law in cases of serious IHL violations.

Finally, and as an exemplary but not limiting basic aspect, the training must include teaching-learning spaces that specify the sanctions that may be imposed on both the military and LEO, in cases of infringement of national law and international law applicable to the NIAC.

-Training legal advisors specialized in gender issues

Since IHL incorporates in its norms issues related to specially protected groups, it is advisable to provide legal advisors of the armed, security and police forces with instruments to guarantee such special protection to the groups covered by the norms of international law.

Just as the role of "operational advisors" is fundamental to ensure that the rules of international law applicable to a NIAC are respected, so too are "legal advisors" in terms of taking into account the perspective of protected groups, including gender dimensions in military operations.

Legal advisors should be responsible for supporting the design and development of military operations to ensure that, on the one hand, women and men are treated differently according to their needs without discrimination and, on the other, that the principles of distinction, precaution, proportionality and military necessity are complied with, avoiding casualties among those not participating in hostilities, particularly women and girls.

Both women and men in security and defense institutions must have the necessary skills and abilities to understand the needs of women and children in the context of NIAC, to provide care to possible victims of gender-based violence, to avoid revictimization, and to handle in a timely manner the necessary complaints and medical and psychological services as required by the circumstances.

Other Situations of Violence

These are scenarios characterized by sporadic and isolated acts of violence —such as riots, tensions and commotions— that usually significantly affect tranquility and public order, and although they do not reach the threshold of violence necessary to be considered a NIAC, they usually have major humanitarian effects that especially impact vulnerable groups, such as women and girls. Therefore, the LEO and the military members that are tasked with restoring peace must adopt measures and protocols *ad hoc* to respect and preserve the human rights of the most vulnerable groups.

Guidelines for gender mainstreaming in Other Situations of Violence (OSV):

-Training those responsible for planning and carrying out law enforcement operations in OSV

In accordance with international standards on the use of force and firearms for LEO, there is an obligation to guarantee and protect the human rights of all people, without discrimination, when employing the faculties to restore order or maintain and provide security to the citizens of the State.

The Inter-American Court of Human Rights on the importance of training

“An adequate legislation would not fulfill its goal if, inter alia, the States do not educate and train the members of their armed forces and security agencies pursuant to the principles and provisions on protection of human rights and the limits to which the use of weapons by law enforcement officials is subject, even under a state of emergency”. (Official translation. Case of Montero Aranguren et al. (Catia Detention Center) v. Venezuela. Preliminary Exception, Merits, Reparations and Costs. Judgment of July 5, 2006. Series C No. 150, para. 77).

Under the previous premise, LEO must be trained in such a way that they are in a position to everyone’s human rights, particularly the right to life, integrity and personal security, this is to say the “main core of the human rights” (ICRC,2015)

The Inter-American Court of Human Rights on the duties of training in the case of Mexico

The IACtHR has deemed pertinent to “require the State to create and implement, within two years, a training plan for officers of the Federal Police and the police of the state of Mexico aimed at:

(ii) training police agents on the standards for the use of force in contexts of social protest established in this judgment and in this Court’s case law. This training plan should be incorporated into the regular training of members of the state and federal police forces.” (Official translation. Inter-American Court of Human Rights Case Of Women Victims of Sexual Torture in Atenco v. Mexico. Preliminary Objections, Merits, Reparations and Costs. Judgement of November 28, 2018. C Series. No. 371, paragraph 355).

Currently the compliance of this ruling is being monitored.

In general, the training and education of LEO consists of two major stages: initial or basic training, and continuous or complementary training. In both dimensions, differentiation should be made between levels of operational responsibility, emphasizing the role of commanders in taking specific actions to deter the commission of crimes and especially the violation of women's and girls' rights.

On the other hand, training in the context of OSV should consider the timely and effective care of victims of gender-based violence, especially when it comes to basic aspects such as promptly recognizing the victims' needs and providing proper guidance and support.

-Training legal advisors specialized in gender issues

As in the context of a NIAC, the responsibility for considering a gender perspective in the actions of the LEO in OSV contexts falls significantly on the operational and administrative leaders, which should be supported by expert counsel to improve the institutional framework of performance.

Gender perspective: the case of Uruguay

Several countries in Latin America have decided to meet their gender obligations by incorporating a specific area within their security and justice agencies. Such is the case of Uruguay which, within the Ministry of the Interior, has a Gender Policies Division created by Article 137 of Law No. 18.362 of October 6, 2008, and one of its guidelines is to integrate a gender perspective in the design, elaboration and evaluation of Public Security Policies, as well as to contribute to the design, elaboration and evaluation of a comprehensive policy that provides effective and quality responses to gender-based violence. See: <https://www.minterior.gub.uy/index.php/2-uncategorised/93-division-politicas-de-genero>

Post-Conflict

All those involved in the negotiation and implementation of peace agreements should adopt a gender perspective that takes into account, among others:

- a) the special needs of women and girls in cases of displacement and resettlement, as well as for rehabilitation, reintegration and post-conflict reconstruction.
- b) measures to support local women's peace initiatives and indigenous conflict resolution processes and to involve women in all peace agreement implementation mechanisms; and,
- c) measures to ensure the protection of and respect for the human rights of women and girls, particularly with regard to the electoral, police and judicial systems.

In addition, it is necessary to highlight the responsibility of States to:

- a) End impunity and to prosecute those guilty of genocide, crimes against humanity and war crimes, especially those related to sexual and other types of violence against women and girls and, in this regard, the need to exclude such crimes, whenever feasible, from amnesty provisions.

- b) Ensure that all persons involved in planning for disarmament, demobilization and reintegration are aware of the distinct needs of persons who have directly participated in hostilities, depending on whether they are male or female, as well as the needs of their families.

Guidelines for gender mainstreaming in Post-Conflict (POC) scenarios:

-Training LEO involved in transitional processes

When the cessation of hostilities is achieved and peace negotiations begin, the incorporation of a gender perspective in the post-conflict period contributes to reconciliation and the achievement of a lasting peace. Hence, the need to educate and train members of the security forces and other key actors involved in the transitional process from war to peace.

Training efforts should focus on the differentiated treatment of women and men as victims of armed violence, as well as direct participants in hostilities, understanding their contexts, their vulnerabilities and their motivations, to the extent that these are enshrined in the law.

Training, in its various modalities, should be directed not only to the public forces, but also to those political and social actors involved in the transition to peace.

Recommendations of the Committee on the Elimination of Discrimination against Women—the Colombian case study

Through its concluding observations on the ninth periodic report on Colombia, and in relation to women in conflict prevention, conflict and post-conflict situations, the Committee recommends “increasing the presence of State institutions and access to basic services in former conflict zones, taking into account the specific needs of Afro-Colombian women, indigenous women and women with disabilities, and ensuring the protection of the affected population in former conflict zones and the prevention of the recruitment of children by armed groups”.

It also recommends that “impact indicators, disaggregated by sex, age, ethnicity, race, geographic location and disability, should be integrated to monitor the application of the gender equality provisions of the implementation framework plan and that an indicative budget be allocated to this work”. (Unofficial translation. See; CEDAW/C/COL/CO/9, March 14, 2019, paragraph 16 b., c.)

-Encouraging greater involvement of women in post-conflict scenarios

The aim is to enable women who participated directly in the hostilities to become actively involved in peace processes, sharing their experiences as active members of the peacebuilding working groups, with the objective of analyzing and modifying institutional practices in post-conflict situations.

In many cases, civil society organizations established during the armed conflict are headed by women victims of violence, both directly and indirectly, especially regarding the search of victims of enforced disappearance.

The Committee on the Elimination of Discrimination against Women —the Colombian case study

Through its concluding observations on the ninth periodic report of Colombia, the committee recognized “the achievements of the State party in the areas of peace, security and justice, through the signing in 2016 of the Final Agreement for the End of the Conflict and the Construction of a Stable and Lasting Peace, which sets an important precedent in terms of women’s participation in negotiations and the incorporation of a gender perspective in the agreements, and provides an important basis for realizing women’s human rights within the State party” (Unofficial translation). The Committee welcomed Decree 1418/2018 which establishes the creation of a high institutional body in charge of gender mainstreaming for the implementation of the peace agreement. (See: CEDAW/C/COL/CO/9, 14 March 2019, paragraphs 5 and 9)

-Integrating observatories and multidisciplinary working groups

This involves the inclusion of various social actors such as international and regional institutions, civil society organizations and academia, in order to support institutional transition processes.

Multidisciplinary observatory on gender– Mexican case study

In Mexico there are, at least, two examples of observatories and multidisciplinary groups for gender mainstreaming in the armed and police forces.

The first of these is the “Observatory for Equality between Men and Women in the Mexican Army and Air Force” of the Ministry of National Defense, which was created in December 2011 through the publication of an agreement establishing its creation in the Official Journal of the Federation of Mexico.

Among the purposes of this observatory are the following:

- a) Detecting situations that violate equality between women and men in the Army and Air Force;
- b) Evaluating and proposing the necessary actions to prevent and eliminate any form of gender discrimination;
- c) Promoting measures and policies that ensure equality between women and men in the Army and the Air Force; and
- d) Evaluating the compliance and effectiveness of the actions and policies implemented to prevent and eliminate any form of discrimination, and ensuring equality between women and men.

(For more information, see in Spanish: https://www.gob.mx/sedena/acciones-y-programas/observatorio-para-la-igualdad-entre-mujeres-y-hombres-en-el-ejercito-y-fuerza-aerea-mexicanos?state=published_)

As a final remark, it is important to note that this chapter has sought to highlight the relevance and the complex challenge of applying a gender perspective in the three scenarios considered.

References

Belém Do Pará Convention; available at

<http://www.cidh.org/Basicos/English/basic13.Conv%20of%20Belem%20Do%20Para.htm>

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW);

available at: <https://www.ohchr.org/documents/professionalinterest/cedaw.pdf>

Cook, Rebecca J. y Simone Cusack (2010). *Gender Stereotyping: Transnational Legal Perspectives*, University of Pennsylvania Press, United States; available at:

División de Políticas de Género, Ministry of the Interior of Uruguay; available at: <https://www.minterior.gub.uy/index.php/2-uncategorised/93-division-politicas-de-genero>.

Guzmán Stein, Laura (n/d), "Roles de género y Poder", Programa Mujer y Derechos Humanos, Inter-American Institute of Human Rights, Costa Rica; available at: <http://www.ts.ucr.ac.cr/binarios/docente/pd-000124.pdf>

https://www.law.utoronto.ca/utfl_file/count/documents/reprohealth/estereotipos-de-genero.pdf

INMUJERES-PNUD (2006). *Prevention of violence from childhood. Curso-Taller*. Instituto Nacional de las Mujeres y Programa Nacional para las Naciones Unidas y el Desarrollo, Mexico; available at: http://cedoc.inmujeres.gob.mx/documentos_download/100801.pdf

Instituto de la Mujer y para la Igualdad de Oportunidades (n.d.), Secretaría de Estado de Servicios Sociales e Igualdad, Ministerio de Sanidad, Servicios Sociales, Gobierno de España; available at:

https://www.inmujeres.gob.es/servRecursos/formacion/Pymes/docs/Introduccion/02_Definicion_de_violencia_de_genero.pdf.

Inter-American Commission on Human Rights, Report "Violence and Discrimination against Women, Girls and Teenagers", OAS/Ser.L/V/II. Doc. 233, 14 November 2019.

Inter-American Court of Human Rights and International Committee of the Red Cross (2021) *Jurisprudence Booklet of the Inter-American Court of Human Rights No. 17: Interaction between International Human Rights Law and International Humanitarian Law*.

Inter-American Court of Human Rights, Case *Artavia Murillo et al. (In vitro fertilization) v. Costa Rica*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 28, 2012. Series C No. 257.

Inter-American Court of Human Rights, Case *I.V. v. Bolivia*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 20, 2016. Series C No. 329.

Inter-American Court of Human Rights, Case of *Montero Aranguren et al (Retén de Catia) v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 5, 2006. Series C No. 150.

Inter-American Court of Human Rights, Case Women Victims of Sexual Torture in Atenco v. Mexico. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 28, 2018. Series C No. 371

International Committee of the Red Cross (ICRC) (2015), Violence and the Use of Force; available at: https://www.icrc.org/en/doc/assets/files/other/icrc_002_0943.pdf

International Criminal Court, Rome Statute. The text of the Rome Statute circulated as document A/CONF.183/9 of 17 July 1998, as amended by the procès verbaux of 10 November 1998, 12 July 1999, 30 November 1999, 8 May 2000, 17 January 2001 and 16 January 2002. The Statute entered into force on July 1, 2002; available at: <https://www.icc-cpi.int/resource-library/documents/rs-eng.pdf>

Lamas, Marta (1999) (1999). "Gender, sex differences and sexual difference". Debate feminista, 20 (10), pp. 84-106; available at: https://debatefeminista.cieg.unam.mx/df_ojs/index.php/debate_feminista/issue/view/51

Latin American Security and Defense Network (2016) Comparative Atlas of the Situation of the Armed Forces in Latin America, available at: <https://www.resdal.org/assets/atlas-2016-esp-completo.pdf>

Mexico City Government Headquarters (November 25, 2019), Published in the Official Gazette Declaring Gender Violence Alert, available in Spanish at: <https://jefaturadegobierno.cdmx.gob.mx/comunicacion/nota/se-publica-en-gaceta-oficial-declaratoria-de-alerta-por-violencia-de-genero>
of Violence Against Women

ONU Mujeres. (2017). www.colombia.unwomen.org. Recuperado el 7 de 10 de 2021, de <https://colombia.unwomen.org/es/como-trabajamos/fin-a-la-violencia-contra-las-mujeres/feminicidio>

PRODEMU (2020), Gender Glossary, Fund. Promoción y Desarrollo de la Mujer, Chile; available at: <https://www.prodemu.cl/wp-content/uploads/2021/glosario/GLOSARIO-final-28abril.pdf>

Secretaría de las Mujeres de la Ciudad de México, Presenta Gobierno de la Ciudad datos de atenciones a la violencia contra las mujeres durante la emergencia sanitaria (Mexico City Women's Secretariat, Presenta Gobierno de la Ciudad datos de atenciones a la violencia contra las mujeres durante la emergencia sanitaria); available at: <https://www.semujeres.cdmx.gob.mx/comunicacion/nota/presenta-gob-cdmx-datos-de-atenciones-la-violencia-durante-emergencia-sanitaria>

Secretaría Técnica del Proyecto Equal (2007), Glosario de Términos Relacionados con la Transversalización de Género, Proyecto Equal "En Clave de Culturas", Spain; available at: <https://www.um.es/documents/2187255/2187771/glosario-terminos.pdf/34c77283-cc4c-44b9-9fc5-09142baf9386>

Secretariat of National Defense, Actions and Programs, Observatory for Equality between Women and Men in the Mexican Army and Air Force, available in Spanish at: <https://www.gob.mx/sedena/acciones-y-programas/observatorio-para-la-igualdad-entre-mujeres-y-hombres-en-el-ejercito-y-fuerza-aerea-mexicanos?state=published>

United Nations General Assembly, Declaration on the Elimination of Violence against Women, available at: <https://www.ohchr.org/en/professionalinterest/pages/cedaw.aspx>

Vinuesa, R. E. (1998) Derechos Humanos y Derecho Internacional Humanitario, diferencias y complementariedad, ICRC: Geneva, June 26; available at: <https://www.icrc.org/es/publication/derechos-humanos-dih-diferencias-complementariedad>

CHAPTER II - SEXUAL EXPLOITATION AND ABUSE

The purpose of this chapter is to cover the basic concepts and definitions regarding sexual exploitation and abuse at an international level; it also goes over standards from international organizations that establish procedures to regulate these acts for their personnel working in international scenarios; to then study an emblematic case that illustrates these occurrences in the context of a NIAC. Finally, the reader is provided with some guidelines and recommendations that can be applied in IAC, NIAC and POC scenarios.

Conceptual framework

The following definitions should be kept in mind in order to achieve a better understanding of the topics that will be discussed in this chapter.

-Sexual abuse

The term “abuse” refers to the action of taking advantage of someone to obtain personal gain. In the same vein, the term “sexual” refers to a sexual field or in relation to it, therefore, term “sexual abuse” refers to an actual or attempted physical intrusion of a sexual nature, and, as in sexual exploitation, this is an illegal act against the freedom of an individual who is subdued through a differential in power, trust or violence, against their will by means of coercion, or exploiting a situation of vulnerability, with the purpose of executing activities of a sexual nature.

Similarly, the term “sexual abuse” is defined by the United Nations as “the actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions. All sexual activity with a child (under 18 years of age) is considered as sexual abuse” (Official text, UN Department of Peacekeeping Operations; UN. Department for Field Support, 2018). Examples of this include rape, the production, promotion and dissemination of pornographic materials, sexual relations with minors and persons with certain disabilities, forced nudity, and sexual slavery, among others.

-Sexual harassment

An action of pursuit or persecution with the intent of having, or actually resulting in, sex or other sexual activity.

Hence, “sexual harassment” can be defined as a hostile or degrading act of pursuit or persecution to which a person is systematically subjected to, including unwanted sexual advances, requests for sexual favors, verbal or physical manifestations or behaviors and gestures, as well as any behavior of a sexual nature that may be perceived as offensive or humiliating.

Also, sexual harassment refers to a prohibited conduct in the workplace, which includes any unwanted sexual situation, the request of sexual favors, verbal or physical behaviors or gestures of a sexual nature, or any other demeanor of a sexual nature that could reasonably be expected

to or perceived to cause offense or humiliation to another, when such conduct interferes with work, when it becomes a condition of employment, or when it creates an intimidating, hostile, or degrading working environment (United Nations, 2017). Examples include discrimination, exhibitionism, persecution or pestering, the production of audio-visual material, making sounds (words, noises, whistles, panting, moaning, or other), gestures, obscene acts, disrespectful propositions, leering, or other similar actions provided they have a sexual connotation.

-Sexual assault

This refers to scenarios in which there is physical contact between the aggressor and any part of the victim's body in a sexual way, even through clothing, without the victim's consent. This action differs from sexual harassment because of the intentional physical contact that it entails.

-Sexual exploitation

This concept covers two aspects. The first, "exploitation", revolves around actions pursuant to obtaining a profit or benefit; while the second, "sexual", refers to an individual's intimate sphere or their sexuality. Following these concepts, "sexual exploitation" is the action of actual or attempted abuse by one individual towards another with the intention of obtaining sexual favors to produce an economic, social or political advantage. It constitutes an illegal act against the freedom of an individual subjected by a power differential, trust or violence, against their will or by means of coercion, or by exploiting a situation of vulnerability with the purpose of making them execute activities of a sexual nature, in which the one who exercises dominance receives the reward.

For their part, the United Nations understands the term "sexual exploitation" as any abuse or threat of abuse in a situation of vulnerability, power or trust imbalance, for sexual purposes, including, but not limited to, garnering material, social or political gain from the sexual exploitation of another person (UN, 2003, pg. 6). Examples include forced prostitution, human trafficking and human sale for sexual purposes, the production, promotion and dissemination of pornographic materials, public or private sex shows, and forced pregnancy, among others.

-Sexual exploitation and abuse (SEA)

It refers to acts, such as crimes, contraventions or misdemeanors, that are committed around or for the purpose of committing sexual exploitation, abuse and harassment. This term refers to the institutional analysis of acts committed by the armed forces or other members of State forces during the course of an operation. It should be noted that these acts are often committed to take advantage of real or apparent power relationships, since victims are in a situation of vulnerability or need.

-Sexual and gender-based violence

It can be considered as an act of gender violence with sexual purposes. This term, also known as SGBV, refers to acts of sexual violence whose special characteristic is that they are committed for gender-based reasons.

Along the same lines, it is also worth noting the acts known as CRSV (Conflict-related Sexual Violence), which refer to acts of sexual violence that occur as part of, or in relation to, an armed conflict. Finally, this also includes CRSGBV which is conflict related sexual violence and gender-based violence.

-Vulnerability

Although the term vulnerability literally refers to the characteristic of being vulnerable, in the context of this handbook it also refers to someone's —or a specific group's— probability to prevent, avoid, resist or overcome a negative situation. In the context of exploitation, abuse and sexual harassment, this term refers to the situation which enables the aggressor to take advantage or overpower the victim, or the social, political, economic or psychological conditions that facilitate physical, psychological or moral harm. This is, in some circumstances, the factor that the aggressor exploits in order to perpetrate the acts discussed in this chapter.

Exploitation, abuse and sexual harassment according to the United Nations High Commissioner for Refugees (UNHCR)
<p>Exploitation, abuse and sexual harassment are terms that often cause confusion. The main difference lies in who the victim (also known as "survivor") is.</p> <p>Sexual exploitation and sexual abuse affect people of concern.</p> <p><u>Sexual exploitation</u> is understood as the actual or attempted abuse of a person's power differential, trust, or position of vulnerability —such as a person who is dependent on another for survival or to obtain food rations, schoolbooks, transportation, or other services— for the purpose of obtaining sexual favors, including, among other actions, offering money or other social, economic, or political advantages. Human trafficking and prostitution are part of sexual exploitation.</p> <p><u>Sexual abuse</u> refers to the actual or attempted physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions. Sexual abuse includes sexual slavery, pornography, child abuse and sexual assault.</p> <p><u>Sexual harassment</u> affects personnel and refers to any unwelcome sexual conduct that may be perceived as offensive or humiliating. Sexual harassment can occur in the workplace or in connection with the workplace. Although it sometimes involves patterns of behavior, sexual harassment can also be viewed as an isolated incident. To determine whether certain action is offensive, it is necessary to consider the victim's perspective.</p> <p>For more information, see: UNHCR, Our Fight Against Sexual Exploitation, Abuse and Harassment; available at: https://www.unhcr.org/en-us/our-fight-against-sexual-exploitation-abuse-and-harassment.html</p>

**Sexual exploitation and abuse according to the United Nations Children's Fund
(UNICEF)**

Sexual exploitation is the abuse or attempted abuse of a position of vulnerability or of a relationship of power or trust for sexual purposes.

Sexual abuse is considered to be physical contact or attempted physical contact of a sexual nature, whether imposed by force or under unequal or coercive conditions.

For more information, see UNICEF; available in Spanish at: <https://www.unicef.org/es/postura-de-unicef-respecto-la-explotacion-el-abuso-y-el-acoso-sexual>.

Types of Sexual Exploitation and Abuse: Triggers, Contributing and Risk Factors

The following is a description of the main types of sexual abuse that occur in places where international operations are carried out and where mainly women and girls are affected. Although men and boys are also impacted by these types of crimes, their occurrence is much lower. Similarly, there are a number of factors that, for cultural or social reasons, lead to an increase in these crimes; knowledge of these factors can be used to adopt measures to reduce them.

Sexual abuse and exploitation is recurrent in areas of poverty and humanitarian needs. Thus, in places where there is an international or non-international armed conflict or post-conflict zones, there are optimal conditions for this type of abuse to occur; and to the extent that they are clearly identified, there is the possibility of taking concrete actions to prevent their occurrence.

-Prostitution or transactional sex

The exchange of money, employment, goods or services for sex, including sexual favors, and other forms of humiliating, degrading or exploitative behaviors. Including any exchange of assistance that is due to beneficiaries of assistance. (The term "sexual activity" includes sex and sexual favors) (United Nations, 2017, p. 7).

-Survival or coercive sex

Coercive or survival sex occurs between a person who offers to provide sexual services in exchange for food, basic necessities or even in exchange for security. As is well known, in contexts of conflict, whether international, non-international armed conflicts or post-conflict scenarios, poverty, desperation and lack of security are the main reasons why intervention is required, whether by the United Nations or other international organizations, which will support and protect the population. Members of the United Nations' Forces and other humanitarian organizations are in a position of power compared to the people in need in the host territory, in addition members of these organizations tend to have more resources than the locals, which can lead to them being confronted with the possibility that part of the population wants to obtain some economic benefit, food or security in exchange for sexual benefits, a behavior

that the United Nations have strictly prohibited for all those who are representing the organization.

-Trafficking of persons for sexual exploitation

This is “the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of sexual exploitation. The recruitment, transportation, transfer, harboring or receipt of a child for the purpose of exploitation shall be considered ‘trafficking in person’ even if this does not involve any of the means set forth above (e.g. threat or the use of force or other forms of coercion etc.)” (Official text, United Nations, 2017, pg. 7,8).

-Rape

A crime that can be broadly defined as the act of having sexual intercourse with a person without their consent. However, this crime goes beyond this definition, and can be committed when there is a constrained or defective consent that does not reflect the victim’s genuine will, but is obtained through violence, aggression or threats, or exploiting a situation of vulnerability, through deceit or power imbalances.

Rape also refers to the oral, anal, or vaginal introduction of organs, fingers, objects or animals in the victim, or forcing the victim to introduce them themselves, regardless of the victim’s sex. The United Nations define rape as “penetration –even if slightly– of any body part of a person who does not consent with a sexual organ and/or the invasion of the genital or anal opening of a person who does not consent with any object or body part” (Official text, United Nations, 2017, pg.6).

Sexual violence does not have a single contributing factor: a combination of structural, institutional, individual, cultural and situational aspects are present; there is always a possibility of avoiding this violence if these factors are correctly identified, interrupting the chain of events and thus preventing an undesirable outcome. Therefore, if the contributing factors can be identified according to the context in which they take place, actions can be taken to combat, mitigate or eliminate them. It is therefore more than useful to ask what causes sexual violence, and what are the conditions that make sexual violence more likely to occur at a given time and place. This does not mean that a perpetrator has all of these factors in mind when they carry out an act of sexual violence, however, it does imply that every act of sexual violence arises from a complicated web of factors that, had they developed differently, the result would most likely have been different as well.

Contributing factors include the following:

-Cultural conditions

These include traditions and customs assigned to men, women and the relations between

them, and to sex and gender in a given society. If we are able to understand that every culture in the world has its own traditions and customs, and we approach them respectfully, it is possible to avoid getting involved in situations that we do not understand, as outsiders of said culture, which demands us to be cautious when tackling these cultural conditions.

-Myths surrounding rape

These are myths that are prevalent in certain groups of people or societies in which a series of justifications are sought to make rape appear as a less serious or more acceptable action than it really is (Gibbon, 1984). These myths include:

- a) Women often make false reports of rape;
- b) Women often say "No" to sex when they mean "Yes";
- c) Women who are raped often asking for it (want to be raped);
- d) Rape is usually a crime of passion; or it is acceptable for a man to force a woman to have sex with him if she has been flirting or encouraging him.

-Male entitlement

There are communities in which concepts of honor and male entitlement over women are culturally accepted and where sexual violence goes unpunished. In many countries, the extent of male honor depends on female sexual purity. The rape of a woman "tarnishes" the honor of her husband or her family, and is likely to be punished as a way of restoring the family's honor. Punishment may include her marriage to the rapist, banishment or varying degrees of violence against her, including her murder or "honor killing." Social ideology rooted in male entitlement may deny women the fundamental right to refuse sexual intercourse and fails to recognize marital rape as a problem (National Sexual Violence Resource Center, 2005, p. 8).

-Structural, economic and institutional conditions

Different studies have established that sexual violence is much more common in countries with greater gender inequality, regardless of their level of economic development. There are also certain groups that are affected by poverty, which deepens people's vulnerabilities and leads them to fall into sexual exploitation in places such as work, schools, as well as prostitution, sex trafficking, survival sex and drug trafficking. People who are economically disadvantaged are at greater risk of violence. People without sufficient economic resources to meet their basic needs, particularly women, may have to resort to exchanging sex for essential items in order to survive. Men and boys are no strangers to this reality, especially when rape is used as a military tactic, as a weapon of war to terrorize and break the will to fight of its victims.

-Individual conditions

These refer to the characteristics of the perpetrators themselves, such as psychological disorders, personal experiences, or situations they have had to live through, among others.

-Alcohol and drug use

Alcohol and drug intake causes individuals to act in a way that inhibits their conscience, causing them to lose the ability to react to a sexual attack or aggression. On the other hand, it allows aggressors to use it as a mitigating factor for their actions, they justify themselves by arguing that these substances led them to commit acts for which they are not accountable for (Burgos, 2017, p. 14).

Declaration of Gender Violence Alert in Mexico City

In 2019, several cases of sexual violence committed by the police against young women were made public in Mexico City. These actions led to mass protests demanding justice for the victims and guarantees of non-repetition of the events, as well as the creation, on social networks, of the movement #NoMeCuidanMeViolan (“They don’t look out for me, they rape me”), which sought to make visible the gender-based abuse of authority.

To date, at least 252 cases of sexual crimes committed by members of Mexico City’s security institutions have been documented in investigation files of the Mexico City Prosecutor’s Office. In 78% of the investigation files, the accused belong to the Ministry of Public Security of the Mexico City government, while the rest are distributed among members of private security companies, the Mexican armed forces and other security entities.

Of the 252 investigation files, 81% of the cases occurred when the security agents were on duty and 92% of the victims were women, while 95% of the people charged were men and only 13% of these cases have been prosecuted.

(For more information, see the statement in Spanish of the movement #NoMeCuidanMeViolan: <https://we.tl/t-TPINXNqpRJ>)

All of the above forced the Mexico City government to issue a Declaration of Alert for Gender Violence on November 25, 2019, through which it imposed various government agencies to take measures to reduce and eradicate violence against women in the city, including the Mexico City Police, by establishing a strategy for the comprehensive training of police forces with a gender and human rights perspective, and the creation of a Specialized Gender Unit within the Department, for the comprehensive and timely attention of crimes committed against women.

(For more information, see in Spanish:

<https://jefaturadegobierno.cdmx.gob.mx/comunicacion/nota/se-publica-en-gaceta-oficial-declaratoria-de-alerta-por-violencia-de-genero>)

International norms regarding sexual exploitation and abuse

When it comes to international standards associated with sexual exploitation and abuse, the American conventions on Human Rights should be noted; this is where the States’ concern for women’s rights formally begins, followed by the standards established by the United Nations for their personnel and, thirdly, the standards set by the International Committee of the Red

Cross (ICRC) designed for the members of its work teams which address different roles and teams deployed around the world.

-American Convention on Human Rights (1969)

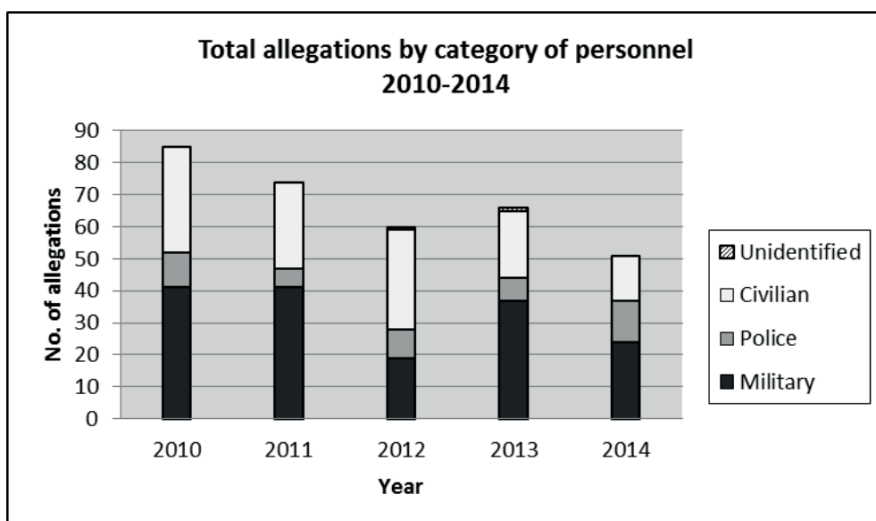
This body of law emphasizes the recognition of the essential rights of all persons; it highlights the international protection every human being is entitled to just by virtue of being a human, it grants this protection through legal instruments that reinforce and complement the domestic law of the American States. Furthermore, article 21 of the American Convention on Human Rights, paragraph 3 indicates on the subject: "Usury and any other form of exploitation of man by man shall be prohibited by law"; it is clear then that acts of sexual exploitation and abuse are not only illegitimate, but also a flagrant violation of human rights.

-Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (1994)

This Convention addresses the importance of unrestricted respect for human rights (enshrined in the American Declaration of the Rights and Duties of Man and the Universal Declaration of Human Rights) as a necessity acknowledged by States through other international and regional legal instruments. It is considered relevant, as it includes the need to eliminate violence against women as an indispensable requirement for their individual, social, political and economic development, and as a factor that leads to full and equal enjoyment in all spheres of life.

-Measures for the Prevention and Protection from Sexual Exploitation and Sexual Abuse established by the United Nations.

This document establishes that peoples are united by close bonds and their cultures form a shared heritage which is affected by grave situations that have struck women, men, girls and boys, threatening the peace, security and well-being of all humanity (United Nations, 1998, p. 3). Likewise, it classifies rape, sexual slavery, forced prostitution, forced pregnancy, forced sterilization or any other form of sexual violence of comparable gravity as *crimes against humanity*, for which a series of measures have been established to prevent these from occurring in various scenarios such as international and non-international armed conflicts, other situations of violence, post-conflict scenarios and, above all, in peacekeeping missions. This is why it states "stressing the importance of ensuring engagement by senior mission leadership on protection of civilians, including the prevention of and response to instances of sexual violence in armed conflict, with a view to ensuring that all mission components and all levels of the chain of command are properly informed of and involved in the mission's mandate and their relevant responsibilities" (Official text, United Nations, 2010, p.3). Thus, among others, a series of measures have been extensively developed to prevent acts of sexual exploitation and abuse by United Nations personnel against persons entrusted to their protection. The following chart shows the number of allegations on the matter between 2010 and 2014, classified by different categories.



Source: Office of Internal Oversight Services.

Figure 1: Allegations against personnel members deployed in peacekeeping operations and special political missions serviced by the Department of Field Support (United Nations, 2015).

It is the general policy of the United Nations to ensure that all reported allegations for which sufficient information is available to initiate an investigation are thoroughly and promptly investigated. Where the results of investigations show that allegations are substantiated, the United Nations will take action within its authority and request Member States to also ensure that those responsible are held accountable for their actions through disciplinary mechanisms or criminal accountability where appropriate.

In January 2015 the Secretary-General of the United Nations presented several proposals that aim to create a zero-tolerance policy towards sexual exploitation and abuse, and that cover prevention, enforcement and remedial actions:

Proposals for the prevention of sexual exploitation and abuse:

- a) They cover risk assessment, training, community outreach, awareness-raising and staff vetting all with a holistic approach.
- b) Prevention strategies assume that individuals have received training that enables them to recognize sexual exploitation and abuse by United Nations personnel and how to report suspected wrongdoing.
- c) They include the development of communication strategies focused on sexual exploitation and abuse that highlight best practices and procedures for receiving complaints which encourages reporting any misconduct.

- d) The proposals update standard operating procedures for public information activities related to sexual exploitation and abuse taking into account lessons learned.
- e) They include mandatory e-learning programs, which will target staff at all levels and categories, including leaders and commanders, and allow for flexible training in multiple languages.
- f) They strive to ensure that United Nations staff who are no longer in service and are found to have committed acts of sexual exploitation and abuse do not re-enter the organization.
- g) Other measures established by the United Nations aim to provide protection to vulnerable population, namely women and children. To that aim, a set of general obligations in the United Nations Staff Regulations and Rules (United Nations, 2016) were established:
 - i. Sexual exploitation and sexual abuse constitute serious misconduct and are therefore grounds for disciplinary action, including expedite dismissal;
 - ii. Sexual activities conducted with persons under the age of 18 are prohibited regardless of the local age of consent. An erroneous estimate of a child's age cannot be raised as a defense;
 - iii. The exchange of money, employment, goods or services for sex, including sexual favors or other forms of humiliating, degrading or exploitative behavior, is prohibited. This includes any provision of assistance that is required to be provided to assistance recipients;
 - iv. Sexual relationships between UN staff members and recipients of assistance, as they are based on inherently unequal power dynamics, undermine the credibility and integrity of the work of the United Nations and are strongly discouraged;
 - v. Should a UN staff member harbor concerns or suspicions regarding the commission of sexual exploitation or abuse by another staff member, whether or not within the same agency or the UN system, they should report such concerns through existing reporting mechanisms;
 - vi. United Nations staff members have an obligation to establish and maintain an environment conducive to the prevention of sexual exploitation and abuse. Managers at all levels have a particular responsibility to support and promote systems to maintain such an environment.

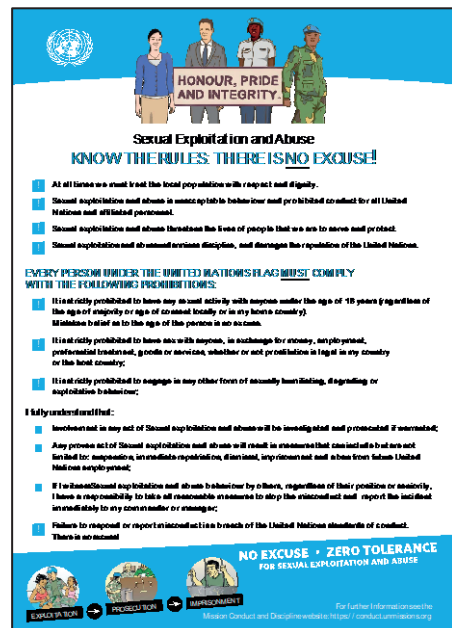


Figure 2: Rules against Sexual Abuse and Exploitation (United Nations, n.d.)

-Code of Conduct for Employees of the International Committee of the Red Cross

The ICRC is an organization with an exclusively humanitarian mission. Its credibility, ability to gain acceptance for its operations and capacity to act are based on the observance of its Fundamental Principles and the trust placed in it by governments, parties to armed conflict and victims in other situations of violence, for whom it seeks to provide protection. The Code of Conduct applies to all ICRC employees and anyone working for the Committee under a contract of employment or on another basis such as a contract with a national organization or other employer, a role as a consultant or as a volunteer. The standards set out in the Code are intended to promote safety, ensure respect for those with whom the ICRC comes into contact, protect employees and project a positive image of the ICRC to ensure the effectiveness and integrity of its work (ICRC, 2018, pg. 4). In accordance with this, the Committee has outlined the following general rules:

- a) The conduct of ICRC employees must be consistent with the Fundamental Principles of the Movement¹¹.
- b) ICRC employees must respect the dignity of the people with whom they come into contact, in particular the beneficiaries of the ICRC's work, and must fulfill their duties for the ICRC, bearing in mind that each of their actions in this context may have repercussions for the fate of many human beings.
- c) The conduct of ICRC employees must be characterized by integrity and respect and loyalty to the interests of the ICRC and must not in any way damage or compromise the reputation of the ICRC. Supervisory staff and managers have a particular responsibility to ensure compliance with the Code. Their conduct must set an example for all their colleagues.
- d) In operational contexts in particular, employees must, both during working and non-working hours and in their private lives, refrain from any conduct that they know or should know is or appears to be inappropriate, particularly in the specific context in which they find themselves.
- e) Employees shall show due respect, particularly through their conduct, dress and language, for the religious beliefs, customs, rules, practices and habits of the people of the country or context in which they are located and of their place of work (e.g. a hospital or prison).

In addition to the aforementioned Code of Conduct, the ICRC establishes more specific rules depending on the context in which they work, their area of activity and their position. In relation to harassment, abuse of power and sexual exploitation, they have the following provisions:

- a) Harassment in any form, including sexual harassment, is strictly prohibited. In general, harassment refers to a pattern of hostile language or actions expressed or carried out against an employee over time. Sexual harassment refers to any sexual or gender-related behavior that is unwanted by the person who is the victim of the harassment and that violates his or her dignity.

¹¹ The seven Fundamental Principles of the International Red Cross and Red Crescent Movement are: humanity, impartiality, neutrality, independence, voluntarism, unity and universality; for further details see: <https://www.icrc.org/en/fundamental-principles>

- b) The purchase of sexual services and any form of sexual exploitation are prohibited. Sexual exploitation is understood as abuse of authority, trust or vulnerability for sexual purposes in exchange for money, labor, goods or services.
- c) Having a sexual relationship with a direct beneficiary of ICRC assistance and protection programs or with a member of their immediate family and using their position to solicit sexual services in exchange for assistance and/or protection provided by the ICRC are prohibited.
- d) Having a sexual relationship with a child under 18 years of age or inciting or forcing a child to engage in sexual activities, whether or not the child is aware of the act committed and regardless of his or her consent. This prohibition also covers pornographic activities (photos, videos, games, etc.) that do not involve sexual contact with the child, as well as the acquisition, storage or circulation of documents of a pedophilic nature, regardless of the medium used.
- e) Abuse, neglect, exploitation and violence against children (minors under the age of 18) is prohibited. Employees shall ensure that the safety and well-being of children are protected at all times, and shall prevent and respond to child abuse, neglect, exploitation and violence. In all actions involving children, the best interests of the child shall be a primary consideration.

Cases of sexual exploitation and abuse

Peru, NIAC Case “Violencia Sexual en Huancavelica: Las Bases de Manta y Vilca (1984-1995)” (Sexual Violence in Huancavelica: Bases of Manta and Vilca). According to the Truth and Reconciliation Commission (2020), this is an emblematic case in terms of sexual crimes during the internal armed conflict in Peru between 1984 and 1991. The case was exposed in 2003 by the Truth and Reconciliation Commission (TRC) with 35 complaints occurring between 1985 and 1994. In 2004, the facts were presented to the Huancavelica Prosecutor’s Office, which investigated and denounced, after four years, the rape of nine women.

The Peruvian Public Ministry has indicted fourteen members of the military of raping nine women in the communities of Manta and Vilca, located north of Huancavelica. Due to subversive activities, a state of emergency had been declared throughout the country since August 1982. On March 21, 1984, a military base was installed in Manta. A state of emergency was declared in Huancavelica in 1984. At that time, human rights were violated, under the assumption that peasants were collaborators or members of the armed group Sendero Luminoso. The acts against the victims’ sexual freedom were committed against their will, there was never a romantic relationship between them and the aggressors, and the criminal acts were committed inside the base as well as in the victims’ own homes.

The case reached the courts in April 2009, and in 2014 the investigative stage of the judicial processes was completed. The prosecution filed the indictment in 2015. The trial began in 2016 in the National Criminal Chamber and lasted two years. The tribunal was removed from the case following the Supreme Court’s decision, which reversed the Chamber’s initial ruling to dismiss a recusal presented by the defense and a second recusal. The first trial was unsuccessful since the judges violated the victims’ right to evidence. Starting in March 2019 there has been an ongoing trial, and to this date the defendants’ representative has offered a limited argument, stating the allegations were just stories fabricated by NGOs, and that there were no sexual violations at all but rather consensual sexual relations. Friday, March 13, 2020,

marked the first anniversary of the beginning of the second trial of the “Manta and Vilca” case, where women were raped more than 30 years ago by military personnel in the context of the anti-subversive policy implemented during that period. The women demand a speedy trial against thirteen members of the military.

The new court accepted the victims’ request for two Quechua interpreters in the process, preferably with knowledge of Quechua Huancavelicano. In this way, the victims’ statements in their mother tongue will be fully respected. The court also considered it appropriate to request psychological accompaniment for the complainants during the trial. An official letter will be sent to the Ministry of Women’s Affairs so that it can designate personnel to participate in the hearings. It should be noted that the defense attempted to obstruct this decision. The president of the Collegiate informed that the court will consider human rights standards and assume a gender perspective regarding sexual crimes, it will also guarantee the right to truth, equality and non-discrimination, as well as the right to evidence, assessing the political context and not exposing the victims to the alleged sexual aggressors. In addition, he pointed out that because this is an “emblematic case” there will be a correspondingly prompt sentence within a reasonable period of time.

Guidelines and recommendations

The following are some guidelines and recommendations for those responsible for planning and executing the deployment of personnel to conflict and post-conflict areas where conditions in which sexual exploitation and abuse may arise.

-Including tools and best practices as sexual exploitation and abuse (SEA) prevention measures

It is highly recommended that personnel involved in operations receive training prior to participation in an IAC, NIAC, OSV and POC scenarios. These training programs should be mandatory, ongoing and continuous, complemented by SEA awareness exercises, supported by case studies and supported by a wide range of training materials, including specific tools for all levels and programs.

The Inter-American Court of Human Rights on the obligations of training in Mexico

The Inter-American Court of Human Rights has deemed pertinent to “require the State to create and implement, within two years, a training plan for officers of the Federal Police and the police of the State of Mexico aimed at:

- a) Raising the awareness of members of the police forces: that they should include a gender perspective in police operations; regarding the discriminatory nature of gender stereotypes such as those used in this case, and with regard to the absolute duty to respect and protect the civilian population with whom they come into contact in the context of their work keeping public order.

For more information see Inter-American Court of Human Rights Case of Women Victims of Sexual Torture in Atenco v. Mexico. Preliminary Objections, Merits, Reparations and Costs. Judgement of November 28, 2018. C Series. No. 371, paragraph 355.

The case is currently in compliance monitoring status.

There are several tools to obtain better results in training prior to participation in IAC, NIAC, OSV and POC scenarios, such as employing a train-the-trainer model based on the basic material provided and deploying mobile teams for military/police and civilian participation. In addition, military and police contingent personnel, as well as any other civilian personnel involved in the aforementioned situations, must obtain certification that they have received prior training. Among other aspects, training should focus on avoiding inappropriate off-duty contacts with the local population and outline the reasons why such contacts should be minimized or even avoided.

The initial training and its updating in the development of an IAC, NIAC, OSV or POC allows specific training for each scenario and can, in particular, have an impact on how to proceed when it comes to reporting possible irregularities. An online training program on the prevention of SEA is a tool that is simple to implement and can be mandatory for all uniformed and civilian personnel who are part of or participate in an IAC, NIAC, OSV or POC scenario. This tool can be translated into the different languages spoken in the territory where the operation is deployed. The best solution is to design a tailor-made training process. First, mandatory generic (basic) training would help all personnel understand SEA and its implications more effectively than if more expert sessions were conducted.

Secondly, there should be specialized training. To this end, specialized training sessions could be organized for trainers (train-the-trainer) where there are large numbers of staff in need of training; for local government officials, they should be briefed on all aspects of SEA; for recipients of assistance, community outreach programs should be included; while for specific functions, such as public information, and for administrators and managers, key management responsibilities should be addressed.

Senior managers in the field play a crucial role in preventing SEA by implementing precautionary policies. They should be fully informed of their institution's, agency's, group's or association's position on SEA protection and their obligation to integrate anti SEA measures into program designs and evaluations.

In IAC and NIAC settings where inappropriate behavior is most likely to occur, it should be made clear to all staff that sexual contact with persons under the age of 18 is strictly prohibited and that such acts should in all cases be considered sexual abuse, with the legal consequences and administrative sanctions that it entails. The allegation of a possible error regarding the age of the minor cannot be used to justify such conduct.



Figure 3 Campaign Zero Tolerance for Sexual Exploitation and Abuse (UN,2021)

Prostitution can be legally and culturally accepted, so training should specifically address that issue. In this regard, for the very least, caution should be exercised regarding the desirability of refraining from soliciting prostitution services or engaging in any prostitution-related activity and prohibiting the use of such services is recommended.

The training of the participants in the operations with a gender focus should be foreseen according to their levels of command, with the possibility of generating content common to all and others according to rank/position or function.

Training with a gender perspective for operations participants should have an approach that corresponds to the different levels of command, while generating content that is common to all according to their rank or function.

-Researching, selecting and evaluating personnel as an efficient way to prevent SEA. For practical purposes, enforcing such mechanisms means subjecting individuals involved in NIAC, OSV and POC to a thorough review, including background checks, monitoring and evaluation

Selection is usually done through a basic filter; therefore, the term “selection mechanism” is usually used when dealing with troops or civilian personnel, while an “investigation mechanism”, which is a narrower filter, is mainly associated with commanders.

Investigation and selection mechanisms should include a misconduct monitoring system preserved in a database that allows for the tracking of previous assignments and verifying staff rotation. Awareness of this issue should also be ensured among hired personnel or external partners, through the use of recruitment databases. In addition, the existence of a pre-participation training certification for each individual in a NIAC, OSV or POC scenario has become a precondition for the employment of national contingents.

Report A/72/751 of February 15, 2018, provides new measures to protect against sexual exploitation and abuse, such as background checks, to avoid hiring those who have had a disciplinary record for such acts, and risk mitigation tools. There is also, in addition to this document, the Administrative Instruction ST/AI/2017/1 of October 26, 2017 which establishes sanctions when there are reasonable grounds to believe that these acts have been committed. The UN Secretary-General’s Bulletin of October 9, 2003 establishes dismissal as one of the possible consequences for these acts, and Report A/60/980 of August 16, 2016 makes an analysis about the criminal responsibility that may proceed in these cases and the category of the crimes that aggressors might incur in.

-Creating and instating mechanisms for public information and its dissemination geared at local communities in NIAC, OSV and POC scenarios

A key strategy to reduce the risk of SEA and minimize its harmful consequences is to effectively raise awareness regarding what constitutes acceptable behavior from the personnel participating in NIAC, OSV or POC scenarios, and how to report any observed irregularities in this regard. Indigenous and rural populations must be especially considered, as they are vulnerable groups and, in many countries, they are the most affected by this type of behavior.

Communication should reach out to local government officials, civil society organizations, community groups, international organizations, non-governmental organizations, schools and religious communities. Awareness campaigns should be aimed at avoiding the impunity caused by fear, indifference or by avoiding any conflict, understanding multilingual or predominantly illiterate environments, adopting an inclusive scope using translations into non-official languages and including people with visual or hearing disabilities, ensuring all community members will understand.

Awareness raising measures for local communities should be diversified to maximize their accessibility (for example, through print media, poster campaigns, intra-network websites, newsletters, radio broadcasts, briefings during town hall meetings, and community talks on specific Codes of Conduct). It is also possible to distribute translated copies of the Codes of Conduct to communities and make them available to interested parties.

The local population should at least be aware of the commonly accepted definition of SEA, the standards of conduct for personnel participating in a NIAC, OSV or POC scenarios, their right to receive humanitarian assistance without being subject to SEA, the existing services and how to access them and where to report incidents of SEA as well as what to expect next, including possible referrals, timelines, and responsibilities of the actors involved.

Another important element in the prevention of SEA is the well-being and recreation of the personnel, which seeks to optimize the living and working conditions of the participating personnel in any scenario.

-Promoting the spread of information on the prohibition of SEA and the investigation of any acts that go against the rules

People should have access to information channels that enable them to file anonymous complaints or reports, either verbally or in writing, (for example, closed mailboxes, private meeting rooms for confidential reporting, hotlines, safe email addresses, the designation of regional coordinators, key community leaders trained on SEA, staff employed at a Gender-Based Violence Center, Women’s Centers or medical centers and NGOs, agencies, etc. specialized on SEA).

Reporting in the Duty Station

SILENCE IS NO EXCUSE!

If you have knowledge of sexual exploitation and abuse you **must** report it to one of the following:

- **The Commander or manager of your unit**
- **The Mission Conduct and Discipline Team**

NAME OF OFFICE

LOCATION

PHONE / E-MAIL

- **The focal point for sexual exploitation and abuse**

NAME OF OFFICE

LOCATION

PHONE / E-MAIL

VICTIM ASSISTANCE:

- **ALL VICTIMS OF SEXUAL EXPLOITATION AND ABUSE ARE ENTITLED TO SAFE AND CONFIDENTIAL ASSISTANCE**
- If the victim is a child, special considerations for the protection and support to the child are needed.
- Treat the victim with respect and dignity, and direct or assist the victim for support to the nearest UN office, the Conduct and Discipline Team, or the PSEA Focal Point.
- Where immediate medical assistance is needed, refer the victim to the nearest medical centre.

Figure 4.- Information on complaints in mission areas

Regarding the dissemination of codes of conduct and the awareness campaigns in local communities, it is essential to incorporate translations into non-official languages, as well as ensuring people with visual or hearing impairments are included.

Personnel should receive information during their training on how to report misconduct. The information should also be available on intranet sites or specialized applications and should be disseminated through poster campaigns or broadcast messages. In the event of a suspected SEA incident, its notification should be mandatory, ensuring that all personnel involved in a NIAC, OSV or POC scenario are familiar with the proper channels to report SEA cases.

Upon receiving a report of possible misconduct, the information should be reviewed and evaluated to determine whether the alleged acts, if true, would constitute a violation of the relevant code of conduct. If sufficient information is available to reach that conclusion and the alleged acts constitute misconduct, the matter should be investigated.

Inspectors must initiate and conduct independent, impartial, thorough and prompt investigations in coordination with the internal oversight bodies. Investigations should be respectful of the extremely sensitive nature of the complaints, as well as the age and gender-based vulnerability of the victims, with the full cooperation of commanders.

If an accusation of serious misconduct is substantiated, the person—or persons—responsible must be removed from office without delay, so the corresponding disciplinary sanctions and other legal actions, including criminal and civil actions, can be taken.

States in general have an important role to play in facilitating investigations and strengthening accountability. One possibility is to use on-site martial courts to address allegations that constitute sexual offences under national law and only in the case of military contingents. Another possibility is to obtain DNA samples from uniformed personnel alleged to have committed SEA, if such measure is permitted by national law.

Allegations of SEA should be investigated immediately, as soon as they become known, to properly preserve the evidence. The initiatives can even improve their basic capacity to carry out investigations through Quick Impact Projects; although, on the other hand, it is equally useful to carry out long-term projects to build the State's capacity in this field.

-Analyzing criminal liability situations of SEA. The role of criminal liability in the suppression of SEA

Within the framework of managing situations of SEA during operations, the analysis of the criminal liability that exists in the application of mechanisms of criminal repression has great relevance. The analysis of the applicable norms during operations is of great importance for their effective application and for determining the liability of the offenders or of the state.

In the training process, the criminal liability of operations personnel should be emphasized, the legal consequences of carrying out these behaviors should be shown, and the message that functional immunity does not work in these cases should be reinforced. In this sense, it is necessary to highlight a set of legal mechanisms which aim to establish responsibility, so that

steps can be taken to criminally prosecute those who have committed SEA and other related acts, in order to overcome the deficit in the criminal prosecution of these conducts. This becomes relevant if one bears in mind that the mission of the operations personnel is to protect and serve the population and that, therefore, the commission of such acts must be effectively punished.

The importance of following a detailed control and coordination in the investigation of SEA cases lies in providing adequate information, evidence, and input to the judicial system in order to determine the criminal responsibility of the individuals who have committed the criminal acts.

The role of law enforcement must be highlighted when it comes to aiding in the reception of SEA complaints, either for sexual violence, trafficking or other types of abuse committed by participants in situations of violence or conflict. This is important since usually, due to fear, retaliation or lack of authority, these acts are not documented, nor recognized by any authority, losing all their value and credibility in times of post-violence, as they cannot be truthfully and reliably accredited, in order to be investigated and compensated by the State.

Best practices regarding prevention and response to SEA are contained in Annex II of the UN Secretary General Report titled "Special Measures for Protection from Sexual Exploitation and Abuse: A New Approach" of February 28, 2017. Among the measures taken in relation to specific SEA allegations (for example, those made by South Africa in the Democratic Republic of Congo) is conducting judicial proceedings *in situ*, allowing for a judicial process close to the location of the victims. Measures taken to strengthen investigations include the prompt appointment of national specialized investigation staff to execute actions to process SEA complaints (for example, in the Democratic Republic of the Congo, Egypt, Morocco, Togo, Uruguay, among others).

-Analyzing compensation mechanisms for victims, including trust funds or the facilitation of paternity claims, as well as alternative dispute resolution mechanisms

Assistance and support should be provided to complainants, victims, and children allegedly born as a result of SEA, even before the complaint's investigation has been completed. This support can be provided through local services, programs, networks or community mechanisms that are appropriate to the given context and always in a manner that does not isolate or stigmatize the complainants. This may include medical assistance, facilitating the access to psychological support, shelter, clothing, food and protection (when their physical safety is objectively considered to be at risk). Similarly, efforts should be made to keep the victim informed about the process following the filed complaint (United Nations, 2015).

In order to guarantee the protection of the complainants, victims, witnesses, representatives and the children of SEA, the confidentiality and privacy of all information must always be maintained, providing mechanisms to avoid any unauthorized disclosure of data, as well as systems of sanctions to take disciplinary action against those who omit such protection. The health response should include examination and treatment of injuries, prevention of illness and unwanted pregnancies, collection of minimal and necessary forensic evidence, medical

documentation and follow-up care. Psychosocial services should provide mechanisms to help the victim recover from, or as far as possible avoid, traumas and side effects of SEA (feelings of guilt, shame, resentment or fear). It is imperative that complainants, victims, witnesses, and children born out of SEA are not forced to identify the offender, prove the existence of SEA, or wait for sentencing as a result of criminal prosecution in order to receive assistance. Upon request for legal advice as a complainant, victim, or witness of SEA, officials will inform the complainant of all legal options, procedures, and timeframes, as well as safety measures to prevent further harm from the alleged offender and to warn them about any potential deficiencies or problems in national or traditional justice systems (seeking to provide all information necessary for the assistance of the affected persons).

Trust funds can be established to provide resources to support victim assistance services and projects, including the funding of:

- a) Specialized services: assistance and support to complainants, victims, and children resulting from SEA, including medical care, legal services, and psychosocial support.
- b) The closing of gaps in the process of providing assistance and support.
- c) Sensitizing communities.
- d) Providing additional support and communication for complainants, victims and children resulting of SEA.

When a child is born as a result of an act of SEA committed by a member of an operation, the proceedings for paternity claims and child support must be facilitated, and all the rights enshrined in the Convention on the Rights of the Child must be respected.

Regarding paternity claims, it is necessary to emphasize the protection of the best interest of the child. It is every child's right to know his or her parents and to be cared for by them, whose primary responsibility is to provide, within their economic capacity, the living conditions necessary for the development of the child.

In the same vein, genetic samples (deoxyribonucleic acid —DNA—) should be collected since they can be fundamental in guaranteeing the effectiveness of the investigations and often constitute convincing evidence for the development of criminal and other judicial proceedings. States should be encouraged to use DNA samples for paternity testing and to designate institutions for the coordination of paternity investigations. Once the paternity is confirmed, it should be legally recognized and the necessary steps should be taken to ensure the payment of child support.

-Restorative justice

This aims to solve the problem of crime, focusing on the compensation of the damage caused to the victims, through a process in which the offender assumes the responsibility of their actions. Restorative justice is based on the following premises (United Nations, 2006):

- a) The response to the crime must repair, to the extent possible, the damage suffered by the victim.

- b) The offender must understand that their behavior is not acceptable and that it had real consequences for the victim and the community.
- c) The offender must accept responsibility for their actions.
- d) Victims should have the opportunity to express their needs and participate in determining the best way for the offender to repair the harm caused.

The community has a responsibility to contribute to the process.

Final remarks

To recapitulate, "sexual exploitation" is the action of actual or threatened abuse, real or intentional, by one individual against another with the intention of obtaining sexual favors to produce an economic, social or political advantage; this includes prostitution, trafficking in persons and their sale for sexual purposes, the production, promotion and dissemination of pornographic materials, public or private sexual performances, forced pregnancy, among others.

On the other hand, "sexual abuse" refers to a real or threatened physical interaction of a sexual nature, subjected by differential power, trust, violence, against their will or through coercion, or taking advantage of a situation of vulnerability; as in sexual exploitation, this is characterized as an illegal act against the freedoms of the individual, any type of sexual activity with a child under 18 years of age is considered sexual abuse. Some examples are rape, production, promotion and dissemination of pornographic materials, sexual intercourse with minors and or persons who cannot consent, forced nudity, and sexual slavery, among others.

In accordance with the rules established by international organizations for those who are part of their work teams, it is absolutely forbidden to maintain or carry out any action that may be interpreted as an act of harassment, abuse or sexual exploitation and if it is carried out, there are consequences for the officer that range from administrative sanctions, such as repatriations, and even judicial sanctions provided for in the applicable legislation, including the duty to generate the respective compensation to the victims, once the respective investigations have been completed.

This chapter also illustrates that in case of alleged acts of sexual abuse in the context of a NIAC, the military personnel involved is prosecuted and punished, and they must offer reparations for the victims.

Finally, guidelines and recommendations are presented to create and include various tools and good practices as SEA prevention measures: investigate, select and evaluate personnel as an efficient way to prevent SEA; create and install, according to the context, whether NIAC, OSV or POC, mechanisms for public information and outreach to local communities; promote mechanisms for information on the prohibition of SEA and for investigation in case of acts contrary to the norm; analyze criminal liability in the context of SEA situations and

compensation mechanisms for victims, including trust funds or the facilitation of paternity claims, as well as mechanisms for alternative dispute resolution.

References

International Committee of the Red Cross. (May 2018). Retrieved on 04 08 04 2021, from https://www.icrc.org/sites/default/files/wysiwyg/code_of_conduct_may_2018.pdf

UNHCR. (n.d.). UNHCR UNHCR; available at: <https://www.unhcr.org/en-us/our-fight-against-sexual-exploitation-abuse-and-harassment.html>

United Nations. (13 of 02, 2015). www.acnur.org; available at: <https://www.acnur.org/fileadmin/Documentos/BDL/2015/9941.pdf?view=1>

United Nations. (16 Feb. 16, 2016). United Nations, General Assembly; available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N16/040/59/PDF/N1604059.pdf?OpenElement>

United Nations. (16 of 12, 2010). www.acnur.org; available at: <https://www.acnur.org/fileadmin/Documentos/BDL/2011/8324.pdf>

United Nations. (17 Jul 07, 1998). www.un.org; available at: <https://www.icc-cpi.int/resource-library/documents/rs-eng.pdf>

United Nations. (2006). www.unodc.org; available at: https://www.unodc.org/documents/justice-and-prison-reform/Manual_sobre_programas_de_justicia_restaurativa.pdf

United Nations. (9 October 2003). United Nations, Secretariat; available at: <https://undocs.org/pdf?symbol=es/ST/SGB/2003/13>.

United Nations. Department of Peacekeeping Operations; UN. Department for Field Support. (01 de 05 de 2018); available at: https://www.un.org/preventing-sexual-exploitation-and-abuse/sites/www.un.org/preventing-sexual-exploitation-and-abuse/files/the_military_aide_memoire_united_nations_measures_against_sexual_exploitation_and_abuse.pdf

United Nations. (24 July 2017). Glossary on Sexual Exploitation and Abuse. Geneva: UN. https://hr.un.org/sites/hr.un.org/files/SEA%20Glossary%20%20%5BSecond%20Edition%20-%202017%5D%20-%20English_0.pdf

United Nations. (n.d.). www.conduct.unmissions.org; disponible en: https://conduct.unmissions.org/sites/default/files/2-sea_flyer-a4-en.pdf

United Nations (2021). Conduct in UN Field Missions; disponible en: <https://conduct.unmissions.org>

CHAPTER III - CONFLICT-RELATED SEXUAL VIOLENCE

“Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault.”

(IV Geneva Convention, Article 27)

This chapter covers some of the concepts necessary for a good understanding of sexual violence and its relationship with IAC, NIAC, OSV and POC. Next, it presents some cases that clearly show the different situations of violence found in the conflicts described. Later on, the provisions established by International Human Rights Law and International Humanitarian Law regarding violence are discussed, to conclude with a series of guidelines and recommendations for the training of those responsible for planning and executing the deployment of personnel in conflict or post-conflict scenarios.

Conceptual framework

The following definitions are presented below for an adequate understanding of the topics that will be addressed during the development of this chapter.

-Gender-based violence

This concept has a generally broader scope than sexual violence, since it includes not only acts of sexual violence, but also acts of a non-sexual nature, such as certain forms of domestic violence (for instance, assaults) or honor killings (for instance, dowry-related deaths).

This violence is committed because of the victim's gender or is based on socially attributed gender roles. Some examples of gender-based violence include domestic violence, rape, sexual exploitation or abuse, forced prostitution, trafficking in human beings, forced marriage and child marriage, female genital mutilation, honor killings, forced sterilization and forced abortions. In specific reference to men and boys, rape can also take many forms: oral and anal rape, gang rape, rape with objects (such as sticks, bottles, hoses, drills and metal skewers), sexual slavery, forced nudity, being forced to perform sexual acts with others (including family members), tying or beating of the genitals, cigarette burns to the genitals and anus, injury and mutilation of the penis or testicles, and castration. Gender-based violence is very likely to occur in situations of detention (International Institute of Humanitarian Law, 2019, p. 52).

A clear and precise definition of gender violence can be taken from the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women — Convention of Belém do Pará—: “an offense against human dignity and a manifestation of the historically unequal power relations between women and men”. (For Latin American countries

complying with this convention is mandatory if they have ratified it). Law No. 11,340, of August 7, 2006 (Maria da Penha Law).

-Sexual Violence

It covers any act of violence of a sexual nature directed against one or more persons or the of coercing a person to participate in such an act, such as that caused by fear of violence, coercion, detention, psychological pressure or abuse of power, or by taking advantage of a coercive environment or the inability of such person or persons to give genuine consent.

This category includes rape, sexual slavery, forced prostitution, forced pregnancy, forced abortion, forced sterilization, forced marriage and any other form of sexual violence of comparable gravity perpetrated against women, men, girls or boys. Acts of sexual violence are motivated by the desire to assert power and domination, inflict suffering or abuse authority, and may be motivated by opportunistic crimes, war tactics or other practices. Sexual violence has serious physical, psychological, social and economic consequences for victims, survivors, families and communities.

The terms "victim" and "survivor" can both, in principle, be used interchangeably, but it should be noted that the scope or extent of each is different; in this Handbook the term "victim" is used in the sense of also including secondary victims, this is, persons who are injured as a direct result of having witnessed or subsequently learned about an act of sexual violence.

Sexual violence is a global phenomenon, very often widespread, not committed in isolation, but rather linked to other violations of human rights and also IHL (for example, murder, child recruitment, looting, etc.) and is also a crime that has been described as "invisible", due to feelings of guilt, shame, fear of reprisals or taboos that may prevent victims from reporting it (International Institute of Humanitarian Law, 2019, p. 51).

In contexts such as NIAC, OSV and POC, sexual violence has been a distinctive feature both in the past and the present. Thus, incidents of conflict-related sexual violence (CRSV) occur. CRSV can have different causes, including it being used for political, military or psychological purposes with the aim of controlling a territory, a population or resources and it is frequently and deliberately used against vulnerable populations, causing among others: psychological trauma, humiliation and displacement (UN, 2017). CRSV can be committed by anyone, against anyone and in many different ways.

-Non-discrimination

The Geneva Conventions of August 12, 1949 and the Additional Protocols of June 10, 1977, establish a principle of equality to the effect that "no unfavorable distinction may be made between individuals on the basis, among others, of sex". This principle is reflected in Article 12 of the II Geneva Convention, which requires parties to a conflict to treat persons in their power humanely. This article prohibits any "adverse distinction founded on sex [...] or any other similar criteria" (Official text). Article 2(1) of Additional Protocol II reproduces the same words in relation to armed conflicts of a non-international nature (ICRC, 2014).

-Protection of women

Like all civilians, women are protected, on the one hand, against abuses by the warring party in whose power they are, and, on the other hand, against the effects of the hostilities. Any person who is not a member of the armed forces is a civilian (art. 50, Additional Protocol I).

In the case of an international armed conflict (IAC), a woman belongs to the category of persons protected under the IV Geneva Convention relative to the Protection of Civilians in Time of War. In these conditions, they benefit from all the provisions which enunciate the fundamental principle of humane treatment, which includes respect for life and physical and moral integrity, prohibiting coercion, corporal punishment, torture or collective punishment, reprisals, pillaging and hostage-taking. Moreover, in case of offenses committed in connection with the armed conflict, they have the right to be tried by an impartial and lawfully constituted court, respecting judicial guarantees.

In addition to the general protection enjoyed by other civilian victims, "women shall be especially protected against any attack on their honor, in particular against rape, enforced prostitution, or any form of indecent assault" (Official text, art. 27, paragraph 2, IV Geneva Convention, art. 75 and 76 Additional Protocol I).

This provision was introduced to condemn certain practices that took place, for example, during the Second World War (1939-1945), when countless women of all ages were subjected to the greatest outrages: rapes committed in occupied territories, brutalities of all kinds, mutilations, etc. In the regions through which the troops passed or where they were stationed, thousands of women were sent, against their will, to houses of prostitution [...] The acts against which women are protected by virtue of Art. 27, paragraph 2°, IV Geneva Convention, are prohibited in all places and under all circumstances, and women, whatever their nationality, race, religion, age, marital status or social condition, have an absolute right to the respect and intangibility of their honor, their modesty, and, in short, their dignity as women (Unofficial translation, Kril, 1985).

For its part, article 76 from Additional Protocol I, entitled "Protection of Women" has its origin in a Resolution of the UN Economic and Social Council of April 1970, on the "protection of women and children in time of emergency or in time of war, struggle for peace, national liberation and independence" (unofficial translation), by virtue of which the UN Secretary General is invited to pay particular attention to this problem.

This provision is an advance of IHL over Article 27, paragraph 2, IV Geneva Convention, insofar as it widens the circle of beneficiaries; it is also a considerable extension of the International Covenant on Civil and Political Rights, which does not contain specific provisions for the protection of women. In other words, this norm refers to all women on the territory of the Parties to the conflict.

In the event of non-international armed conflict (NIAC), women are protected by the fundamental guarantees concerning the treatment of persons not taking part in hostilities,

which are contained in Article 3 common to the four Conventions. It contains the following provisions relevant to the prohibition of rape and other sexual abuse: paragraph 1.a prohibits violence against persons, including "mutilation, cruel treatment, torture and humiliation"; and paragraph 1.c prohibits "outrages upon personal dignity, in particular humiliating and degrading treatment".

However, this article does not provide special protection for women. Additional Protocol II completes and expands this provision. Thus, Article 4 establishes that women are expressly protected against "humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault" (Official text).

IHL affords women broad protection. Not only do they benefit from all the provisions that generally protect victims of armed conflict, but some 40 of the 560 articles contained in the Geneva Conventions of 1949 and their Additional Protocols of 1977 also concern women.

Although, in reality, women are not always as protected as they should be, this is not due to the lack of a legal framework. Despite the adoption of the IV Geneva Convention and the Additional Protocols, women, as part of the civilian population, are still the first victims of indiscriminate attacks against them.

It should be noted that common Article 3 and Additional Protocol II also apply to the actions of armed groups. Common Article 3, which expressly states that "each Party to the conflict" is bound by its provisions, applies to armed groups. While Additional Protocol II, like other IHL treaties, constitutes an agreement between the "High Contracting Parties", Article 1(1) provides that the Protocol applies to situations where a state is confronted by dissident armed forces or organized armed groups. State practice indicates that armed groups are bound by these rules both as a collective and as individual members of a group. This has been supported by the International Court of Justice in the *Nicaragua v. United States of America* case and by the Inter-American Commission on Human Rights in the *La Tablada* case, with respect to common Article 3. In the latter, the Inter-American Commission stated the following: "[...] Common Article 3's mandatory provisions expressly bind and apply equally to both parties to internal conflicts, i.e., government and dissident forces. Moreover, the obligation to apply Common Article 3 is absolute for both parties and independent of the obligation of the other" (Official translation, par. 174).

The UN Commission on Human Rights has also called on armed groups to abide by Additional Protocol II.

The relevance of the provisions does not depend on the consent of the armed groups concerned, unlike states, which have a sovereign right to decide whether or not to ratify a treaty. In fact, some armed groups have sought to formally accede to IHL treaties, a practice that has usually been opposed by governments. In any case, this is not expressly permitted under the terms of the treaties, although special agreements, such as those used in the former Yugoslavia, are recommended. Armed groups are obliged to respect both the IHL treaties ratified by the state in whose territory they operate and customary international law. Thus, the specified precepts of IHL can and should be applied to hold armed groups accountable for

their often serious and systematic acts of violence against women in armed conflict. International criminal law procedures reinforce accountability in this area.

-Conflict-Related Sexual Violence (CRSV)

It is an expression that, although not used in International Humanitarian Law (IHL) treaties, has become increasingly common.

CRSV refers to incidents or patterns of sexual violence that are directly or indirectly (temporally, geographically or causally) related to a conflict. The link to the conflict may be evident in the profile and motivations of the perpetrators, the profile of the victim(s), the wider climate of impunity and weakening of state power, cross-border actions or the fact that it is committed in violation of the terms of a ceasefire agreement.

CRSV is generally understood as sexual violence committed by armed or unarmed individuals, encompassing both state actors (military, police and paramilitary under the direct command of other state actors) and non-state actors (rebels, arms bearers, militia organizations, organized criminal networks). The term CRSV also covers human trafficking for sexual purposes when committed in the context of armed conflict.

In contexts such as OSV, POC, crisis, emergencies, and displacement, sexual violence is not limited to the acts of CRSV; in fact, they are also committed as a consequence of the collapse of community and family structures, the lack of security, the absence of the rule of law, and the prevalence of impunity. This generally takes place in a context of inequality that can make women, girls, boys, and sexual minorities particularly vulnerable and exposed to extreme forms of gender-based violence perpetrated by armed combatants or civilians, strangers, or intimate partners.

Professionals should be aware that CRSV does not occur in isolation from other forms of sexual violence, it is usually implicit or, in some cases, normalized. Because of this, they should be very attentive to the testimonies that may be received at any stage of the aforementioned contexts, so as not to re-victimize the person who suffered the CRSV.

The UN understands conflict-related sexual violence (CRSV) as actions perpetrated against men, women, girls or boys, which are conflict-related and may include rape, sexual slavery, forced prostitution, forced pregnancy, forced abortion, forced sterilization, forced marriage and all other forms of grave sexual violence (Security Council, 2020).

CRSV can be perpetrated by anyone, against anyone and in many different ways. However, usually the perpetrator is associated with an armed group, which could even be a terrorist one. Examples include ISIS (Daesh) and Al-Qaida. The victim is usually associated with political, ethnic or religious minorities who are persecuted for their sexual orientation or gender identity, usually in an environment of impunity and lack of governance (Security Council, 2020).

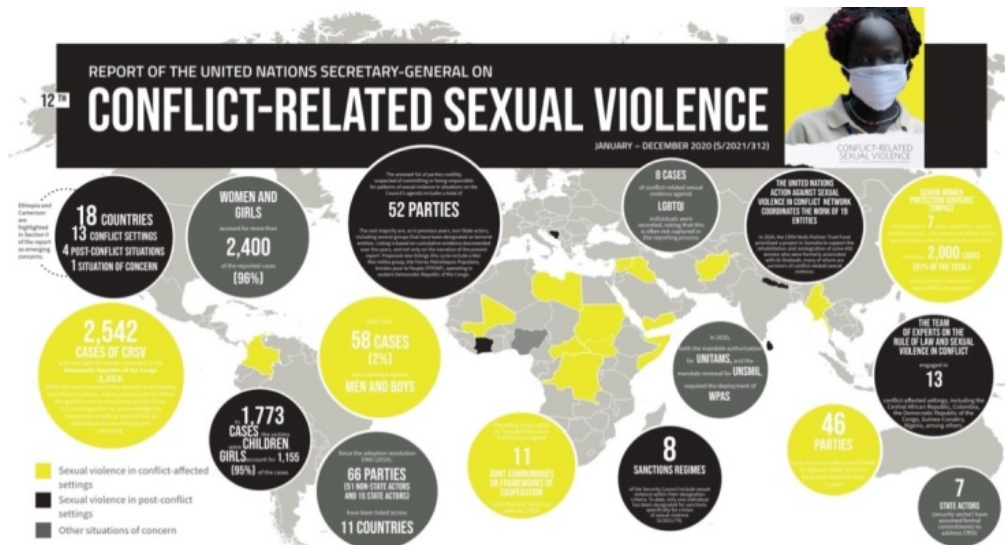
CRSV occurs in conditions in which states find themselves collapsed without an authority that can ensure compliance with an adequate rule of law and without control of a part of their

territory. This, added to a climate of violence, makes it possible for impunity to be a characteristic of such sexual violence (United Nations, 2020).

In contexts where movements of people take place, either voluntarily or forcibly, within the same territory of a country or across country borders, cases of CRSV also occur, which is both a consequence and a reason for the forced displacement of people. For example, CRSV is used to displace communities from a territorial area in order to seize land and the natural resources that may exist there (United Nations, 2020).

In addition, when refugee camps are set up, which are usually not properly organized and guarded, new victims of sexual violence are generated, either at the hands of state authorities, armed groups, traffickers, smugglers who control resources and services, as well as other local or displaced persons from the same communities. This is why the nexus between CRSV, trafficking and violent extremism has been recognized by the United Nations Security Council (United Nations, 2020).

From the 12th Annual Report of the United Nations Secretary-General on Conflict-Related Sexual Violence (CRSV), for January to December 2020, it stands out that of the 2,542 cases of CRSV, 1,053 occurred to the Democratic Republic of Congo. While the report notes the severity and brutality of the incidents verified, it does not reflect the global scale or prevalence of this crime, recognizing the limitations resulting from COVID-19 restrictions on monitoring and reporting. Other data reveal that 2% of all cases involve men and boys (Secretary General, United Nations, 2021).



It also highlights that Senior Women's Protection Advisors (SWPAs) are deployed in 7 peace operations or special political missions. The presence of SWPAs has better reflected data collection and analysis in CRSV. More than 2000 cases (81% of the total) were reported in countries where SWPA clusters were implemented. The UN Action Against Sexual Violence in Conflict network coordinates the work of 19 entities. In 2020, the CRSV Multi-Partner Trust Fund prioritized a project in Somalia to support the rehabilitation and reintegration of some 400 women formerly associated with Al-Shabaab, many of whom are survivors of conflict-related sexual violence (Secretary-General, United Nations, 2021).

The attached list of parties credibly suspected of committing or being responsible for patterns of sexual violence in situations covered by the Council's program includes a total of 52. The vast majority are, as in previous years, non-state actors, including several groups that have been designated as terrorist entities. The list is based on cumulative evidence documented over the years, not just the report's description. The proposed new listings for this cycle include a militia group "Mai-Mai", the "Forces Patriotiques Populaires", and the "Armées pour le Peuple" (FPP/AP), operating in eastern DRC (UN Secretary-General, 2021).

Understanding how gender relations manifest themselves in any society and in any conflict-related situation whether NIAC, OSV or POC is key. The prevalent gender stereotypes in different societies and the inevitable gender roles that emanate from them shape how men, boys, women and girls experience conflict and how it manifests itself. Traditional patriarchal social models often portray women and girls as submissive, passive, and less valuable than men. Women and girls may also be stereotyped as symbols of family, honorable and pure, and as such become "natural" victims. The models described above can play a role in encouraging the commission of violent sexual acts against women and shape their different manifestations and motivations. Particularly in the scenarios of NIAC, OSV and POC, sexual violence is equally perceived and deserves to be considered for its particular characteristics in the context of the improvement of the Handbook developed by the International Institute of Humanitarian Law (IIHL).

Sexual violence has been used on countless occasions as a real tactic of war or as a way to spread terror in certain groups of the population, either with political or military objectives. Some of the reasons used by these groups to achieve their objectives have been identified.

- a) Control over a population (through terror or intimidation);
- b) Control over a territory (vital terrain, cities, trade routes, etc.);
- c) Control over natural resources (mining areas, fossil fuel reserves, forests, water sources, etc.);
- d) Control over life and reproductive rights through deliberate targeting of ethnic/religious communities.
- e) Punishment of civilians suspected of supporting opponents.
- f) Humiliation of victims/survivors in order to destroy the social fabric of societies and fracture families and communities; and
- g) As a form of socialization and group bonding among perpetrators, incentive for recruitment or to generate income.



Figure 6.- Reasons for committing CRSV. (United Nations, 202).

The United Nations has repeatedly established that States have the primary responsibility to prevent and address CRSV, but sometimes authorities may be unwilling or unable to respond adequately to CRSV-related crimes, both during and after situations of armed conflict. Special care must be taken to ensure that there will not be a culture of impunity for CRSV, which occurs when there are no adequate legal responses, both in terms of time and quality. Otherwise, a series of consequences will follow that are harmful in the short and long term for victims, survivors of CRSV and their communities, as well as for the strengthening of the rule of law and the achievement of sustainable peace (United Nations, 2020).

An effective way to reduce CRSV is to ensure accountability for those who commit CRSV crimes, an effective approach to deter reoccurrence and to send a message that intimidates perpetrators and communities that such actions are not acceptable. Accountability is also a way to provide peace of mind to victims and survivors as it helps them to rebuild their lives. In addition, lack of justice is often a root cause and catalyst for conflict; promoting justice is a fundamental condition for restoring peace and security (United Nations, 2020).

Cases of conflict-related sexual violence

The following cases illustrate the reality of Latin America, considered the most violent region in the world.

-Non-International Armed Conflict (NIAC)

Case “The consequences of the Colombian armed conflict with regard to women’s human rights”.

The 2002 Report of the Special Rapporteur on violence against women, its causes and consequences, Mrs. Radhika Coomaraswamy, following her visit to Colombia on an official mission in November 2001, reveals with documents the consequences of the armed conflict for women, the widespread and systematic nature of gender-based violence and the various forms of violence suffered by women. The international bodies demonstrated how violence against women in Colombia was “habitual”, “generalized” and “systematic” (Coomaraswamy, 2001).

Inter-American Court of Human Rights. Case of Miguel Castro Castro Prison v. Peru. Merits, Reparations and Costs. Judgment of November 25, 2006. Series C No. 16020.

223. When analyzing the facts and their consequences the Court will take into account that the women that were affected by the acts of violence differently than the men, that some acts of violence were directed specifically toward the women and others affected them in greater proportion than the men. Different Peruvian and international organizations have acknowledged that during the armed conflicts women face specific situations that breach their human rights, such as acts of sexual violence, which in many cases is used as “a symbolic means to humiliate the other party”.

224. It has been acknowledged that during domestic and international armed conflicts the confronting parties used sexual violence against women as a means of punishment and repression. The use of state power to breach the rights of women in a domestic conflict, besides affecting them directly, may have the purpose of causing an effect in society through those breaches and send a message or give a lesson.

306. In relation to the aforementioned, it is necessary to make emphasis on the fact that said forced nudity had especially serious characteristics for the six female inmates who, as proven, were submitted to this treatment. Likewise, during the entire time they were in this place, the female inmates were not allowed to clean themselves up and, in some cases, in order to use the restroom they had to do so in the company of an armed guard who did not let them close the door and who aimed their weapon at them while they performed their physiological needs (supra para.197(49)). The Tribunal considers that these women, besides receiving a treatment that violated their personal dignity, were also victims of sexual violence, since they were naked and covered only with a sheet, while armed men, who apparently were members of the

State police force, surrounded them. What classifies this treatment as sexual violence is that men constantly observed the women. The Court, following the line of international jurisprudence and taking into account that stated in the Convention to Prevent, Punish, and Eradicate Violence against Women, considers that sexual violence consists of actions with a sexual nature committed with a person without their consent, which besides including the physical invasion of the human body, may include acts that do not imply penetration or even any physical contact whatsoever (Official translations).

The case deals with the international responsibility of the state for the excessive use of force that resulted in the death of dozens of persons deprived of liberty and numerous injured in the context of an operation at the Miguel Castro Castro penitentiary center. Many of the injured persons were kept without medical attention for several days and those who were taken to the hospital did not receive the medicines or medical attention they required. Likewise, there were several violations based on acts of violence against women deprived of their liberty.

Inter-American Court of Human Rights, *Case of Espinoza Gonzales v. Peru*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 20, 2014. Series C No. 28921.

141. The Court has established that torture and cruel, inhuman or degrading treatment or punishment are strictly prohibited by international human rights law. The prohibition of torture and cruel, inhuman or degrading treatment or punishment is absolute and non-suspendable, even under the most difficult circumstances, such as war, threat of war, the fight against terrorism and any other crimes, states of emergency, or internal unrest or conflict, suspension of constitutional guarantees, internal political instability or other public emergencies or catastrophes.

Nowadays, this prohibition is part of international *jus cogens*. Both universal and regional treaties establish this prohibition and the non-suspendable right not to be subjected to any form of torture. Also, numerous international instruments recognize this right and reiterate the same prohibition, including international humanitarian law.

195. Lastly, the Court considers it pertinent to recall, as already established in this case, that one of the forms of the generalized practice of torture was the generalized practice of sexual violence against women, in particular by State agents, and against women who were presumably involved in the armed conflict (supra paras. 62 to 66). The Court also recalls that special mention was made of the DINCOTE as a place where rape was perpetrated frequently (supra para. 159). In this regard, the Court finds that what happened to Ms. Espinoza is consistent with this generalized practice. Since they took place in this context, the Court considers that the acts of sexual violence against Gladys Espinoza also constituted acts of torture the absolute prohibition of which, it reiterates, belongs nowadays to the domain of international *jus cogens* (supra para. 141) (official translation).

184. After precise examination of the case, it stems from the domestic convictions that an "illegally armed group" subjected Mrs. Yarce to "criminal actions, including [...] death threats [...] constantly" and "aggressions" prior to her death. The foregoing is sufficient to conclude that Ana Teresa Yarce was in a situation of risk, which finally materialized with her death. This situation of risk acquired particular characteristics, given that, within a situation of armed conflict, the events took place in a context in which violence against women, including threats and homicides, was habitual and numerous acts of aggression and harassment directed against human rights defenders were also occurring.

194. On the other hand, even if it has not been proven that the murder of Mrs. Yarce was motivated by her gender, it is certain that, in accordance with what has already been indicated, before that event the State had, based on Article 7(b) of the Convention of Belém do Pará, a specific duty of protection given its knowledge of the context of violence against women and women human rights defenders in the context of the armed conflict, which manifested itself in the neighborhoods of Medellín. Indeed, as has been indicated, it has been documented that in this context women, especially those who were organized, saw their security affected, and various pronouncements prior to Yarce's death, both from international organizations and others, have reported an increase in violence, including homicides, and human rights violations against women.

243. With regard to the particular impact referred to, the Court observes that it is clear from the context that the forced displacement in Colombia had a differentiated or disproportionate impact on women because of their gender. This circumstance was documented by various international organizations, which identified that women were not only the largest displaced population group, but also "exacerbated" the "difficulties" inherent to displacement or, in the words of the Colombian Constitutional Court, the greatest "hardships" of the phenomenon. The Colombian Constitutional Court itself declared that the violence derived from the armed conflict had a differentiated and exacerbated impact on women, who as a consequence of this impact were disproportionately affected by forced displacement. This impact was translated into the deepening of different patterns of gender discrimination and violence, including violence against women leaders. It highlighted the existence of "unusually high exposure and vulnerability" due to "dangers of all kinds" for displaced women.

In addition, the Constitutional Court identified various problems specific to displaced women, such as difficulties with the official registration system for the displaced population, as well as obstacles to accessing the system of care for the displaced population. This Court assumes that the displacement of Mrs. Naranjo, Mrs. Rúa, Mrs. Ospina and Mrs. Mosquera, inserted in the situation described, had a particular impact on them linked to their gender. As a result of their displacement, they faced a

situation of aggravated vulnerability. Likewise, the facts of this case show the difficulties that the women had in accessing the state systems for the displaced population. The Court, due to the particularities of the forced displacement of women, recognizes these circumstances (unofficial translations).

Another case to keep in mind is that of the radical group Boko Haram in Nigeria, which is responsible for kidnapping women and girls, often forcing them into marriages involving repeated rape. Sometimes these marriages were presented as a form of "protection" against rape by other members of the group. Girls who refuse marriage or sexual contact within marriage faced violence and death threats. Forced marriage, slavery, and the "sale" of abducted women and girls are fundamental elements of Boko Haram's modus operandi and ideology. (Hernandez, 2021).

-Other Situations of Violence (OSV)

Case: "Domestic Violence: Maria da Penha Law"

Law No. 11. 340, known as the "Maria da Penha Law", in force in Brazil since 2006, creates mechanisms to curb domestic and family violence against women in terms of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women "Convention of Belém do Pará" of the Organization of American States (OAS), ratified by Brazil in 1994, and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) of the United Nations (UN). A study sponsored by the Institute for Applied Economic Research (IPEA - Brazil) shows that the Maria da Penha Law has reduced the homicide rate by approximately 10% against women in the home (Republica Federativa do Brasil, 2006).

Case "Gangs weaponizing rape"

El Salvador has highlighted both the alarming recurrence with which gang members use rape to terrorize local communities and the cultural entrenchment of the practice among the country's gangs. The girlfriends of El Salvador's Mara Salvatrucha (MS13) and Barrio 18 gang members are frequently victims of gang rape and even murder. In addition, gangs commonly kidnap and abuse women and girls who are not related to the group. (Gurney, 2014)

-Post-Conflict (POC)

Case "Violence Against Women (1995-2018)"

In Ecuador, 1994, specialized police stations for women and family issues were created, which were some of the first governmental spaces to deal with gender-based violence. Subsequently, in 1995, Law No. 103 or The Law on Violence against Women and Family was enacted, which covered the 3 classic forms of violence: physical, psychological and sexual, it also offered various protection measures for

victims. Since 2018, there is a new law which considers masculinities as sociocultural construct based on roles and values associated to the behavior of men. It also includes other types of violence like economic, symbolic, politic and gynecological-obstetric violence. The criminalization of these forms of violence takes place in a POC context, since they include a trial for the aggressors.

Sexual Violence in the light of International Human Rights Law (IHRL) and International Humanitarian Law (IHL)

Rape and other forms of sexual violence are absolutely prohibited by IHRL at all times and by IHL, both during the development of any type of conflict and during peacetime. IHRL can complement IHL in times of armed conflict, especially with regard to acts of sexual violence that have no nexus to armed conflict and can also provide guidance on the interpretation and application of IHL prohibitions against sexual violence.

While most human rights treaties and instruments, both universal and regional, do not contain explicit or specific prohibitions of sexual violence, they do enshrine the right to life, liberty and security of persons, and the non-suspendable prohibition of torture, cruel, inhuman or degrading treatment or punishment contained in most of them provides a solid basis for prohibiting virtually all forms of sexual violence at any time and in any situation. In addition, recent case law tends to treat sexual violence as a separate crime.

IHL treaties prohibit acts of sexual violence in the Geneva Conventions and their Additional Protocols, and this prohibition is also part of customary IHL.

Sexual violence also constitutes a crime against humanity when committed as "part of a widespread or systematic attack directed against a civilian population and with knowledge of such attack" or as an act of genocide, when perpetrated "with intent to destroy, in whole or in part, a national, ethnical, racial or religious group as such." CRSV is also a crime in most national legal systems.

On May 25, 1993, the United Nations Security Council constituted the ad-hoc International Criminal Tribunal to try war crimes committed in the former Yugoslavia (ICTY). During this conflict, sexual violence emerged as one of the most heinous crimes committed against girls and women to sow terror and as part of a process of ethnic cleansing. The Statute establishing the mandate of the ICTY includes rape as a crime against humanity in Article 5.

Subsequently, on November 8, 1994, the body responsible for ensuring international peace and security created the International Criminal Tribunal for Rwanda (ICTR), which incorporates rape as a crime against humanity, a war crime and a violation of Common Article 3 of the Geneva Conventions.

The jurisprudence of both tribunals formed the basis for the inclusion of a gender perspective in the Statute that creates the International Criminal Court: the Rome Statute (Amnesty International, 2018).

Thus, in the Akayesu case, the International Criminal Tribunal for Rwanda (ICTR) set a global milestone by finding —on September 2, 1998— Jean Paul Akayesu, former mayor of the Rwandan city of Taba, guilty of rape for failing to prevent and stop a rape in his official capacity, and not for having committed it personally. The ICTR found that rape constituted torture and that, under the circumstances, widespread rape as part of "measures aimed at preventing births within the group" constituted an act of genocide. For example, in societies where ethnicity is determined by the identity of the father, raping a woman to impregnate her may prevent her from giving birth to her child within her own group. As a result, the First Trial Chamber found him guilty of genocide, direct and public incitement to commit genocide and crimes against humanity, and sentenced him to life imprisonment in a Malian prison. This is the first international conviction for genocide and the first to recognize sexual violence as a constituent act of genocide.

For its part and according to the verdict of the International Criminal Tribunal for the former Yugoslavia (ICTY), during the Bosnian war, Serb forces practiced mass rapes among Muslim women in that region; the Tribunal estimated that the victims may have numbered between 20,000 and 44,000 women. These rapes occurred mainly in the territory of eastern Bosnia, during the Foča massacres, and in Grbavica, along the siege of Sarajevo. In the ICTY judgment, the Trial Chamber found that the crime of rape can be understood as "a grave violation of sexual autonomy." In its review of the common law and civil law of various jurisdictions regarding definitions of the crime of rape, the Chamber concluded that the fundamental principle linking the two legal systems "[...] is that such serious violations of sexual autonomy must be criminalized" (ICTY, 2001). From which the following perpetrators were convicted: Dragoljub Kunarac, sentenced to 28 years imprisonment; Radomir Kovač, sentenced to 20 years imprisonment; Zoran Vuković, sentenced to 12 years imprisonment; Milorad Krnojelac, sentenced to 12 years imprisonment; and, Dragan Zelenović to 15 years imprisonment. After the Bosnian War rape was recognized for the first time as a weapon of war, employed as a tool of ethnic cleansing and genocide.

Emblematic cases of conflict-related sexual violence, crimes against humanity and genocide include:

- a) Prosecutor v. Jean-Paul Akayesu, Case No. ICTR-96-4-T, ICTY Trial Chamber I, Judgment of 2 September 1998, paras. 597, 687;
- b) Prosecutor v. Zejnil Delalic, Case No. IT-96-21, ICTY Trial Chamber II, Judgment of 16 November 1998, discussion, paras. 475-496, and conclusions, paras. 943, 965;
- c) Prosecutor v. Anto Furundzija, Case No. IT-95-17/1-T, ICTY Chamber II, Judgment of 10 December 1998, paras. 264-269;
- d) Fernando and Raquel Mejía v. Peru, Inter-American Commission on Human Rights, Report No. 5/96, Case No. 10,970, 1 March 1996, para. B.3.a; -Prosecutor v. Dusko Tadić, ICTR Chamber II, Opinion and Judgment of 7 May 1997, para. 559. See also paras. 607, 613-615.
- e) Prosecutor v. Dragoljub Kunarac et al, Case No. IT-96-23 and IT-96-23/1, ICTY ICTY Trial Chamber II, Judgment of 22 February 2001;

- f) International Tribunal on War Crimes against Women (Tokyo Tribunal) on Sexual Slavery at the hands of the Japanese Army, para. 6; <https://www.iccwomen.org/tokyo/summary.htm>
- g) Aydin v. Turkey (57/1996/676/866), European Court of Human Rights, Judgment of 25 September 1997, paras. 13, 20, 86; available at: <https://www.corteidh.or.cr/tablas/r23736.pdf>

The Rome Statute includes crimes of gender-based violence as crimes against humanity or war crimes, according to the context in which they are committed:

-Article 7- Crimes against humanity [...] f) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity (official text).

-Article 8- War crimes. 2. For the purpose of this Statute, "war crimes" means: [...] Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions (official text)

As for Genocide, sexual violence was not expressly included in Article 6 which defines it as: "[...] any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: [...] b) Causing serious bodily or mental harm to members of the group.

However, both doctrine and jurisprudence have indicated that it can be considered as constituting Genocide and various agreements have resulted in the inclusion of the following note in subparagraph b: "This conduct may include, but is not necessarily limited to, acts of torture, rape, sexual violence or inhuman or degrading treatment".

The complementary nature of the International Criminal Court positively affects the imperative need for states under its jurisdiction, to enact national laws that incorporate these crimes (Amnesty International, 2018). The gender mandate that intersects international criminal justice, is not only reflected in the crimes it typifies, but also in the construction of its organs and procedures, which include, for example, Article 42: "The Office of the Prosecutor. [...] 9. The Prosecutor shall appoint advisers with legal expertise on specific issues, including, but not limited to, sexual and gender violence and violence against children" (Official text). Another article that allows us to identify the presence of the gender perspective in the Statute is the one related to the protection due to victims: Article 68. "Protection of victims and witnesses and their participation in the proceedings: 1. he Court shall take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses. In so doing, the Court shall have regard to all relevant factors, including age, gender as defined in article 7, paragraph 3, and health, and the nature of the crime, in particular, but not limited to, where the crime involves sexual or gender violence or violence against children" (Official text, International Criminal Court, 1998).

International criminal law deals with the criminal responsibility of persons who have committed crimes of an international nature, such as those noted above. According to the Rome Statute of the International Criminal Court, sexual violence includes the following crimes: rape, sexual

slavery, enforced prostitution, forced pregnancy, enforced sterilization, and any other form of sexual violence of comparable gravity. Rape and other forms of sexual violence can be investigated and prosecuted as a war crime, as a crime against humanity, and as a constitutive act of genocide (United Nations, 2020).

-Sexual violence as a war crime: It includes actions of sexual violence that take place during an international or non-international armed conflict both against civilians not participating in the hostilities and with combatants or persons directly participating in the hostilities. Thus, "the participation of women in hostilities is not a recent phenomenon, since, to a greater or lesser degree, throughout history women have taken part in wars" (Kril, 1985).

-Sexual violence as a crime against humanity: it takes place when sexual violence is carried out in a systematic or generalized manner against civilian population, with the intent or knowledge of the perpetrator of the attack. It may qualify as a Crime against Humanity if it is part of the policy or is tolerated by a government or an organized armed group. In the case of Crimes against Humanity, they do not necessarily have to be associated with an armed conflict and, therefore, can take place in peacetime as well as in an IAC, NIAC, OSV or POC.

-Sexual violence as an element of genocide: in this situation the act of violence has to do with the objective pursued, and includes actions aimed at the partial or total elimination of a national, ethnic, racial or religious group. Sexual violence is directed at a group, seeking harm or destroy that group.

To recapitulate, the Rome Statute of the International Criminal Court defines *crimes against humanity* as any of the following acts, when committed as part of a widespread or systematic attack against a civilian population and with knowledge of the attack: murder; extermination; enslavement; deportation or forcible transfer of population; imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; torture; rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization or any other form of sexual violence of comparable gravity; persecution of a self-identified group or collectivity on political, racial, national, ethnic, cultural, religious, gender or other grounds universally recognized as unacceptable under international law; enforced disappearance of persons; the crime of apartheid; and other inhumane acts of a similar character intentionally causing great suffering or serious injury to body or to mental or physical health.

It should be noted that the crimes of rape, sexual slavery, forced prostitution, forced pregnancy, forced sterilization and "any other form of sexual violence" are criminalized as crimes against humanity in Article 7.1.g, as war crimes in international armed conflicts (Article 8.2.b.xxii), and as war crimes in non-international armed conflicts (Article 8.2.e.vi). Gender-based persecution of groups is criminalized in Article 7.1.h, and slavery, including "the exercise of such attributes in trafficking in persons, in particular women and children," in Article 7.1.c. Both practices are considered *crimes against humanity*.

States are obliged to address violations of IHRL and IHL, including sexual violence under domestic laws. This is why they are responsible for complying with and enforcing human rights in the territory under their jurisdiction. The rights to life and physical integrity are guaranteed by

almost all national constitutions around the world and are also protected by the respective national criminal laws. Provisions of national laws prohibit rape and sexual offenses. In addition, once ratified, international conventions and treaties become part of national law, enabling national courts to sanction, in case of violations of their norms (United Nations, 2020).

Military commanders are those who, not only have the obligation to comply with these guidelines, but also must control their troops and therefore are also responsible for the lack of such control, sharing responsibility with the actor or actors of the crimes. Thus, the commander is responsible when (United Nations, 2020):

- a) Knew or, due to the circumstances of the time, should have known that the forces were committing or were about to commit such crimes; and,
- b) When failing to take all necessary and reasonable measures within their power to prevent or suppress the commission of the crimes, or failed to submit the matter to the competent authorities for investigation and prosecution.

In addition, it is important to remember that the laws of a large number of countries provide for the discipline of military personnel through the establishment of a military justice system for criminal and disciplinary offenses, including sexual offenses and the responsibilities of those who must monitor that these do not occur.

Accountability measures should include at least the following aspects:

- a) States should conduct adequate, timely, effective, independent and impartial investigations into allegations of violations of IHRL and IHL, and prosecute suspects through the appropriate jurisdiction in their national legislation.
- b) In addition to prosecution, persons who have participated in serious violations of IHRL and IHL should not be admitted to the security forces or, where appropriate, should be expelled from them.
- c) It should be made easier for victims to file complaints. This would help victims to access essential medical care and psychosocial support. It could also contribute to the prosecution of CRSVs, including as an international crime. Billboards, community radio and theaters can be used to facilitate reporting. In addition, long-term community mobilization strategies should be implemented to change prevailing local norms of behavior. Access to information and support services should be facilitated, including during emergency periods (for example, 24-hour hotlines, transportation to health centers, community first responders who can accompany survivors to services).
- d) Witness protection and support should be given priority. Shelters that promote a sense of security for the victim should be made available, as well as, in the courtroom, closed-door testimony and screens to protect witnesses while they testify.
- e) Reparations for victims of sexual violence, beyond financial compensation and other forms of restoration (for example return of property, restoration of liberty), can be provided through rehabilitation (provision of medical, psychological, social and legal services), satisfaction (such as cessation of violations, truth-seeking, public

apologies, acknowledgement of the violence) or guarantees of non-repetition (which may include reforms to laws, increased public budget, creation of violence-related public policies and assistance institutions).

Guidelines and recommendations

The following are aimed at those responsible for planning and executing personnel deployment to conflict or post-conflict areas where conditions for the occurrence of sexual violence may be prevalent.

-Preparing the trainees to carry out a gender analysis aimed at identifying the risks and consequences of sexual violence against women, men, girls and boys in NIAC, OSV and POC contexts

Some scholars argue that structural gender-based discrimination is one of the causes of sexual and gender-based violence (SGBV) and that gender inequality can influence prevention strategies in high-risk situations.

Widespread and systematic sexual and gender-based violence is based on gender-discriminatory social norms, including discriminatory family codes that entrench men's domination over women and children; severe restrictions on women's civil liberties, access to claims and rights; institutionalized biases against children, women and men; and normalized everyday violations of women's physical and bodily integrity.

Hence the need to disaggregate data following gender related criteria in the context of conflict. In addition, structural gender stereotypes affect the frequency of sexual and gender-based violence crimes, as well as the possibilities of reporting these events. For example, rape is so traumatic for men and boys, insofar as it undermines their conception of masculinity and political identity, that the victim is often unable to file a complaint. In addition, there may be a lack of male doctors trained to assess rape against men. On the other hand, access to health care for women may be more difficult in certain contexts (for example, a woman who must be accompanied by a male relative to travel outside the home; lack of female doctors to treat women).

Therefore, policies should not only seek to prevent sexual gender-based violence by focusing on the prosecution and social rehabilitation of individual perpetrators and on reforming justice systems to end impunity for such violence, but they should also address the social dimension of gender inequalities and discriminatory practices.

Non-international armed conflicts (NIAC) should be distinguished from other forms of violence (OSV), whose main characteristic is that they do not present the same level of intensity, and can be classified as riots, civil disturbances, and isolated and sporadic acts of violence in general. However, their consequences can be as devastating and lethal as those of an armed conflict (ICRC, 2011).

In order to fulfill a humanitarian mission in a situation of violence, it must be assessed whether or not the situation constitutes an armed conflict. To this end, the situation of violence must be carefully analyzed in order to define the applicable legal framework. In OSV, IHL is not applied, instead International Human Rights Law (IHRL), states' domestic law, states' constitutional guarantees and their means and mechanisms for the protection of human rights are applied in such cases.

-Providing the appropriate cognitive and operational tools to prevent and respond to CRSV

It is imperative that both regular armed forces and non-state armed groups, arms bearers or organized armed groups (OAGs) prevent sexual violence. The prohibition of sexual violence should be integrated into all operational documentation, strategic concepts and specific guidelines. Best practices and lessons learned in the prevention of CRSV should be disseminated throughout the chain of command.

With regard to the OAGs, collaborative efforts should address in particular the following aspects: end all CRSV-related activities and release hostages and sex slaves with immediate effect; agree that all perpetrators will be held accountable for violations committed of human rights and IHL, including CRSV, and will be prosecuted in accordance with the applicable law; inform them that their activities will be closely monitored, recorded and reported; remove/dismantle unauthorized checkpoints and roadblocks to prevent harassment and extortion; declare commercial areas as "weapon-free zones" to facilitate safe economic activity for women; recognize the status of refugees and internally displaced persons; declare disarmament, demobilization and reintegration camps as weapon-free zones; and make clear that amnesty provisions will not apply to perpetrators of CRSV.

Undoubtedly, front-line personnel are key for the prevention and protection of people in situations of violence, as they are the first people to whom the victim or first responder turns to. Therefore, the proper management of protocols is essential to avoid revictimization and even more so to avoid abandoning cases that could be pursued ex officio.

-Identifying the needs related to the assistance and relief of sexual violence victims

Victims should always be guaranteed unimpeded access to timely and adequate health care, including psychological support, shelter and economic support (including, for example, food, water and clothing), as well as security and protection from further violations or reprisals. Interpreters (especially those fluent in indigenous languages) can play a crucial role in ensuring such access. The privacy, confidentiality and wishes of the victim must be fully respected. In OSV and POC scenarios, national and local governments have this responsibility. The UN and humanitarian organizations can provide support in these tasks.

The medical response to sexual violence involves addressing the victim's health problems; making a complete medical history that registers sexual violence; conducting sexual violence exams, documenting and treating injuries; conducting STI/HIV/pregnancy testing; providing emergency contraception and post-exposure prophylaxis (PEP) for HIV; collecting forensic evidence and securing its safekeeping, documenting findings in a medical affidavit. It is

important to bear in mind that the medical report is the most important element and often the only evidence in CRSV cases, aside from the victim's testimony.

However, on many occasions the victims are unable to access medical services in time due to the obstacles they encounter when reporting the facts, so that in many cases, the injuries have already healed, and possible evidence has been lost. In all cases, the victim's consent to conduct an examination is required.

The psychological and mental health response to sexual violence should include the following: providing the victim with individual counseling; discussing with the victim possible options for seeking justice; providing group counseling; working with the victim to deal with attitudes of stigma and rejection; working with the victim and the community to promote reintegration and social acceptance; promoting income-generating activities for victims; and, extending protective measures to members of the community who have also been affected.

While victims need social/community support, the underlying cultural, social and gender norms of a community often make it difficult for the victim to receive such support or obtain reparations. By reporting sexual assault, victims of sexual violence may jeopardize their status, social prestige, and economic capacity. Indeed, they often face a myriad of obstacles, including revictimization, ostracism, discrimination, and the loss of their livelihoods. Women victim of sexual assault, especially young mothers, can be marginalized and stigmatized by their own families and communities because of the "dishonor" associated with sexual violence. Also, female victims often face economic hardship; this is particularly true in societies in which a woman's access to resources is based on her relationships with male family members. Hence the need to help communities positively change their norms, educate the victim's family and share with them examples of positive cases in which stigmas have been eradicated. In addition, specific programs that provide financial support can help victims and promote their reintegration into their communities.

Victims should be assisted in accessing justice, at all times and in all circumstances; it is necessary to facilitate access to specialized gender justice so that they can immediately turn to it.

However, since this is a very delicate issue, it is recommended to have shelters for women victims of violence where they can feel safe and have psychological, health and legal support, since the first statement is extremely important to start an investigation and have at least some certainty of the situation that occurred in terms of violence.

It is recommendable that the personnel are trained to be able to identify, within the structure of the state, how they should act, the specific existing laws applicable, the available mechanisms, the specialized police departments, the available means of investigation, the support centers for victims and the instruments of repression available.

Health care providers must be able to move freely and have access to victims while the local health sector must be supported and engaged. Indeed, health care providers play a dual role in the response to CRSV, providing clinical care to victims, but also assisting with the justice

process. Accordingly, health care providers should be trained to conduct a thorough forensic examination, as well as complete relevant medical or police forms, collect, store and document evidence, and testify in court. Practical protocols should be developed for evidence collection in CRSV emergency situations. More generally, states should allocate greater resources within the budgets of Ministries of Health to address CRSV and comply with the recommendations of the UN system and regional and international treaties and conventions.

-Addressing issues of criminal liability for sexual violence

Sexual violence can constitute a serious violation of IHL and a crime in the context of non-international armed conflicts (NIAC). Rape and other forms of sexual violence have been explicitly recognized in international law as a separate category of crimes in international and non-international armed conflicts.

-Explaining the routes for prosecuting sexual violence.

Primarily, national legal systems hold the responsibility for prosecuting sexual violence. All states must investigate sexual violence crimes allegedly committed by their nationals or on their territory (in addition to the crimes they are required to prosecute under the principle of universal jurisdiction). Likewise, orders, doctrines and rules of engagement of armed forces and police should prohibit and criminalize sexual violence.

In addition, national and international criminal laws relating to SGBV and CRSV should be harmonized, especially with when it comes to the definition of crimes (for example, the definition of rape in the Rome Statute is gender-neutral, which is not always the case in national laws, which sometimes only recognize women and girls as possible rape victims). Effective and efficient enforcement of laws criminalizing sexual violence requires strong state justice.

The defense and security sector (military, police and other public forces) should be staffed and trained to recognize sexual violence and to protect the population from such crimes committed by non-state actors. Appropriate procedures should be established to prevent and punish sexual violence committed by state officials with disciplinary and criminal sanctions.

Women, women's organizations, other civil society organizations, formal and informal leaders at national/provincial/local levels, including traditional and religious leaders, as well as community networks, should take an active position in developing the various key roles they play. To this end, they should influence parties in a NIAC, OSV and POC contexts to address the issue of CRSV; sensitize communities about sexual violence to avoid marginalization and stigmatization of victims; as well as support victims in accessing justice and reparations and combat the culture of impunity surrounding these crimes.

It is necessary to strengthen specialized training on human rights, gender and violence for all those involved in CRSV issues. In addition, armed groups and other actors involved in CRSV acts or suspected of having committed them need to be actively involved in these processes. In this regard, the following actions can be taken: engaging key leaders/contact persons to

enforce accountability, try to influence the armed group's behavior and actions so that they cease all CRSV-related violations and release hostages/sex slaves with immediate effect, let them know that their activities are being closely monitored and reported, emphasize that amnesty provisions will not be applicable to CRSV, and support governments in the arrest, disarmament and prosecution of CRSV perpetrators.

Final remarks

As it has been pointed out throughout this chapter, sexual violence is a part of conflicts, it is present in all types of conflicts such as IAC, NIAC, in OSV and also during the POC. It is precisely for this reason that this chapter includes guidelines aimed at taking actions to raise awareness of the harm this violence causes to the population and effectively mitigate its effects.

It should be noted that in contexts such as OSV, POC, crisis, emergencies and displacement, sexual violence is not limited only to acts of CRSV; in fact, they increase as a consequence of the collapse of community and family structures, the lack of security, the absence of the rule of law and the prevailing impunity in communities in conflict. This generally takes place in a context of inequality that can make women, girls, boys and minorities particularly vulnerable and exposed to extreme forms of violence, gender-based violence perpetrated by their own communities, by armed combatants, civilians or intimate partners.

Hence the importance that those responsible for planning and executing the deployment of personnel to conflict or post-conflict areas can generate the conditions to prevent the occurrence of sexual violence, training with a gender analysis aimed at identifying the risks and the actual existence of sexual violence against women, men, girls and boys in NIAC contexts, OSV and POC, provide appropriate cognitive and intervention tools to prevent and respond to CRSV, identify needs related to assistance and relief for victims of sexual violence, be able to address issues related to liability for crimes of sexual violence and explain what are the avenues for prosecution of crimes of sexual violence. All of these concrete measures are a contribution to the preparation and training of personnel, with the aim of reducing sexual violence.

References

Amnesty International (2018) Sexual Violence in International Humanitarian Law and the Rome Statute; available at: <https://www.amnistia.org/ve/blog/2018/03/5160/la-violencia-sexual-en-el-dih-y-el-estatuto-de-roma>

Coomaraswamy, R. (2001). www.hchr.org. Retrieved on 7 OCT 2021, from <https://www.hchr.org.co/documentoseinformes/documentos/html/informes/onu/resvm/E-CN-4-2002-83-Add3.html>

Gurney, K. (7 NOV 2014). www.insightcrime.org. Retrieved 10/7/2021, from <https://es.insightcrime.org/noticias/noticias-del-dia/pandillas-el-salvador-violacion-arma/>.

International Committee of the Red Cross (ICRC) (2014) The Geneva Conventions of 1949 and their Additional Protocols; available at: <https://www.icrc.org/es/document/los-convenios-de-ginebra-de-1949-y-sus-protocolos-adicionales>

International Criminal Court, Rome Statute. The text of the Rome Statute circulated as document A/CONF.183/9 of 17 July 1998, as amended by the procès verbaux of 10 November 1998, 12 July 1999, 30 November 1999, 8 May 2000, 17 January 2001 and 16 January 2002. The Statute entered into force on July 1, 2002; available at: [https://www.un.org/spanish/law/icc/statute/spanish/rome_statute\(s\).pdf](https://www.un.org/spanish/law/icc/statute/spanish/rome_statute(s).pdf).

International Criminal Tribunal for the former Yugoslavia (ICTY) (2001) Prosecutor v. Dragoljub Kunarac et al, Sentence of 22nd of February 2001; available in Spanish at: <https://archivos.juridicas.unam.mx/www/bjv/libros/11/5212/24.pdf>

International Criminal Tribunal for Rwanda[a] (ICTR) (1998), Prosecutor v. Jean Paul Akayesu, sentencia del 2 de septiembre de 1998; disponible en: https://www.iri.edu.ar/revistas/revista_dvd/revistas/R15/R15-JURI2.html

International Institute of Humanitarian Law. (2019). Mainstreaming Gender Perspectives in International Operations. (G. Venturini, Ed.) San Remo, Italy.

Kril, F. (1985) The protection of women in international humanitarian law, International Review of the Red Cross, Geneva, 01-11-1985; available at: <https://www.icrc.org/es/doc/resources/documents/misc/5tdlea.htm>

Odio Benito, E. (2014) La perspectiva y el mandato de género en el Estatuto de Roma; en, Revista del Instituto Interamericano de Derechos Humanos, San José de Costa Rica; available at: <http://historico.juridicas.unam.mx/publica/librev/rev/iidh/cont/59/pr/pr8.pdf>

República Federativa do Brasil. (7 AUG 2006). Retrieved on 7 10 10 2021, from https://www.planalto.gov.br/ccivil_03/_ato2004-2006/2006/lei/111340.htm

Secretary-General, United Nations. (13 APR 2021). Retrieved 19 NOV 2021, from <https://www.un.org/sexualviolenceinconflict/factsheet-12th-annual-report-of-the-sg-on-conflict-related-sexual-violence-crsv/>

Security Council. (3 JUN 2020). www.un.org. Retrieved on 18 NOV 2021, from <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N20/065/43/PDF/N2006543.pdf?OpenElement>
United Nations. (2020). www.un.org. Retrieved on 15 NOV 2021, from <https://www.un.org/sexualviolenceinconflict/wp-content/uploads/2020/06/2020.08-UN-CRSV-Handbook.pdf>

CHAPTER IV - TRAFFICKING IN HUMAN BEINGS

Latin America is undoubtedly the most violent region in the world: the coexistence of Non-International Armed Conflicts (NIAC), traumatic Post-Conflict Processes (POC) and Other Situations of Violence (OSV), perpetrated by non-State actors with means (armed systems) with high levels of power and lethality, such as armed groups that create armed fighting, organized crime —especially drug cartels— and violent gangs, also entail the occurrence of heinous crimes against humanity, including trafficking in human beings.

The purpose of this Chapter is, primarily, to address the conceptual frameworks of trafficking in human beings and of smuggling of migrants, incorporating various sources of law, such as regional legal instruments related to the subject, as well as advisory opinions and jurisprudence of the Inter-American Human Rights System.

In this context, three emblematic cases of trafficking in human beings are presented as examples: a) "Hacienda Verde vs Brazil", is a ground-breaking case, as it is the first judgment of the Inter-American Court of Human Rights on the subject; b) a case of trafficking in the form of forced marriage, perpetrated by gangs in the context of OSV; and c) the third case reflects the reality of trafficking in situations of NIAC.

Finally, the Chapter presents six guidelines for action against trafficking in human beings regarding the incorporation of a gender analysis to combat it, it also presents the fundamental elements of this crime in NIAC, OSV and POC scenarios, the distinction between smuggling of migrants and trafficking in persons, the relationship between terrorism and trafficking, the risks and approaches to trafficking in the three scenarios considered, and finally, the mechanisms for international cooperation in the investigation of cases.

Conceptual framework

-Trafficking in human beings

The deprivation of liberty and exploitation of persons in such a way that they cannot act according to their will or change their living conditions; all by means of threats, physical or emotional violence, coercion, or abuse of power. Trafficking harms victims physically, psychologically and emotionally. They may also suffer additional trauma due to stigmatization by their families and communities of origin, with the consequent deprivation of any personal assistance or economic support. Due to differences between cultures and social backgrounds, the perception of what human trafficking is has been subject to different interpretations, but it is now considered to be a crime against the person and also a serious form of organized crime.

With the adoption of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (also known as the "Palermo Protocol", in force since 2003), supplementing the United Nations Convention against Transnational Organized Crime, the international community has recognized that trafficking in human beings (in its different forms) constitutes a serious violation of human rights and has simultaneously resulted in the first

internationally agreed definition of the crime. The Palermo Protocol is one of the main international instruments to establish a comprehensive and universal approach to legislation and action in relation to trafficking in human beings, to prevent and combat it, to assist victims—with special attention to women and children—and to promote international cooperation.

According to the Palermo Protocol, trafficking in persons must have a number of specific constituent elements to be recognized as such:

- a. An *act* (for example, the recruitment, transportation, transfer, harboring, or receipt of persons).
- b. *Means* by which the act is carried out, for instance the threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power or of a position of vulnerability, or through the giving or receiving of payments or benefits to achieve the “consent” of a person and have control over them, for the purpose of exploitation.
- c. A *purpose* for exploitation of the victim (the modalities of exploitation are varied, the most frequent being sexual and work exploitation, forced marriages, organ extraction, irregular adoptions, the commission of criminal acts, begging, and surrogacy, among others).

Trafficking in Human Beings according to the United Nations Office on Drugs and Crime

Human trafficking is a global problem and one of the most shameful crimes in existence, depriving millions of people around the world of their dignity. Traffickers lure women, men and children from every corner of the globe into exploitative situations on a daily basis. While the most well-known form of human trafficking is sexual exploitation, hundreds of thousands of victims are also trafficked for forced labor, domestic servitude, child begging or organ removal. Globally, one in five victims are children, and in poorer regions and sub-regions, such as Africa and the Greater Mekong, children make up the majority of traffic victims. Women, for their part, account for two-thirds of the world's victims of trafficking in human beings.

In 2000, the General Assembly adopted the United Nations Convention against Transnational Organized Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the Convention, which entered into force at the end of 2003. As the only international legal instrument that addresses trafficking in human beings as a crime, the Protocol is the primary tool available to prevent and combat this crime, protect and assist victims, and promote cooperation among countries to address this crime.

See: UNODC, Trafficking in Persons: The Sale and Purchase of Human Beings; available at: <https://www.unodc.org/toc/en/crimes/human-trafficking.html>

At a regional level, Article 6 of the American Convention on Human Rights establishes the absolute and un-voidable prohibition of slavery, servitude, trafficking in women and slavery in all its forms. Pursuant to Article 6.2 of said Treaty, no one shall be compelled to perform forced or compulsory labor. In addition to the above, Article 27.2 establishes that the prohibition of slavery, servitude and trafficking in persons is one of the fundamental human rights from which states may not void in time of war, public danger or other emergency that threatens the independence or security of the state party.

Trafficking in Human Beings: Violated Rights

The IACHR has established that human trafficking, servitude and forced labor often entail violations of other human rights under the American Convention, the Convention of Belém do Pará and other instruments of the Universal Human Rights System, such as the right to life, to personal integrity, the prohibition against torture and other cruel, inhuman or degrading treatment or punishment, personal liberty and security, protection of honor and dignity, freedom of expression, the rights of the child, the duties derived from the right of women to a life free of violence, private property, equality before the law, and access to justice. (“Report on captive communities: Situation of the Guaraní indigenous people and contemporary forms of slavery in the Chaco of Bolivia”, para. 58).

<http://www.cidh.org/pdf%20files/comunidades%20cautivas.pdf>

According to the 2018 Global Report on Trafficking in Persons, published by the United Nations Office on Drugs and Crime (UNODC), compared to the other sub-regions of the world, the American continent amasses the majority of human trafficking victims identified and reported by states worldwide. In South America alone, 1,796 victims were reported, and Central America has more victims per 100,000 inhabitants than any other region in the world.

-Smuggling of migrants

The facilitation of the irregular entry of a person into a state for the purpose of financial or material gain. Article 3 of the Protocol against the Smuggling of Migrants by Land, Sea and Air, states that “smuggling of migrants” means the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident. It also determines that “illegal entry” shall mean the crossing of borders without having fulfilled the necessary requirements for legal entry into the receiving state. It should not be overlooked that the migrants, regardless of the unlawfulness of the method used to enter the territory of a country, retain all their rights intact. This aspect has been reinforced in the “Inter-American Principles on the Human Rights of All Migrants, Refugees, Stateless Persons and Victims of Human Trafficking”, established by the IACHR and the Organization of American States (OAS), which, although considered soft law, set standards and references in the field of human rights, and establish guidelines for action:

- a) Every migrant, regardless of their migratory status, has the right to be recognized everywhere as a person before the law (Principle 4).
- b) Migration laws and policies implemented by states should incorporate a gender perspective that considers the specific risks, as well as the differentiated effects, faced by women, men, children and adolescents of both sexes and LGBTQ persons in the context of human mobility (Principle 8).

The Principles also contain an express prohibition on the smuggling of migrants, maintaining that states should prevent the facilitation of the irregular entry into their territories of a person who is neither a national nor a permanent resident, for the purpose of obtaining, directly or indirectly, a financial profit or other material benefits (Principle 21).

Emblematic cases

-Case "Workers of Hacienda Brasil Verde v. Brazil"

First judgment of the Inter-American Court of Human Rights, regarding human trafficking. The events of this case are related to the Brasil Verde farm located in the State of Pará. The Court's judgment declared the Republic of Brazil internationally responsible for the violation of the right to not to be subjected to slavery and human trafficking. The judgment established that Brazil failed to guarantee the protection of 85 workers subjected to contemporary forms of slavery and human trafficking.

The judgment was relevant and historical since it was the first time that the prohibition of slave labor (Art. 6 of the American Convention) was applied to a concrete case in the continent. In its text it was concluded that the Brazilian State violated the right not to be subjected to slavery and human trafficking, provided for in Article 6.1 of the American Convention, in relation to Articles 1.1, 3, 5, 7, 11 and 22 of the same legal instrument. The judgment also significantly raised the standard of protection in the matter under study, by considering the complex phenomena of slavery, forced labor and human trafficking as products of a context of structural inequality, in which the absence of state policies is the determining factor in its permanence and deepening over time.

The gravity and multiplicity of the rights affected —*norms of jus cogens*— with the underlying state responsibility, lead to the events to be categorized as crimes against humanity, the highest category of injury recognized by international human rights treaties and conventions. The declaration of the imprescriptibility of the crime of slavery contained in the ruling and its declaration as a crime against humanity constitute fundamental precedents.

"Black Widows" Case, El Salvador.

Trafficking in human beings in OSV: This case deals with trafficking under the modality of forced marriage, in which the victims were young women from rural areas, recruited under promises of domestic work. Once at the place of "employment", they were taken to gang members who beat them, sexually abused them and threatened them. At the same time, the gang members had arranged to find them future husbands through deception. After getting married, the woman —by order of the gang members— would convince her husband to take a life insurance with a bank. Only three or four weeks later, the man was murdered by gang members. The "wives" were forced to collect the life insurance in cash and hand it over to the gang, only to be murdered afterwards.

The ruling in the ordinary criminal jurisdiction, was historic as it was the first in Central America to deal with trafficking under the modality of forced marriage. It also reflects the link between trafficking and terrorism, since the gangs have mutated into true organized crime groups, with tentacles in the illicit drug trade, extortion, contract killings (sicariato) and human trafficking, among others. For this case, the Salvadoran

Prosecutor's Office won the 2019 annual award from the U.S. Department of State.

Other non-prosecuted cases of human trafficking, with non-traditional modalities of exploitation, are perpetrated by gangs, including the recruitment of women who, through threats or physical and sexual violence, are forced to take care of imprisoned gang members' children or to offer them conjugal visits. See; <https://www.bbc.com/mundo/noticias-america-latina-44483181>
<https://www.bbc.com/mundo/noticias-america-latina-48548800>

"Helena" Case, Colombia.

Trafficking in human beings during NIAC-POC: in April 2003, Helena was forcibly recruited by members of the Revolutionary Armed Forces of Colombia (FARC). When she was a minor, she was forced to go with them to a camp, where she was subjected to military training for three months. Subsequently, Helena fought for FARC. During this time, she was forced to take contraceptives and was the victim of a forced abortion — performed without basic medical conditions— which significantly impacted her health. The guerrilla group allowed her to go home, but after a while they forced her to report back, so she decided to flee instead. When her family refused to reveal her whereabouts to FARC, they received death threats from the armed group.

The Unit for Attention and Integral Reparation to Victims (UARIV) rejected Helena's application as a victim of FARC and, therefore, her inscription in the Unified Registry of Victims was denied; because of this, she could not access the reparation measures to which victims of the armed conflict in Colombia are entitled to. The UARIV based its refusal on Article 3, paragraph 2 of the Victims Law, which excludes FARC members from its scope, with the exception of children who were still minors at the time of demobilization. This interpretation of the law favored Helena's role as a former FARC combatant, obscuring the reality of sexual and reproductive violence related to the armed conflict she endured during her time in FARC. This meant that there was no legal recognition of these abuses or reparations mechanism for those who were forcibly recruited as children into FARC and had become adults by the time of demobilization.

In December 2019, the Colombian Constitutional Court published the summary of its landmark judgment in the "Helena" case. The summary shows that the Court reached its conclusion by referring to both International Humanitarian Law and International Criminal Law. It concluded that Helena's human rights had been violated, and so the Court ordered the UARIV to provide her with gender-sensitive physical and psychological support to help her recover from the sexual violence she had suffered and restore her mental and emotional well-being; it also ordered the State to ensure that women and girls, including adolescent girls who are survivors of sexual violence perpetrated by armed groups, receive specialized and immediate medical and psychological care for the abuse committed against them

(See; Communiqué of the Judgment; available at:
<https://www.corteconstitucional.gov.co/comunicados/No.%2050%20comunicado%2011%20de%20diciembre%20de%202019.pdf>).

Guidelines to address trafficking in human beings

-Gender perspective is essential for identifying and addressing trafficking in human beings.

According to the 2018 Global Report on Trafficking in Persons, published by the United Nations Office on Drugs and Crime (UNODC), in Latin America there is a clear majority of female victims of trafficking. In South America, for example, 82 percent of human trafficking victims are women, mostly adult women who were sexually exploited, while in North America, Central America and the Caribbean, the majority of sexually exploited victims have been girls.

Forced labor and forced marriage are also forms of trafficking that are present in the region, with significant numbers of female victims. The recruitment by non-state armed groups, forcing women to commit criminal acts, is also a reality in the region under the logic that women appear “less suspicious” or more trustworthy, which explains why they are often used for illicit activities such as drug trafficking, extortion, arms sales, and entry of prohibited articles and substances into prisons, among other.

Human trafficking involves all types of gender-based violence, causing serious difficulties for the development of women and girls in the different stages of their lives. In addition, in Latin America, women who experience trafficking are exposed to institutional victimization (revictimization) and face greater obstacles in accessing justice, due to precarious systems and high levels of poverty and inequality. The prevailing sexism in the region makes it easier for girls and women to be sexually exploited. The culture not only tolerates and justifies, but even naturalizes the purchase of sexual services by men. This makes it difficult to identify human trafficking. There is a criminalization of women who have been sexually exploited, which limits the allocation of resources for the care and recovery of victims.

For their part, mass media continues to disseminate messages and images that show women as objects, and their bodies as merchandise susceptible to appropriation and exchange, which reinforces the idea of exploitation and the commission of the crime of trafficking in human beings.

Types and modalities of violence against women

Article 2 of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women establishes that violence against women includes physical, sexual and psychological violence occurring in the community and perpetrated by any person, including, among others, trafficking in human beings and forced prostitution.

In the Advisory Opinion IACHR21/2014 on Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection, the Court recognizes that girls may be even more vulnerable to being victims of trafficking, especially for sexual and labor exploitation. Women and girl victims of this crime suffer physical violence through beatings, burns, wounds and all kinds of cruel, inhuman or degrading treatment, in many cases reaching death.

Addressing trafficking requires an understanding of the specific vulnerabilities faced by women and girls in situations of armed conflict, post-hostilities and other situations of violence, taking into account the disproportionate effects this crime has on them. The fact that women, teenagers and girls are the majority of victims of sexual exploitation entails, for example, long-term effects on their health in general, but specifically on their sexual and reproductive health, such as sexually transmitted diseases and unwanted pregnancies.

On the other hand, a frequent view of women as “caregivers”, regarding household and children, incites the commission of trafficking in the form of forced labor, surrogate motherhood or forced care of the children of others. In Latin America, under the actions of gangs, young women are often used to care for the children of gang members who are deprived of their liberty, or forced to have the gang members’ children. Experience recommends the use of health services as a mechanism for detecting and reporting these cases.

This evidences the need to promote and institutionalize processes, not only of training, but also of sensitization for combatants and law enforcement officials (LEO) participating in hostilities (in NIAC contexts) and for LEO (in OSV and POC contexts), oriented to:

- a) Developing diagnostics on the knowledge of personnel involved in operations, in terms of human trafficking and gender equity, and based on these results, develop training, updating it as well as updating processes for the prevention, attention and punishment of crimes related to human trafficking, while integrating a gender perspective.
- b) Recognizing the construction of their own masculinities to overcome hegemonic patriarchal visions, this deconstruction will facilitate the identification of trafficking indicators.
- c) Building, depending on the context, guidelines and verifiable indicators, which provide early warnings in the detection of trafficking in women and girls in the territories.
- d) Incorporating, in the training process, opportunities for interaction with international organizations and women’s organizations in the territories, which can not only strengthen knowledge, but also contribute to the process of creating indicators.
- e) Generating action protocols for personnel involved in the situations in question (NIAC, OSV, POC). Among the responsibilities of the commanders, it is important to promote control mechanisms and protocols for the personnel under their charge, with zero tolerance for those who commit, justify or promote acts of exploitation of women, girls and boys, as well as to get involved in the dissemination of such control instruments and in guaranteeing their application.

-Recognizing the fundamental elements of trafficking in human beings in NIAC, POC and OSV, particularly in the Latin American context

-Trafficking in human beings in NIAC and POC

In situations of armed conflict, human trafficking is likely to manifest itself in all its forms: forced prostitution and other forms of sexual exploitation; forced military recruitment, including that of children; subjection to forced labor; slavery, servitude and organ removal. However, military recruitment is a form of exploitation inherent to armed conflicts. The dynamics of armed

conflicts also facilitate sexual exploitation, in which most of the victims are women and girls; in many cases, the same victim may be forced to fight, perform domestic work in the camp and become a sex slave.

In its most recent Global Report on Trafficking in Persons, launched at the beginning of 2019, the United Nations Office on Drugs and Crime (UNODC) noted that armed groups are using human trafficking as a strategy to finance activities or increase their labor force in armed conflicts around the world and that, in this regard, the recruitment of children for use as soldiers has been widely documented in conflicts in Central Africa and the Middle East, among other regions. These groups also traffic adults and children for exploitation in mining and other extractive industries, as well as to instill fear in order to control the local population. Women and girls are trafficked into sexual slavery to encourage recruitment and reward soldiers. In the region, Colombia has documented thousands of cases of forced recruitment by non-state armed groups, including the recruitment of children, which is prohibited by the Convention on the Rights of the Child (Article 38), the Optional Protocol on the involvement of children in armed conflict, the Fourth Geneva Convention (Articles 14, 17, 23, 24, 38 and 50), Additional Protocol II to the Geneva Conventions, and Convention 182 of 1999 of the International Labour Organization (ILO) concerning the worst forms of child labor. At the regional level, Article 19 of the American Convention on Human Rights stands out.

In armed conflicts, there are circumstances that make victims of trafficking especially vulnerable to this crime, for example, the displaced/refugee status often held by women and children. The presence of organized crime groups already involved in the cross-border trafficking of arms, drugs and other illicit products often includes human trafficking among their criminal activities due to the high levels of profit they generate. This is compounded by institutional weaknesses, permeable borders, and lawlessness. These are situations that tend to continue during the transition to peace (POC).

Mapiripán Massacre v. Colombia Case

Jurisprudence of the IACHR in the case of the Mapiripán Massacre v. Colombia, 15-9-2005, recognizes that the vulnerability generated by displacement especially affects women, who are heads of household and that women, girls, boys, young people and elders represent more than half of the displaced population. The internal displacement crisis in turn provokes a security crisis, given that groups of internally displaced persons become a new hub or a recruitment resource for paramilitary, drug trafficking and guerrilla groups.

-Trafficking in human beings in OSV contexts

In Latin America, the existence of organized crime, drug trafficking cartels, gangs or *maras*, paramilitary groups, among others, generate high levels of violence and the occurrence of multiple crimes, including human trafficking, which manifests in various ways in this region.

In many countries, organized crime has permeated institutional structures, making the identification, investigation and effective prosecution of trafficking in human beings a major challenge. The multiplicity and diversity of victims of violence, coupled with limited budgets for

their care, make the reintegration of trafficking victims a challenge. The predominant sexism and adult-centeredness in the region facilitates the occurrence of trafficking: thus, Central America, unlike other regions of the world, is characterized by a higher percentage of girls who are sexually exploited.

Modalities of Human Trafficking

With regard to the different modalities of human trafficking, the IACHR released its report “Human Rights of Migrants and Other Persons in the Context of Human Mobility in Mexico”, although this is not a legally binding instrument, it is a relevant reference for the development of the topic. The IACHR expressed that human trafficking in that country is not limited only to migrant women.

During its visit to Mexico, the Commission received information regarding male migrants who are kidnapped and forced to work in different ways for organized crime groups. For example, they are recruited to carry out criminal activities such as contract killings, murdering other migrants, or smuggling drugs into the United States. In addition, migrant children and teenagers are forced to work as lookouts for organized crime organizations, also known as “hawks” (“halcones”) (para. 141).

Elements for a comprehensive approach to trafficking in human beings with a gender perspective in the context of NIAC, OSV and POC

Prevention of human trafficking in its broadest and most structural sense is aimed at taking measures to reduce vulnerabilities, especially for women and girls. This implies guaranteeing them opportunities for education, safe livelihoods, and food, among others. It also includes focusing on reducing sexual violence, on education for gender equity, and on the application of timely measures to combat discrimination and gender-based violence in general.

-Prevention of trafficking in NIAC

In order for prevention to be effective, anti-trafficking measures must be defined well in advance of the onset of a conflict, analyzing actual and potential risks and identifying mechanisms to minimize or eliminate the chances of their occurrence. In particular, due attention should be paid to early warning signs, including indicators of vulnerability to trafficking in internally displaced persons camps and host communities. Similarly, registry systems for missing persons should be promoted, as they may show possible victims of human trafficking.

It would also be advisable to develop training courses for relevant personnel to identify, document and report situations in which there is a risk of trafficking inside and outside internally displaced persons camps and in the vicinity of military bases.

In a complementary manner, awareness-raising activities on the risks of trafficking and other forms of exploitation should be developed, targeting the general population through mass media.

-Prevention of trafficking in OSV

The use of technologies for the recruitment of trafficking victims is on the rise. Thus, social networks have become an accessible medium for trafficking networks, whose main victims are young women. Hence, the need to regularly monitor networks and their content as a means of prevention (cybersafe mechanisms).

Awareness campaigns should also be promoted for the general population, as well as specific campaigns for key sectors in the detection of cases. An example of this is the organization Truckers Against Trafficking (TAT) in the United States, which trains commercial truck drivers to identify and report suspicious cases by calling the national anti-trafficking hotline. Another example that has worked for internal protocols regarding case detection and timely notification is the tourism sector, particularly in lodging sites.

In Latin America, the existence of mass displacements and migratory movements, mainly due to violence, should be taken into account, these scenarios have particular characteristics and generate greater protection needs for individuals involved. Therefore, the prevention of trafficking, considering this context, should promote efforts to motivate the regulation of the migratory situation of all persons, particularly women, in order to reduce the risk of becoming victims of human trafficking networks.

In Latin America, disappearances also occur in the context of OSV, both forced disappearances and disappearances at the hands of private individuals (organized crime, gangs, cartels, etc.). Consequently, it is essential that LEO review persistent and historical myths about the disappearances of young women, which are often attributed, almost automatically, to the fact that they left with their partners. One of the maxims to be incorporated in the respective action handbooks and protocols should be to consider human trafficking as a possible cause of a woman's disappearance.

In general, mechanisms to prevent recruitment should be strengthened, as well as the routes of assistance and prevention of human trafficking, focusing efforts on key recruitment points, such as border crossings and transportation terminals. It is advisable to include personnel stationed in border areas as a priority in the training processes for the detection of trafficking and in the gender sensitization processes.

Finally, it is recommended to ensure that programs for the prevention of human trafficking crimes in the workplace do not reproduce gender roles and stereotypes that deny or fail to reflect the participation of women in the paid workforce and, therefore, that they are not considered as possible victims of these criminal behaviors.

-Prevention of trafficking in POC

The prevention of trafficking in human beings in POC situations should be based on the special needs of displaced women and girls, particularly during care, resettlement, rehabilitation, reintegration and post-hostilities planning and reconstruction. These needs should also be considered in the disarmament, demobilization and reintegration processes, in

order to avoid creating conditions of vulnerability for women, with the aim of preventing them from becoming victims of human trafficking.

It is advisable to periodically carry out exercises to analyze the risks of human trafficking in the territories, taking care to work separately with women and girls, so that the LEO have updated information on the perceived risks and can design relevant prevention actions in a timely manner.

Protection and assistance for victims or possible victims of trafficking

-Protection and assistance in NIAC

It would be advisable to carry out a mapping of actors, including state and non-state actors that can provide direct protection and assistance services to victims or potential victims of trafficking, taking into account their strategies, action plans and internal referral mechanisms already in place at the local or national level and assessing whether and to what extent their implementation has been modified due to the armed conflict.

One of the characteristics of trafficking victims is that they rarely identify themselves as such or report it, so law enforcement should be informed about indicators of human trafficking in order to easily identify it. A key aspect of protecting and assisting victims of trafficking is the need to ensure that they are not criminalized or punished for acts committed as a direct consequence of being trafficked, regardless of the form the trafficking has taken.

In the case of those who have been trafficked by armed or terrorist groups, it is possible that, if they escape or are released, they may be mistrusted or even prosecuted solely because of their alleged links to criminals, so steps should be taken to prevent this from happening.

-Protection and assistance in OSV

It is essential to understand that many times the victims of trafficking are reluctant to seek help or report the crime because the criminal organizations that exercised control over them have links with the authorities or officials of the security and criminal justice system. Often the identities of victims who report or make this fact known are revealed and, as a punishment, they are killed to dissuade future complainants.

A good practice in this regard is provided by Ruling C-470 of the Constitutional Court of Colombia, which eliminated the requirement for victims of trafficking to make a criminal complaint in order to receive assistance. The Court argued that a mandatory measure that subjects the victim to the verifiable risks derived from making said complaint cannot be compulsory.

Hence the need to review the practice of housing victims of trafficking in police stations or hotels, especially in the case of women and children, and to create specialized shelters, managed with a human rights and gender perspective.

-Protection and assistance in POC

In the planning of disarmament, demobilization and reintegration programs, special attention should be given to the needs of female ex-combatants and dependents of combatants or other persons who have taken a direct part in hostilities; in particular by informing any person who has been forcibly recruited into armed forces or armed groups or has been forced to commit crimes as a result of having been trafficked about the appropriate protection services.

Reintegration programs should also be tailored to the needs and coping mechanisms of women and their dependents involved in armed group structures. It is also necessary to promote the empowerment of women and girls in humanitarian action, including their access to sexual and reproductive health and rights.

Based on the Helena case, one of the guidelines to be taken into consideration is to verify that the regulations facilitate victims' access to the benefits established for them, and, as the Colombian Constitutional Court pointed out, that the reparations process includes a gender perspective, recognizing that former combatants could also be victims of trafficking due to forced recruitment.

Investigation and Prosecution

-Investigation and prosecution in NIAC and POC

First, it will be necessary to verify whether local legislation exists for the criminalization of trafficking, while training those responsible for conducting investigations. Financial bodies can play the role of "following the money trail" in order to detect and disrupt financial flows related to trafficking in, from or to conflict areas. The empowerment of the trafficked person should not be overlooked in order to ensure a strong testimony in criminal proceedings; and in such a case, also consider that their level of risk may increase, and they may require special protection measures as a witness.

In certain circumstances, it may be possible to apply the penalty regimes established by United Nations Security Council resolutions, which authorize the imposition of measures such as asset freezes, travel bans and arms embargoes on those who have planned, directed or committed acts that constitute human rights abuses or violations. Similarly, when designation criteria include involvement in acts that constitute human rights violations and abuses, such as trafficking in human beings, monitoring groups, teams and expert groups that support the work of the relevant sanction committees can gather information that may be critical to investigating traffickers.

The possibilities offered by these mechanisms highlight the need to examine the various instruments available in situations of trafficking related to armed conflict in order to disrupt the activities of traffickers, bring them to justice and facilitate access to justice for victims.

Finally, it would be advisable to have multidisciplinary technical teams to provide adequate comprehensive assistance to victims, especially women and girls, from the moment the case is detected and throughout its investigation and prosecution.

-Investigation and prosecution in OSV

The development of tools such as route mapping, creating high-risk profiles, tracking criminal networks, as well as developing protocols for carrying out joint operations (between police forces of the same country) to dismantle trafficking networks operating nationally or transnationally are some of the state's tools. The investigation should always be proactive, that is, it should combine confidential information, surveillance by human and technical means, undercover actions (when permitted by the law) and standard investigative techniques that will ultimately identify the traffickers and ensure their effective incrimination. In any case, the complete investigation should incorporate the pursuit of financial lines and special investigative techniques (electronic surveillance and undercover operations).

A primary aspect to consider is the ongoing work of risk assessment with respect to the safety and well-being of victims and their families at every stage of the investigation, prosecution process and beyond. The safety of victims and their families and the possibility of being the targets of retaliation will always be typical aspects of trafficking-related crimes and risk factors that are never completely eradicated.

In addition, LEO training on human trafficking issues should be strengthened, with a human rights, gender, generational and intercultural perspective, and a victim-centered approach should be promoted in police operations.

-Guidelines for the identification of the distinctive elements between the trafficking in human beings and the smuggling of migrants in the Ibero-American context.

Although trafficking in human beings and smuggling of migrants can coexist, they are completely different crimes, and their main differences are:

- a) *Consent*: in smuggling, those smuggled usually consent to the act, often they are even the ones who seek out the smuggler. In contrast, in human trafficking the victims are deceived or have given their consent in a forced manner.
- b) *Border crossing*: Border crossing is indispensable in the smuggling of migrants, since in order to be a migrant, at least one international border must be crossed. However, regarding trafficking, the victim may be transferred for exploitation, either within the same territory of their country (called internal trafficking) or outside their country by crossing borders (external or international trafficking).
- c) *Illegal border crossing*: this is an essential part of smuggling migrants, while in human trafficking border crossing can be carried out in compliance with all legal requirements.
- d) *Commercial transaction*: in the smuggling of migrants, there is always a payment from the migrant to the smuggler; and usually the conditions of this payment are previously established: percentages, terms, etc. In human trafficking, the victim does not pay for the transfer, as this is done through deception or force.
- e) *The victim*: the smuggling of migrants is a crime committed against states, while trafficking in persons is a crime against the dignity and integrity of the trafficked person, thus qualified as a *crime against humanity*.

- f) *Exploitation*: smuggling ends with the arrival of migrants at their destination, while trafficking often begins with exploitation upon arrival at the destination, and then becomes permanent.

Notwithstanding the differences, it should be noted that irregular migration is usually a scenario conducive to human trafficking, although not all migration implies trafficking, nor vice versa. The existence of mixed migratory flows and the feminization of migration, for several years now, have led to a greater risk of women becoming victims of trafficking on their way to other countries.

Human Mobility in Mexico

The IACHR, in its report “Human Rights of Migrants and Other Persons in the Context of Human Mobility in Mexico” No. 138, stated that migrant women, especially girls and teenagers, are more vulnerable to being victims of human trafficking for purposes of sexual exploitation or forced prostitution.

It is essential to promote internal control mechanisms and action protocols to prevent corruption at borders, which can be supported with technological tools. Technology could be an instrument, not only to detect cases of trafficking and smuggling, but also to contribute to the control of officials’ conduct, to help them adjust their actions to the legal framework.

At irregular points of entry, officials should monitor, prevent, identify and confront trafficking risk situations, as well as ensure the applicability of the principle of *non-refoulement*.

Porous Borders

The IACHR has also expressed its concern about the porous borders in the countries of the region, which facilitate the movement of trafficking victims between countries, and about the presence of corruption and organized crime groups in high levels of government that undermine state capacity to counteract trafficking. or more information, see: Human Rights of Migrants, Refugees, Stateless Persons, Victims of Trafficking in Persons and Internally Displaced Persons: Norms and Standards of the Inter-American Human Rights System. <http://www.oas.org/es/cidh/informes/pdfs/movilidadhumana.pdf>

Because of their greater vulnerability, undocumented migrants may be more prone to labor exploitation in the country of destination, so constant monitoring of workplaces to verify the conditions in which they operate, and the existence and dissemination of information on labor abuses, can make a difference in detecting cases and reducing their occurrence. Women are usually employed in agricultural fields and labor production, but mostly to perform domestic activities.

Principles and standards of action

The Inter-American Principles on the Human Rights of All Migrants, Refugees, Stateless Persons and Victims of Human Trafficking, developed by the IACHR and the OAS, although they fall into the category of soft law and are not binding, these principles provide standards that can be used as references for action. In this sense, the following principles should be highlighted as key inputs:

- Principle 19: Prohibition of slavery and servitude and other analogous conditions.
- Principle 20: Preventing, combating and eliminating trafficking in persons.
- Principle 42: Victims of trafficking in persons.
- Principle 43: Prohibition of deprivation of liberty of victims of trafficking in persons
- Principle 67: Exemption from punishment for irregular entry, presence or migratory status.

It is important to consider that, regardless of a person's immigration status, states must create mechanisms to prevent undocumented migrants from becoming victims of trafficking. According to the Inter-American Principles (42 and 43) all victims of trafficking in human beings, regardless of their migration status or national origin, should be protected from revictimization and provided with legal assistance, counseling and information, including with respect to their rights in a language they can understand, gender-sensitive, and medical, psychosocial and material assistance, as well as the victim's privacy and identity. They should also be offered educational or training opportunities.

The processes for dealing with victims of trafficking should consider their vulnerability and facilitate their access to justice and the possibility of filing complaints without fear of being subject to detention, deportation or punishment, giving priority to prevention, identification, protection and appropriate assistance. The processes should apply a gender perspective, considering the various factors of discrimination to which migrants are exposed, particularly women and girls, and ensure that the practices do not revictimize them or perpetuate gender stereotypes.

The Principles state that no penalties should be imposed on persons in need of international protection, such as trafficked women, on account of their illegal entry or presence. They expressly state that migrants should be exempt from criminal prosecution for acts committed as a result of being victims of human trafficking, which applies when the mode of exploitation was the commission of crimes, for example: drug trafficking, extortion, recruitment of new victims, etc. It is in these cases where the gender approach should be applied, since it is common for female victims of trafficking to be forced to become recruiters, as they generate more trust in other women.

International cooperation mechanisms to investigate and prosecute trafficking in human beings

Due to the complexity of the crime of trafficking, creating of partnerships to address it is a fundamental step. These alliances should consider both governmental institutions and local and international non-state organizations. Many countries have multisectoral coordination mechanisms to address human trafficking. These partnerships should then be extended to a regional and international dimension, to make investigations and prosecution of the crime more effective and to facilitate the rescue and recovery of victims, who very often need to change their country of residence to begin the process of reintegration in appropriate conditions.

In Latin America, a good example of a regional structure is provided by the governments of Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, Panama and the Dominican Republic, which in September 2011 signed a Memorandum of Understanding that allows them to jointly develop actions focused on the comprehensive care for victims, prevention and combating the crime of human trafficking, as well as recognizing the Regional Coalition against Trafficking in Persons as an inter-institutional coordination body to promote mechanisms for a comprehensive approach to this crime.

Within this framework, they have developed and promoted the following regional articulation instruments:

- a) National Guidelines for Strengthening Institutional Coordination to Combat Human Trafficking;
- b) Regional Guidelines for Strengthening Institutional Coordination to Combat Human Trafficking in Central America;
- c) Regional Strategy for the Integral Attention and Accompaniment of Victims of Human Trafficking in Central America;
- d) Regional Communication Strategy for the Prevention of Human Trafficking.

Other useful regional spaces for streamlining coordination among states in addressing human trafficking is the Ibero-American Network of Specialized Prosecutors against Trafficking in Persons and Smuggling of Migrants (REDTRAM) of the Ibero-American Association of Public Prosecutors (AIAMP). REDTRAM is a network of specialized prosecutors in the region that also includes Spain, Portugal and Andorra. Through its operation, it seeks to prioritize the spontaneous transmission of information between specialized prosecutors in human trafficking cases, in order to provide an effective response in cases committed in more than one country, as well as aid each other in the repatriation and protection of victims. There is also a "Protocol for Inter-institutional Cooperation to Strengthen the Investigation, Attention and Protection of Victims of the Crime of Trafficking in Persons among Ibero-American Public Prosecutor's Offices" and a "Protocol for the Investigation, Attention and Protection of the Crime of Trafficking in Persons and Smuggling of Migrants".

Some of the actions considered in the protocols that aim to improve coordination for the investigations, prosecutions and punishments of trafficking cases, are the following:

- a) Encourage information transmitted through the Network to have legal value for investigations, without the need to plead for it.
- b) Encourage states to use and implement the videoconferencing system for taking victim statements.
- c) Ensure real-time collaboration when the occasion demands it (for example, for the rescue, search or repatriation of victims).
- d) Establish joint investigation teams through bilateral or multilateral agreements, in line with national legislations, and to make use of special investigative techniques in the fight against human trafficking.
- e) Carry out investigations to determine the responsibility of public officials (security forces, political and judicial authorities, etc.) should be deepened, both to identify their participation in the commission of the crime of trafficking, as well as to identify

actions aimed at achieving impunity and protecting the operation of places prohibited by local laws (such as brothels and clandestine textile workshops).

Final Remarks

Latin America has the highest rate of trafficking victims, and the highest number of women and girls as victims of sexual exploitation. This context forces us to look at trafficking from a gender perspective if we really want to achieve profound transformations and eliminate practices that facilitate and promote trafficking.

Trafficking in human beings is essentially a human rights violation that must be addressed within the framework of international human rights. The criminal law approach, which focuses primarily on prosecution, especially in the context of organized crime, must always incorporate a human rights component that is gender-sensitive and based on the principle that the rights of victims must be respected at all times.

Migration is an unavoidable reality in the subcontinent due to different factors: the search for a better future, fleeing violence, and family reunification, all of which is becoming increasingly feminized. The migration route itself places women in a condition of greater vulnerability, which is why it is essential to focus case detection on migratory flows, but also to train LEO in this approach and in the delineation between human trafficking and human smuggling, which can make a difference when dealing with a case.

In addition, national identification and referral mechanisms should be developed and implemented, as well as standardized procedures in cases of human trafficking, taking into account situations of human mobility and humanitarian contexts, seeking effective coordination between state officials from different areas, civil society organizations and other relevant actors, in order to improve assistance to victims. Gender, generational and intercultural approaches should be taken into account in the development and implementation of these mechanisms.

Regardless of whether trafficking occurs in NIAC, OSV or POC scenarios, the approach should take into account elements of prevention, investigation and prosecution, as well as protection and assistance to victims, applying a intersectional gender approach.

Improving coordination between international, regional and local institutions to achieve effective coordination is essential, given the complexity of human trafficking and its transnational dimension. International women's organizations and civil society organizations working on the issue should be included in such efforts to ensure that the gender approach is considered as a priority element in multilevel coordination.

References

Advisory Opinion IACHR21/2014 on Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection. Inter-American Court of Human Rights. August 19, 2014. Available at: https://www.corteidh.or.cr/docs/opiniones/seriea_21_esp.pdf

American Convention on Human Rights (1969) signed in San José, Costa Rica on November 22, 1969, at the Inter-American Specialized Conference on Human Rights. Available at: https://www.cndh.org.mx/sites/default/files/doc/Programas/TrataPersonas/MarcoNormativoTrata/InsInternacionales/Regionales/Convencion_ADH.pdf

Diagnosis on the situation and incidence of human trafficking in humanitarian contexts in South America, prepared by the International Organization for Migration. Panama, 2020. Available at: <https://repositoryoim.org/handle/20.500.11788/2301>

Diagnosis on the Situation of Trafficking in Persons in Mexico, prepared by the National Human Rights Commission. Mexico, 2019. Available at: https://www.cndh.org.mx/sites/default/files/documentos/2019-07/DIAGNOSTICO-TDP-2019-RE_0.pdf

Global Report on Trafficking in Persons 2018. United Nations Office on Drugs and Crime (UNODC). Available at: https://www.unodc.org/documents/human-trafficking/2018/17-08548_Briefing_Note_TIP_S_ebook.pdf

Human Rights of Migrants, Refugees, Stateless Persons, Victims of Trafficking in Persons and Internally Displaced Persons: Norms and Standards of the Inter-American Human Rights System. Inter-American Commission on Human Rights (2015). Available at: <http://www.oas.org/es/cidh/informes/pdfs/movilidadhumana.pdf>
Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, Organization of American States (1994). Available at: <https://www.oas.org/juridico/spanish/tratados/a-61.html>

Inter-American Principles on the Human Rights of All Migrants, Refugees, Stateless Persons and Victims of Trafficking in Persons. Inter-American Commission on Human Rights. (Resolution 04/19 adopted by the Commission on December 7, 2019) Available at: <http://www.oas.org/es/cidh/informes/pdfs/Principios%20DDHH%20migrantes%20-%20ES.pdf>

Regional Guidelines for Strengthening Institutional Coordination to Combat Trafficking in Persons in Central America. Regional Conference on Migration. Available at: <https://www.conatt.go.cr/wp-content/uploads/2019/08/lineamientos-actuacion-regional.pdf>

Report on Captive Communities: Situation of the Guaraní Indigenous People and Contemporary Forms of Slavery in the Chaco of Bolivia, Organization of American States/ Inter-American Commission on Human Rights (2009). Available at: <http://www.cidh.org/pdf%20files/COMUNIDADES%20CAUTIVAS.pdf>

CHAPTER V - TERRORISM

This chapter addresses terrorism from the perspective of international law and international humanitarian law, as well as from the perspective of other situations of violence (OSV).

Conceptual framework and legal instruments

The phenomenon of terrorism and the fight against it has taken off in recent decades at both international and regional levels, and therefore deserves to be considered as a matter of interest in the analysis of international law in its various aspects, and in particular international humanitarian law, becoming the central topic of debate in terms of legal aspects, policies and humanitarian issues.

Initially, one of the problems that arises in the study of this subject is that international norms often establish generic definitions of what terrorism is, and the lack of clear and precise designations makes it controversial and a source of many interpretations. For guidance purposes, however, it can be said that terrorism is a violent action whose purpose is to inflict terror on persons who are non-combatants, seeking to impose their interests by force.

Although there is a persistent demand to the United Nations (UN) for the approval of a convention with a clear definition of terrorism, in order to provide a solid basis for preventing and combating its scourge, the lack of international consensus on its meaning has prevented progress on the various occasions on which the issue has been discussed.

However, in the absence of an internationally accepted definition of terrorism, there is currently a set of various legal structures, which are oriented towards the criminalization of certain acts to which a terrorist nature can be assigned, and establishing criminal liability for the perpetrators of such acts.

Thus, a wide range of regulations has been developed, in which the UN and its Specialized Agencies have reached consensus with the Member States on 14 conventions related to terrorism, resulting in a fragmentary treatment of the problem. These are: Convention on Offences and Certain Other Acts Committed on Board Aircraft (Tokyo Convention of 1963), Convention for the Suppression of Unlawful Seizure of Aircraft (Hague Convention of 1970), Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (Montreal Convention, 1971), Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Agents (1973), International Convention against the Taking of Hostages (1979), Convention on the Physical Protection of Nuclear Material (1980), Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation (1988), Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (1988), Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (1988), Convention on the Marking of Plastic Explosives for the Purpose of Detection (1991), International Convention for the Suppression of Terrorist Bombings (1997), International Convention for the Suppression of the Financing of Terrorism (1999), International Convention for the Suppression of Acts of Nuclear Terrorism (2005), and the Convention for the

Suppression of Unlawful Acts related to International Civil Aviation (New Civil Aviation Convention 2010).

Also, for example, one can cite the definition adopted by the UN General Assembly in the framework of the "International Convention for the Suppression of the Financing of Terrorism" (1999), which interprets as terrorist any act "intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act [...] is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act"¹² (official text).

Similarly, the International Convention for the Suppression of Acts of Nuclear Terrorism, states in its article 6 "[...]criminal acts within the scope of this Convention, in particular where they are intended or calculated to provoke a state of terror in the general public or in a group of persons or particular persons, are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature and are punished by penalties consistent with their grave nature"¹³, which not only punishes the perpetration of these acts, but also their attempt and complicity.

Thus, the international conventions on terrorism gradually form a mosaic that identifies different types of terrorist acts that fall under criminal action, such as: hostage-taking, acts against certain categories of persons, the use of certain substances or devices, acts against specific means of transportation or facilities.

The aforementioned Conventions, in addition to providing the essential notes of the criminal actions described in each category as terrorism, in turn, commits the States Parties to the obligation to criminalize in their domestic legislation the offenses defined in each of the international instruments, since the legal authority to impose such counter-terrorism measures is a responsibility that rests exclusively with sovereign States.

The basis of this counter-terrorism legal regime is based on the assumption that terrorists should be prosecuted by their home governments or extradited to a country willing to prosecute them (*aut dedere aut judicare* principle).

By virtue of the "universal jurisdiction" provided for in these Conventions, States Parties have the right to prosecute those suspected of being perpetrators of terrorist acts —regardless of where the acts were committed— which shows that the purpose of the international norms is to make the world hostile to terrorists and to prevent them from receiving support and protection.

In this regard, it should be noted that there are no international tribunals competent to try terrorism. In the negotiations prior to the establishment of the International Criminal Court

¹² Resolution A/RES/54/109 (Adopted by the United Nations General Assembly on December 9, 1999 and opened for signature on January 10, 2000. Entry into force: April 10, 2002 in accordance with article 26 (1))

¹³ Resolution A/RES/59/290, (Adopted by the United Nations General Assembly on April 13, 2005).

created in 1998 by the Rome Statute, the possibility of including terrorism within the scope of its jurisdiction was rejected.

Following the terrorist acts that occurred in the United States on September 11, 2001, new initiatives arose within the UN. Thus, Resolution 1373 (2001)¹⁴ at a summit meeting of the Security Council created the Counter-Terrorism Committee (CTC) to strengthen the capacities of Member States to combat terrorism.

On September 8, 2006, the UN General Assembly created, with general consensus, the United Nations Global Counter-Terrorism Strategy¹⁵, [15] an instrument that seeks to lay the foundations for the coordination of international, regional and national counter-terrorism efforts, promoting the development of Member States' capacities to prevent and combat terrorism, aiming to stifle the conditions that favor the spread of terrorism, a document that is updated every two years.

Also, on June 15, 2017, Resolution 71/291¹⁶ of the UN General Assembly created the United Nations Office of Counter-Terrorism (UNOCT), whose main functions are to strengthen the counter-terrorism capacities of the UN, as well as to provide the necessary support to countries in terms of prevention and assistance, and the implementation of the provisions of the "United Nations Global Counter-Terrorism Strategy".

The Organization of American States (OAS) has also promoted agreements on this issue in the Americas, including the Convention to Prevent and Punish Acts of Terrorism Taking the Form of Crimes against Persons and Related Extortion when they are of International Significance (A-49). It was signed at the Third Special Session of the General Assembly, held in Washington, DC, on February 2, 1971, and was accompanied by the Inter-American Convention against Terrorism¹⁷ (adopted in Bridgetown, Barbados, on March 6, 2002), and the Inter-American Convention against Terrorism¹⁸, approved at the first plenary session, held on June 3, 2002.

International Humanitarian Law (IHL) and the distinction between the legal frameworks regulating actions against terrorism

One issue that should be taken into account in relation to the legal regulations regarding terrorism is that the domestic legislation of countries and International Humanitarian Law (IHL) may have common elements, since IHL prohibits most of the acts that international conventions and domestic legislation describe as terrorism. It should be noted, however, that they belong to two different environments, in which the objectives, motivations and structures are very different.

¹⁴ Resolution S/RES/1373 (2001) (Adopted by the Security Council at its 4385th meeting, held on 28 September 2001)

¹⁵ Resolution A/RES/60/288 (2006) (Resolution adopted by the General Assembly on September 8, 2006).

¹⁶ Resolution A/RES/71/291 (Resolution adopted by the General Assembly on 15 June 2017 - Strengthening the capacity of the United Nations system to assist Member States in the implementation of the UN Global Counter-Terrorism Strategy).

¹⁷ Convention A 66

¹⁸ AG/RES. 1840 (XXXII-O/02)

A substantial difference can be found in the fact that for IHL in the framework of an armed conflict, there are acts of violence that are permitted or lawful and others that are not permitted or unlawful, while acts corresponding to terrorism are always unlawful.

In other words, the reason why IHL allows certain acts of violence is to be found in the very nature of armed conflict, where the use of force is justified in order to fulfill the objectives of war, that is, to overcome the enemy force. However, this is conditioned to legitimate objectives, for example, those of a military nature or others that are not entitled to protection under IHL. On the other hand, IHL identifies as unlawful those acts that attack civilians and civilian objects that do not constitute legitimate objectives for the belligerents.

However, all of the above does not apply to the international norms regarding terrorism, insofar as those violent acts will always be considered unlawful, both in international and domestic law.

Another difference is that IHL grants all belligerents in an armed conflict the same rights and obligations (principle of equality), which obviously does not occur in international or domestic legal frameworks that target terrorist acts.

Perhaps, there may be cases of repetition of criminalization when international or domestic legislation designates as crimes acts prohibited by IHL, such as acts of terrorism committed in the framework of an armed conflict that target civilians or protected property, a case that leads IHL to consider as unlawful those terrorist acts, affecting the principle of distinction between combatants and non-combatants. However, it should be noted that for IHL the use of violence against legitimate targets in an armed conflict would be lawful acts and not terrorist acts, even if they are so for international norms or domestic law.

Analysis of cases from the legal categorization of IHL to other situations of violence (OSV)

To illustrate the different legal frameworks of application, it is useful to present case studies of terrorism in the framework of International Armed Conflicts (IAC), Non-International Armed Conflicts (NIAC) and Other Situations of Violence (OSV).

-International Armed Conflicts (IAC):

The Case of North Korea

The case of North Korea can be defined as paradigmatic in terms of the use of terrorism in an international armed conflict, and in fact, in September 2021, North Korea rejected South Korea's offer to end the war¹⁹.

The Korean War began on June 25, 1950, when North Korean troops crossed the 38th parallel (the boundary established between the United States and the then

¹⁹ See in Spanish; <https://www.sandiegouniontribune.com/en-espanol/noticias/story/2021-09-23/norcorea-rechaza-llamado-de-seul-a-declarar-fin-de-la-guerra>

Soviet Union), advancing into South Korea. On July 27, 1953 an armistice was signed between the United States and North Korea, which sought to ensure the cessation of hostilities between the North and the South until a final peace agreement was reached—which is yet to happen—, and for that reason they are still technically at war.

Notwithstanding the armistice, North Korea has on many occasions resorted to terrorist actions, such as kidnappings, bombings, and attacks against the civilian population of South Korea. For example, on January 21, 1968, a commando of 31 North Korean soldiers, called Unit 124, infiltrated Seoul to storm the presidential residence and kill General Park Chung-hee, President of South Korea. They were discovered in the vicinity of the presidential palace, and although the North Koreans were neutralized, 26 South Koreans were killed and about 60 wounded, including soldiers and civilians.

Later, in December 1969, a North Korean agent hijacked a Korean Air YS-11 aircraft shortly after takeoff from the city of Gangneung. The pilot was forced to land in North Korea and, to date, the passengers, crew and aircraft have yet to be returned.

South Korean President Park Chung-hee was the victim of another North Korean-ordered assassination attempt on August 15, 1974, while delivering a speech at the National Theater in Seoul. The perpetrator was a Japanese of North Korean origin, who, although he failed in his attempt to kill the president, killed the president's wife Yuk Young-soo.

In the 1970s, North Korea abducted large numbers of women in Lebanon, as well as in Japan, and in July 1977 attempted to abduct a South Korean pianist and actress and her husband in Belgrade. North Korea has also perpetrated abductions on South Korean territory, and the number of South Korean citizens abducted is estimated at around 485.

In October 1983, South Korean President Chun Doo-hwan paid a visit to Burma, and the North Koreans had prepared a bomb attack. The president providentially delayed his arrival at the site and thus saved his life, but the bombing left a total of about twenty dead, including four ministers and several journalists.

On November 29, 1987 the Korean Air Boeing 707 (Flight 858) covering the flight between the airports of Baghdad, Iraq and Gimpo in South Korea, exploded during the trip over the Andaman Sea, killing all 115 people on board: the timer bomb was placed on the plane by two North Korean agents (the man committed suicide when he was being captured, and the woman was captured). The order was given by President Kim Jong-il, with the aim of destabilizing the 1988 South Korean parliamentary elections and frightening the athletes who would participate in the 1988 Seoul Olympic Games. As a result, the U.S. State Department included North Korea on the list of terrorist organizations.

-Non-international armed conflicts (NIAC):

Case of Afghanistan, Syria, Iraq and Nigeria

Afghanistan, Iraq, Syria and Nigeria are all countries that have had a Non-International Armed Conflict (NIAC), in which Islamist fundamentalism has occupied part of the country, establishing policies of terror, particularly against women. Murders, stoning's, beatings, floggings, amputations, enslaved women and minors forced to marry combatants are common circumstances in countries under Sharia (Islamic law).

Afghanistan

The Taliban government that lasted from 1996 to 2001, called the "Islamic Emirate of Afghanistan", was characterized by a period in which the country went down in history for the enormous violation of human rights by the regime. During this period, Afghanistan was the place of refuge for Osama bin Laden, and a haven for Al-Qaeda, which led to the intervention of the United States and its allies for twenty years (2001-2021). The Taliban made mass executions of civilians a daily occurrence, it turned the degradation of women into state policy, and promoted genocide by depriving 160,000 people of the food supply offered by the UN.

Their fanatical interpretation of Islamic law imposed terror through brutal public punishments for any breach of religious norms and even established the death penalty for violations of the sharia.

The 1980 Afghan Constitution incorporated in its text aspects that were in line with the "Convention on the Elimination of All Forms of Discrimination against Women"²⁰, which was revoked in 1996 when the Taliban came to power.

The poor treatment of women is part of the barbarism and horror of the Taliban, given they practically reduced women's legal status to that of an object. The violation of religious rules by women led inexorably to public flogging, stoning, beheading or summary executions.

The rules imposed were numerous and were restrictive of women's freedom of action and decision. They were mainly aimed at regulating the way they dressed, their behavior in public, their freedom of transit and their responsibilities towards society.

Women had to comply with a strict dress code, hiding their bodies behind the burqa, which covers their body from head to toe and even covers the eyes with a veil so that they are not exposed. The prohibitions include the use of makeup or any embellishment that serves for their beautification, nor can

²⁰ Resolution A/34/180, UN General Assembly, 18 December 1979. Entry into force: September 3, 1981.

they circulate in the streets alone and must do so with a male companion. In addition, they were obligated to walk quietly and refrain from tapping their shoes on the ground, so as not to generate noise. The Taliban rules allowed and encouraged the marriage of girls under the age of 16 and most Afghan marriages were forced.

The ban on work confined women to household chores only, leaving the more than two million war widows without a livelihood. Restricting women's labor to the care and education of their children led to the collapse of early childhood education, as most educators were women. Women were also denied access to education and coeducational schools were closed, as they could not study alongside men.

After the fall of the Taliban in 2001, the Afghan Constitution of 2003 reinstated women's equal rights and restored their freedoms. For 20 years Afghans enjoyed the freedoms and individual rights set out in their Constitution. However, on August 15, 2021, the fall of Kabul into the hands of the Taliban took place again as part of the so-called Taliban offensive of 2021, which followed the withdrawal of North Atlantic Treaty Organization (NATO) troops from the country. Their first actions show that the human, social and economic rights gained in the last two decades are back to where they started in 1996.

Syria and Iraq

With the presence of DAESH or ISIS in Iraq and Syria, a period of terror greater and more radical than the one imposed by the Taliban in Afghanistan began. During this period there was a constant violation of human rights, as well as the implementation of mass executions and the subjugation of women.

The organizations that preceded "DAESH" should be considered since their names and leaderships have been in constant mutation. According to successive stages, the name of the organization has been: from 1999 to 2004 "Jamaat al-Tawhid wa-IJihad" (JTWJ), from 2004 to 2006 "al-Qaeda of the Land of the Two Rivers" (known as "al-Qaeda in Iraq" or AQI), for a short time from 2006 "Majlis Shura al-Mujahedin" (MSM) or "Mujahideen Shura Council", between 2006 and 2013 "Islamic State of Iraq" (ISIS), and finally it will take the name "Islamic State of Iraq and the Levant" (ISIL, DAESH or ISIS).

The first head of the organization was the Jordanian Abu Musab al-Zarqawi, who in the late 1980s participated in the war in Afghanistan fighting against the Soviets. He joined as a mujahideen through the MAK74 (Maktab al Khidmat) organization, and it was there that he came into contact with Osama bin Laden. On his return to Jordan in 1992, he was imprisoned for

participating in a "jihadist" plot to overthrow the Jordanian Hashemite monarchy and establish an Islamic state in the country. After his release in 1999, he returned to Afghanistan and with the group "Jama'at al-Tawhid wa'al-Jihad" set up a training camp near Herat, financed by Osama bin Laden.

The group became active during the US invasion of Iraq in 2003, and with the support of Al Qaeda carried out unusually violent terrorist actions, which caused thousands of deaths among the civilian population, foreign troops in the country and Iraqi government officials.

The group's terrorist actions —following the communication strategy adopted by the Chechen Islamists in the war against Russia—, were disseminated through a massive communication campaign with videos showing bloody executions, firing squads, hangings and beheadings —including those of Nicholas Berg and Eugene Armstrong and many others—, quickly reaching the social networks and other media.

This had vast repercussions in the world and generated repudiation, but also allowed him to gain followers among Islamic radicals. The explicit violence propagated had an impact on world public opinion, and spurred efforts by the United States to capture him, but the search for al-Zarqawi was extremely difficult because he belonged to the Bedouin tribe "Beni Hassan" —whose territory spans several national borders in the Middle East— which allowed him to remain hidden under the protection of his tribe.

On June 7, 2006, al-Zarqawi died, hit by a bomb in a US attack. The organization was left in the hands of Abu Ayyub al Masri —who belonged to the "Egyptian Islamic Jihad"—, changing its name to "Islamic State of Iraq" (ISI). During the period of al Masri's leadership, the group notoriously lost its operational capacity, and was thought to be disbanded when its leader perished in April 2010 in an attack carried out by a joint U.S.-Iraqi operation near Tikrit.

Abu Bakr al-Baghdadi, who was a part of the insurgent movements in Iraq that fought against the U.S. after the fall of Saddam Hussein, has been appointed as the new head of the "ISI".

After the 2011 attempted revolution in Syria against Bashar al-Assad, the "Islamic State" had an unusual growth, recruiting thousands of fighters from Tunisia, Morocco, Saudi Arabia, France, UK, Turkey, Germany, Chechnya and elsewhere in the world, to support its fight in Iraq and against the Syrian government.

The main leader of Al Qaeda, Ayman al-Zawahiri, decided to divide the scenario of operations in the region, leaving Iraq under the influence of the

"ISI", while in Syria there was the "Al-Nusra Front", a faction founded in mid-2011 by Abu Mohamad Al-Golani. For this reason, under the excuse that al-Qaeda was not radical enough, al-Baghdadi confronted al-Zawahiri, and the "Islamic State" split in 2013 from the group founded by Bin Laden, although despite the rupture both organizations still had similarities in terms of the essentials of their ideological perspectives. It was at that time that the organization took the name "Islamic State of Iraq and the Levant" (DAESH).

With al-Baghdadi, Islamic fundamentalism imposed itself in its most bloody form through a wave of attacks of great violence in Iraq and Syria, suicide attacks intensified, starting a raid of massacres, executions, dismemberments, cremations, crucifixions, kidnappings and beheadings, all of which was spread through the Internet and propagated by the international media.

In May 2013 "DAESH" settles in Syria occupying Raqqa, and Deir Ezzor, and later establishes itself in some positions over the border areas of Turkey, Israel and Jordan. In January 2014 together with the remnants of the military forces of Saddam Hussein's disbanded army and tribal rebels, they captured the Iraqi cities of Fallujah and Ramadi.

On June 5, 2014 they launched an offensive, by which they seized the cities of Samarra, Mosul and Tikrit, and by the end of that month, Iraq had lost a significant part of its territory, as well as control of the entire western border with Syria and Jordan. However, the possessions of "DAESH" in Syria and Iraq were not cohesive in a homogeneous space, since, although they had captured scattered cities and towns in which they consolidated and kept under their control, there were also extensive territories in which there was a discontinuous and unstable occupation.

In the conquered populations, an extensive campaign of "purification" was carried out against apostates, pagans, and infidels, promoting ethno-religious genocide against Shiites, Kurds, Yazidis, and Christians, plunging thousands of women from the conquered populations into slavery.

The Islamic State set up two slave markets, one in Mosul and the other in Raqqa, with posters setting the going price of women, according to their virginity and age. An Islamic State spokesman threatened Western women in September 2014, after calling on all its followers to murder Westerners.

The extermination of the Yazidi ethnic group is one example of many, exhibiting the genocide perpetrated by the terrorist organization. After the seizure of the city of Sinjar (Iraq) in August 2014, thousands of Yazidi men were exterminated and about five thousand women and girls were turned into slaves, they were forced to convert to Islam, raped and forced to marry the jihadist fighters.

Recently, a German court sentenced a perpetrator on charges of genocide: "An Iraqi member of the jihadist organization Islamic State (IS) was sentenced [...] to life imprisonment for "genocide" against the Yazidi minority by a German court, the first such sentence worldwide [...] The judges of the Frankfurt Regional Court recognized Taha al Jumailly, 29, "guilty of genocide, a crime against humanity resulting in death, a war crime and complicity in war crimes" (Unofficial translation, Dorner, A., with Paquet, Y., 2021).

DAESH, like the Taliban, imposed strict rules on women regarding their freedom of action and decision. They also regulated the way they dressed and established they had to cover their body from head to toe. They also delimited through precise rules of conduct, their education, behavior in public, freedom of transit and their social responsibilities. In DAESH, men were the only ones who fulfilled political and operational functions, but women played a secondary role in the organization, and formed brigades with the aim of controlling compliance with the rules of the Sharia, assuming a moral policing function regarding other women. They also had some participation in terrorist actions and political violence, in medical assistance tasks and in logistical support for combat actions.

The action of the Islamic State also resulted in the demolition of temples and mosques, as well as the destruction of valuable historical and cultural heritage. On June 29, 2014 Abu Bakr al-Baghdadi declared a "caliphate" in the territory that included Iraq and Syria, proclaiming himself "caliph" (religious and political head) of the "Islamic State of Iraq and the Levant". The creation of the "caliphate" was opposed by his former partners Al Qaeda and the al-Nusra Front in Syria.

Nevertheless, the creation of the "caliphate" activated the ancestral aspiration of the Islamists and produced a great adhesion, which allowed a large recruitment and, by mobilizing radicalized Muslims from all over the world, reaffirmed that in the "jihadists" religious identity is above national identity. Thus, in December 2014, its troops were composed of about 50,000 fighters from ninety countries (10% originating from European countries), in a position to carry out insurgent, guerrilla or terrorist actions. Women from various parts of the world also joined, and it is estimated that around 6,900 foreign women, many of them currently detained in prisons in Syria and Iraq, traveled to the conflict zone.

In August 2014, in the face of the enormous proportions that the conflict had acquired, which already involved several countries, militia groups and "jihadist" organizations, unsuccessfully fighting against the expansion of "DAESH", and in merit of the incessant killings of religious minorities, coupled with the complex humanitarian situation with millions of displaced persons and refugees —anticipating an unprecedented catastrophe in the

region— the US launched an intense air offensive in Iraq and Syria, and also expanded military support in Iraq by providing training, intelligence and equipment.

Finally, in September 2014, the United States created the Global Coalition against "DAESH" with the participation of 64 countries, in addition to the Arab League, Interpol and the European Union, and headed the Combined Joint Task Force (CJFT-OIR) and under its command carried out the "Operation Inherent Resolve", which performed combat missions on targets in Syria and Iraq, while providing humanitarian support. The field of operations was divided into different sectors of responsibility, according to the relations of the participants with the countries involved. Thus, the USA together with France, the United Kingdom, Australia, Canada and Jordan participated in aerial operations to ground forces in all the territories occupied by "DAESH", also providing support for the actions of the Kurdish forces. The Netherlands, Belgium and Denmark are mainly active in Iraq. While in Syria, Turkey intervenes, and Saudi Arabia, United Arab Emirates, Qatar and Bahrain participate with limitations.

On September 30, 2015 the Russian air force began air strikes against the positions of the "caliphate" in Syria, and the international presence in the region is joined by China, who offered support in August 2016.

Various offensives have also been carried out against organizations adhering to "DAESH" in other countries, such as Afghanistan, Azerbaijan (border with Russia), Georgia (border with Russia), Russia (North Caucasus), Indonesia, Philippines, Jordan, Lebanon, Libya, Tunisia, Malaysia, Algeria, Mali, Nigeria, Niger, Cameroon, Chad, Egypt, Somalia and Yemen.

The results of the air and ground offensive of the international coalition were evident, since in two years the "jihadists" lost important parts of the territory they held at their peak in Iraq and Syria. Other consequences of the harsh military response have been the heavy casualties suffered by the "caliphate", which has reduced its strength to around 13,000 combatants, as well as the destruction of its camps, the cutting of its lines of communication and the impact on its economic resources from oil, which have diminished considerably, having to resort to the imposition of higher taxes on the population to compensate for the losses. The decrease of the territory controlled by the "caliphate" in Syria and Iraq as a result of the failures suffered by the persistent attacks of the international coalition, ended up leading to the defeat in 2017 and showed the unfeasibility of its attempt of territorial consolidation, although some fractions continue to operate with limitations in Africa and Asia, and in a very reduced form in Europe.

Nigeria

In 2002 the terrorist organization Boko Haram was created in northern Nigeria, which is not very different from DAESH when it comes to its tactics, in fact, in 2015, this group expressed its allegiance to the Islamic State. Its aim is to attack civilian population, and, since its inception, thousands of civilians have been killed by the organization's attacks. Since 2013, the Nigerian government has launched a strong offensive, but the Boko Haram remains strengthened in the mountainous areas of the northern parts of the country.

Boko Haram has had a preference for terrorist attacks on schools, killing hundreds of children, and as a result, thousands of parents have stopped sending their children to educational institutions, fearing that their children will be victims of an attack or that their daughters will be kidnapped and used as sex slaves.

It is estimated that there would be around 2000 women and girls in the period 2014-2015, but a case that caught the attention of the international press was the kidnapping of girls that occurred in northeastern Nigeria, in Chibok (Borno) on April 14, 2014, when the terrorist group captured and enslaved 276 girls. While small groups were released, by 2019 —the fifth anniversary of the abduction—, 112 of the abducted girls had yet to be released.

The group has also used women and girls in suicide bombings, and between 2011 and 2017, it carried out 434 suicide terrorist actions in which around 56% of the participants were women.

-OSV: Other Situations of Violence

The Mapuche Conflict

The Mapuche ethnic group is a community that existed prior to the birth of the nation of Chile. They demand ownership of lands that they considered to have been dispossessed of during colonial times. This has led the Mapuche to stage protests and take violent actions, which in several cases fit the legal descriptions established in the Anti-terrorism Law of Chile.

Chile's 1984 anti-terrorist legislation (Law No. 18.314) was created to tackle crimes that involve political and ideological violence. It was modified in 1991 during the government of Patricio Aylwin. The amendments introduced establish that these violent actions aim to instill fear among the population, or parts of it, through the nature or the effects of the means used, or because the violence follows a premeditated attack against a specific category or group of people. The amendments added the crime of arson and destruction, a criminal offense that frequently takes place during Mapuche criminal actions.

Although the anti-terrorist law began prosecute the violence unleashed by the Mapuche conflict in 2001, in 2002 the conflict escalated during the illegal occupation of land in the Fundo of Santa, Malleco Province, where Álex Lemun Saavedra was killed by a Carabinero's weapon. In that year, the "Coordinadora de Comunidades en Conflicto Arauco-Malleco" (Coordinator of Communities in Conflict Arauco-Malleco) was declared a terrorist organization and its leaders were imprisoned.

The trials carried out had wide resonance, in particular the "Loncos Case" in which Pascual Pichun and Aniceto Norin received sentences of 5 years and 1 day in prison for the crime of "threat of terrorist arson", and also the "Pulucó-Pidenco Case" in which four Mapuches were sentenced to 10 years and 1 day in prison for "terrorist arson".

In February 2011, the Oral Court of Cañete acquitted 17 Mapuches of the charges of Terrorist Arson and Unlawful Association. However, 4 of them were found guilty of Robbery with Intimidation, Assault on Authority and Attempted Homicide, for an attack against prosecutor Mario Elgueta that occurred in October 2008.

In January 2013, Werner Luchsinger and his wife were killed when their house in the Vilcún commune was burned down and Celestino Córdova was convicted and sentenced to 18 years in prison.

Radicalized Mapuches habitually carry out violent acts in the regions of Biobío, Araucanía and Los Ríos, with intimidation of landowners, rural residents, Christian churches and forestry companies, frequently producing arson and armed attacks against houses and trucks.

On August 28, 2017, in the Los Ríos Region (San José de la Mariquina sector), 29 trucks belonging to the Sotraser company were destroyed by arson. In the commune of Victoria, on February 8, 2020, a group set fire to the truck with the driver, Juan Barrios, inside, causing him severe burns that resulted in his death. In the Commune of Cañete, on September 8, 2020, after an arson attack in the Laguna Grande Lloncao sector, Moisés Orellana was shot in the head and killed.

On October 8, 2021, there was an arson attack on the Pemehue Hot Springs in Collipulli, a day later there was the burning of trucks and machinery at Forestal Mininco in Loncoche, and the burning of 18 trucks at a company in Temuco. In addition, there have been illegal land occupations in recent months, including the violent seizure of a rural property in the province of Malleco, which ended with trucks being set on fire and a shootout between Carabineros and Mapuche groups.

In 2021, violent acts carried out by radicalized Mapuches totaled 866 in the first half of the year, which resulted in 304 people being arrested for crimes of rural violence, 407% more than in 2020. For this reason, in mid-October 2021, Chilean President Sebastián Piñera decreed a State of Constitutional Emergency Exception for 15 days, with the participation of the Armed Forces, in view of the "serious alteration of public

order", due to protests by Mapuche community members in the provinces of Biobío and Arauco, in the Biobío Region, and in the provinces of Malleco and Cautín, in the Araucanía Region. In his announcement, the President of Chile refers to "the serious and repeated acts of violence linked to drug trafficking, terrorism and organized crime committed by armed groups".

Sexual and gender-based violence associated with terrorism

Terrorism and terrorist actions, as previously mentioned, can be considered within different scenarios: International Armed Conflict (IAC), Non-International Armed Conflict (NIAC) and Other Situations of Violence (OSV), depending on the case in question.

Under the aforementioned scenarios, leaving aside gender stereotypes in relation to power, it should be taken into account the increase in the participation of women in armed or terrorist groups, where they no longer do so only as part of the traditional accompaniment to men who participate in these illicit activities, but as an integral part of these groups, supporting the recruitment of new members and actively participating in the terrorist actions they carry out. While it is complex to identify and understand the positions just by looking at gender and terrorism, their intersection with other areas such as cyber warfare, hybrid warfare, social networks and propaganda, can be useful.

Thus, an analysis of gender in the scenarios outlined above, allows us to observe certain social practices and cultural dynamics that impact girls and women when related to terrorist activities. These cultural dynamics are intrinsically linked to gender roles and stereotypes, which are explained through asymmetrical relations between women and men.

It should be remembered that sexual and gender-based violence occurs within these organizations, replicating patterns of other non-state actors. Some of the situations that take place include the controlled reproduction of women, forced sterilization, forced pregnancy, rape by other members of terrorist groups, and forced prostitution, among others.

To combat the actions of terrorists and the groups that carry out such actions, different components of the public force and the security sector may intervene, such as the armed forces and the security forces, understood as the police forces, which may carry out military operations or police operations, respectively. From this perspective, all the guidelines and recommendations previously mentioned are applicable to the military and police functions performed by these forces. All of them should incorporate the recommendations established in the United Nations Security Council Resolution 1325/2000 and the most relevant successive ones regarding the gender perspective.

On the other hand, the presence of women in the fight against terrorism should be noted, by including a gender perspective and incorporating women; a decision that, as an agent of the state, usually contributes significantly in preventing and combating terrorism and violent extremism. In this way, women can act as agents of change, early warning and deradicalization in their communities and family environments. They also have essential roles

to play in security sector policy formulation, negotiation processes and law enforcement services.

Guidelines and Recommendations

It can be said that terrorism impacts society equally, without distinction. Terrorist organizations integrate women and men into their ranks, according to their aims, and their victims have no distinction of sex, age or social status.

Likewise, anti-terrorist actions usually leave aside any kind of consideration or gender perspective, since terrorists usually receive the same treatment by the state with the maximum intensity of the use of force. Hence, *the search for and integration of a gender perspective in the fight against the scourge of terrorism is a challenge*, especially for those countries with a greater tradition of democracy and respect for international human rights law and the laws and customs of war.

-Guidelines

It is important to consider gender in the framework of the fight against terrorism, with special attention to the principle of distinction, detention regimes, protection for those *hors de combat*/in need of medical care, definitions of terrorism and related offenses, and the prohibition of torture and other cruel, inhuman and degrading treatment, especially with the presence of women within terrorist groups.

In other words, consideration should be given to the possible presence of vulnerable groups who are victims of terrorism, such as persons in need of medical care, the disabled, the elderly, pregnant and nursing mothers, displaced persons, asylum seekers and refugees, children, victims of sexual and gender-based violence and victims of other serious human rights violations.

The mandates of other UN agencies and other organizations involved in counter-terrorism implementation, protection, assistance and capacity building should also be observed, thereby maximizing the cross-cutting application of the gender dimension of IHRL.

In addition, consideration should be given to the UN Security Council Resolutions dealing with the phenomenon of foreign terrorist fighters and women and children associated with these groups on the obligations of States with regard to IHRL and IHL.

In intervening and combating terrorism, commanders must take into account the vulnerability of many women and children, especially those with limited resources and low average levels of education.

Appropriate measures must be taken to prevent or, at least, minimize the effects of terrorist acts, with special attention to the most vulnerable groups of civil society, such as women and children. The ideal mechanisms to do so are intelligence services, clear information for the public, counting with their help to alert the authorities about suspicious groups or activities, and

special operations forces to manage consummated acts, all of which must have the strategic objective of saving the greatest number of human lives.

In short, a gender perspective must be considered in every action or operation that is planned—whether in the prevention or in the fight against terrorism—, incorporating it in work teams of women and men, which will guarantee a broader and differentiating vision to the actions that must be planned or executed.

-Recommendations

- a) Including terrorism in the State Risk Agenda, identifying it as a potential threat to national security.
- b) Generate mechanisms for social participation, encouraging citizen cooperation to achieve early warnings of events and groups that could lead to terrorist acts.
- c) Provide the intelligence agencies with guidelines, knowledge, tools (including technological) to prevent, neutralize and terminate indiscriminate attacks against the civilian population and terrorist acts on the nation's critical infrastructure.
- d) Create and develop special operations groups, with a high capacity to respond to terrorist events.

The possibility of effectively combating terrorism is based on an effective intelligence activity, which allows the detection and monitoring of terrorist organizations, which will give the possibility of knowing their plans, and dismantle them before the action. The incorporation of women in the fight against terrorism, from different perspectives, can be a factor of change in the development of such actions and, above all, in their results.

Final Remarks

Terrorism has existed since time immemorial, but as a modern phenomenon it first appeared at the end of the 19th century as a method of anarchist movements and was later used by various groups—including Islamic fundamentalists— as a means of achieving their political objectives.

Terrorism usually resorts to indiscriminate attacks that significantly impact the right to life of the civilian population, including women and children, in order to generate a state of terror for the entire population, a group or collective, or specific individuals.

In contexts of armed conflict, terrorism as a method of waging war is used by non-state actors to compensate for asymmetries in the face of the greater capabilities of the regular armed forces of nation-states, and its commission constitutes a war crime that is indefeasible.

References

Bernard, Vincent. "Armed groups and applicable law", RICR No. 882, June 2011.

CESEDEN, "International Terrorism: Approaches and Perceptions", Spanish Ministry of Defense. Nro79, May 2005

Di Lellio, Anna and Castano Emanuele, "The danger of "new rules" and the continued relevance of IHL in the post 9/11/01 era", IRRRC No. 900, November 2016.

Dorner, A., with Pasquet, Y. (2021) "Justice recognizes Yazidi genocide for the first time with sentence against an Iraqi in Germany"; available at: <https://www.rfi.fr/es/mundo/20211130-la-justicia-reconoce-por-primera-vez-el-genocidio-yazid%C3%AD-con-la-sentencia-contra-un-iraqu%C3%AD-en-alemania>

ICRC. Report: "Applicability of IHL to terrorism and counter-terrorism", 01/10/2015.

ICRC. Statement, "Measures to eliminate international terrorism: statement by the ICRC to the UN," 04/10/2017.

Organization of American States. Report "The Right to Humane Treatment and Terrorism." OEA/Ser.LV/II.116, Doc. 5 rev. 1 corr., 22 October 2002.

Ortiz, Juan. "Islam y democracia", in Boletín de Información del CESEDEN, number 280, 53-54. Madrid, 2003

Paz, José Gabriel. "A Guerra contra o Terrorismo Fundamentalista e a Crise dos Direitos Civis: Outra Perspectiva do Conflito", Military Review, (Edicao Brasileira), USA, Jan-Feb 2005.

Paz, José Gabriel. "Defining the War Objective: The Fight Against Islamic Fundamentalism", Military Review, USA, May-June 2002, Number 3.

Swinnen, Jérémie. "On "Acts of Terrorism" in International Humanitarian Law. A look from the Geneva Conventions and Protocols." Prudentia Iuris, No. 86, 2018, pp. 37-63.

Vacas Fernández, Felix. "El Terrorismo como crimen internacional", Monografías, Volume 750, Tirant lo Blanch, 2011.

CHAPTER VI – DETENTION

This chapter tackles gender mainstreaming in scenarios of detention in the context of Non-International Armed Conflict (NIAC), Other Situations of Violence (OSV) and Post-Conflict (POC).

This chapter focuses on the real situations that take place in Latin America, a region where there is formal protection regarding detention, but with numerous shortcomings in practice. Therefore, this section highlights the importance of sparing no efforts to create effective mechanisms of prevention, control and repression, with a comprehensive gender perspective, in order to ensure respect for detainees.

Following the former, this chapter highlights the need to internalize and raise awareness of the guarantees that should be granted in cases of detention, and it also analyzes strategies to materialize a gender approach in this regard. Finally, the chapter incorporates conclusions from the Inter-American Human Rights System (IAHRS) regarding detention and gender, centered around the reality of this region.

Conceptual framework

-Detention

This refers to the deprivation of personal liberty, that is, the confinement of a person in a restricted space or place, which begins when a person is arrested and ends with their release. Although confinement that reaches the status of detention is normally involuntary, the rules relating to the treatment of persons deprived of their liberty also apply to cases of voluntary confinement. Detention is regulated by domestic law, International Human Rights Law (IHRL) and, in the context of armed conflict, International Humanitarian Law (IHL).

IHRL enshrines the right of all individuals to personal liberty, but, at the same time, authorizes certain limitations. Thus, in certain circumstances, deprivations of liberty are permissible under IHRL.

Right to personal liberty

The right to personal liberty is enshrined in Art. 9 of the International Covenant on Civil and Political Rights (ICCPR), Art. 6 of the African Charter on Human and Peoples' Rights, Art. 7 of the American Convention on Human Rights (ACHR), Art. 14 of the Arab Charter on Human Rights, and Art. 5 of the European Convention on Human Rights. All these provisions admit deprivations of liberty insofar as they are neither unlawful nor arbitrary, with the exception of Art. 14 of the ACHR—which only expressly prohibits unlawful detentions—and Art. 5 of the European Convention, which does not expressly mention the requirement of non-arbitrariness and instead establishes an exhaustive list of admissible grounds for deprivation of liberty.

Deprivation of personal liberty, from an approach that encompasses NIAC, OSV and POC contexts, can be defined as the period from the initial arrest to pre-trial and post-trial incarceration. This includes temporary detention as a precautionary measure or in

international or transit zones at stations, ports and airports, house arrest, rehabilitation through work, and detention in recognized and non-recognized facilities for non-nationals, including migrants, regardless of their immigration status, refugees and asylum seekers, and internally displaced persons, assembly centers, hospitals, psychiatric or other medical facilities or any other type of facility where they remain under constant surveillance, as they may constitute not only restrictions on personal freedom of movement, but also a *de facto* deprivation of liberty. It also includes detention during armed conflict and emergency situations, administrative detention for security reasons, and detention of persons considered civilian internees under International Humanitarian Law.

Definition of detention

This definition is taken from the Report on Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of His or Her Liberty by Arrest or Detention to Bring Proceedings Before Court, presented during the 30th session of the United Nations General Assembly.

-Detention in the context of NIAC

In the context of a NIAC, IHL does not establish specific grounds or procedures for deprivation of liberty. However, some rules on detention/imprisonment regulate the treatment of persons who have been detained.

Two types of deprivation of liberty may occur in a NIAC: a) internment, that is to say, deprivation of liberty promoted or ordered by administrative authorities, on imperative grounds of security threats, without criminal charges having been brought against the detainee; b) criminal detention, this is, the deprivation of liberty in connection with criminal proceedings, in which case the usual judicial guarantees apply.

Deprivation of liberty

Art. 3 common to the four Geneva Conventions of 1949 applies, among others, to persons who have been placed *hors de combat* by detention (people who cannot take part in hostilities as a consequence of their deprivation of liberty) and establishes fundamental protections, including guarantees for detainees.

Additional Protocol II of 1977 to the Geneva Conventions (AP II) also refers to persons whose liberty has been restricted: Art. 4° establishes certain fundamental guarantees that apply to all persons who do not directly participate in hostilities or who have ceased to participate in hostilities, regardless of whether or not their liberty has been restricted; Art. 5° expressly applies to persons whose liberty has been restricted by internment or detention for reasons related to the armed conflict; while Art. 6° of AP II regulates the criminal prosecution and jurisdictional guarantees of detainees subject to criminal proceedings.

With regard, more particularly, to women deprived of their liberty, the ICRC has found that women are exposed to a greater degree of [...] ill-treatment when they are arrested and detained and especially during the interrogation that follows, in order to obtain confessions; this ill-treatment ranges from threats of rape to the act itself. (Unofficial translation, Kril, 1985).

The rules of IHL that regulate the conditions under which internment may be ordered and the procedure for verifying the validity of such grounds in each case are only enshrined in the legal instruments applicable to International Armed Conflicts (IAC).

Women prisoners of war benefited from the provisions of the Regulations annexed to the Hague Conventions of 1899 and 1907 on the Laws and Customs of War on Land; and later, in 1929, by the Convention relative to the Treatment of Prisoners of War. The Third Convention relative to the Treatment of Prisoners of War is currently in force, which establishes as a guiding principle that "Women shall be treated with all the regard due to their sex and shall in all cases benefit by treatment as favorable as that granted to men" (official text, art. 14, Third Geneva Convention), this means, they are entitled to the same protection.

IHL contains explicit reservations with respect to the situation of women in various cases, either generally (taking into account their sex...) or more precisely (separate sleeping quarters, separate places of detention). It should not be inferred from this that the principle of differential treatment is not applicable in cases where it has not been specifically formulated (provisions relating to insults, interrogations, frisking, food, clothing, distractions, instruction, sports, work, conditions of transfer, persons of trust, identification). Expressly mentioning the principle means rather reinforcing its scope than limiting its application, and differentiated treatment is granted to women even if it is not explicitly mentioned (Kriil, 1985).

For its part, Additional Protocol I states that "Women whose liberty has been restricted [...] shall be held in quarters separated from men's quarters. [...] Nevertheless, in cases where families are detained or interned, they shall, whenever possible, be held in the same place and accommodated as family units" (official text, art. 75, para 5). The Fourth Convention provides that "Whenever it is necessary, as an exceptional and temporary measure, to accommodate women internees who are not members of a family unit in the same place of internment as men, the provision of separate sleeping quarters and sanitary conveniences for the use of such women internees shall be obligatory" (official text, art. 85). This is a case of application of the general provisions of article 27, paragraph 2, concerning respect for the honor of women. For the same reasons, "A woman internee shall not be searched except by a woman" (official text, art. 97, paragraph 4).

Additional Protocol I contains an additional guarantee in favor of women detainees, stating that: "They shall be under the immediate supervision of women." (official text, art. 75, para. 5). In addition to this special protection, there is the principle that "Pregnant women and mothers having dependent infants who are arrested, detained or interned for reasons related to the armed conflict, shall have their cases considered with the utmost priority" (official text, art. 76, para. 2, Additional Protocol I); the aim is to ensure that pregnant women and mothers with young children in detention are released as soon as possible.

In the case of NIAC, the complementarity of IHL and IHRL becomes a priority in determining the legal framework for detention, especially with regard to procedural guarantees for those deprived of their liberty in the context of a NIAC. Therefore, in cases of NIAC, in which the

detention takes place within a state's own territory, these guarantees and scope are regulated by domestic law.

Internment

Internment, as a deprivation of a person's liberty, will always be an exceptional measure, and its purpose will be to control a person who may represent an imperative threat to the security of a state rather than to punish them for an act they have committed. Finally, it should not be overlooked that prisoner of war status is not applicable in the context of a NIAC. On the complementarity of IHL and IHRL, see AP II, paragraph 2 of the Preamble, which establishes the relationship between the Protocol and IHRL. The Commentary to the Additional Protocols by the ICRC specifies that the reference to international instruments in that paragraph includes treaties adopted by the UN, such as the International Covenant on Civil and Political Rights and the Convention against Torture, as well as regional human rights treaties. On the complexities of internment in a NIAC context, it is recommended to review the ICRC report *Strengthening International Humanitarian Law Protecting Persons Deprived of their Liberty in Relation to Armed Conflict*.

The Report of the Working Group on Arbitrary Detention on United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court, states in Guideline 17: "With regard to detention in relation to a non-international armed conflict:

(a) Administrative detention or internment may only be permitted in the exceptional circumstance where a public emergency is invoked to justify such detention. In such a case, the detaining State must show that:

- I. The emergency has risen to a level justifying derogation;
- II. Administrative detention is required on the basis of the grounds and procedures prescribed by law of the State in which the detention occurs and is consistent with international law;
- III. The administrative detention of the person is necessary, proportionate and non-discriminatory, and the threat posed by that individual cannot be addressed by alternative measures short of administrative detention" (official text).

Regarding detentions in a NIAC by non-State armed groups, the ICRC states in its "Commentary to Geneva Convention I Article 3 Non-International Conflicts", that "States decided that non-State entities could not be parties to the Geneva Conventions"(unofficial translation). However, it is now accepted that common Article 3 is binding on non-State armed groups or organized armed groups (OAGs), both as treaty law and as customary law.

-Categories of deprivation of liberty in OSV

In OSV contexts, there are usually two types of deprivation of liberty: criminal detention and administrative detention. In this scenario, the IHRL is the autonomous source for the regulation of deprivation of liberty, generally integrated into the domestic law of each State. In addition, each State, in accordance with its international obligations, regulates the scope and procedure of such figures.

In these scenarios, the legal framework is focused on the rule of law. For this reason, when a person is deprived of their liberty or detained, their legal status will be under the protection of the guarantees set forth in the Constitutions of each State, as the main norm, and by the international human rights treaties to which the State has adhered, as well as by lower-ranking norms such as, for example, penal codes.

Administrative detention is the deprivation of liberty of a person ordered by administrative –not judicial— authorities, without any criminal charge. It is an exceptional measure that, in principle, is only allowed under a state of emergency, siege or exception, within which the fundamental rights and guarantees of the person must be respected, as well as the right to file a habeas corpus; in general, detention may not exceed a period of time ranging between 12 and 24 hours and must be closely related to the reason for the state of emergency or exception, otherwise it may be classified as arbitrary.

Deprivation of liberty

Article 7 of the ACHR provides in its second and third paragraphs that “No one shall be deprived of [their] physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto. No one shall be subject to arbitrary arrest or imprisonment” (official text). The Constitutions of the countries of Mexico, Ecuador and Colombia establish the obligation of a prior judicial order issued by a competent authority in order to legitimately deprive someone of their liberty.

Criminal detention, as in an IAC scenario, is the deprivation of a person's liberty through a criminal proceeding, due to the alleged or proved commission of a crime. The procedure for this category of detention, as well as the judicial guarantees inherent to this type of detention, are generally provided for in the norms of International Human Rights Law incorporated into the constitutions of each State and regulated by the respective domestic criminal codes.

There are two types of criminal detention:

- a) detention in compliance with a sentence, understood as that which occurs after a criminal proceeding has been carried out, with the aforementioned guarantees;
- b) pre-trial detention, a precautionary, provisional and exceptional measure consisting of the detention of the person while the criminal proceeding is being carried out, due to risks of an eminently procedural nature.

Criminal detention may originate in the materialization of an arrest warrant issued by a competent judicial authority, or in response to a situation of flagrancy.

Legal process

Article 7 of the ACHR states in its fifth numeral that every person must be tried by someone vested with the proper judicial power within a reasonable time and that they may be released while their trial continues under certain conditions that ensure their appearance before the court. Article 8 lists all the guarantees that must materialize within the framework of a legal process. Article 9 of the ICCPR warns of the exceptional nature of pre-trial detention: " It shall not be the general rule that persons awaiting trial shall be detained in custody, but release

may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement" (official text). In turn, the United Nations Standard Minimum Rules for Non-custodial Measures (Tokyo Rules) state that "Pre-trial detention shall be used as a means of last resort in criminal proceedings, with due regard for the investigation of the alleged offence and for the protection of society and the victim" (Official text).

-Types of deprivation of liberty in POC

In a POC scenario, the categories are the same as those seen above for OSV scenarios. Some variables can be observed not with respect to the category of detention, but with respect to the legal situation of those who, in the framework of a transition to peace, have demobilized from a hostile group and are in the process of reincorporation. This is because some transitional justice mechanisms may provide for certain safeguards such as the suspension of arrest warrants, administrative amnesty for legally established political crimes, or their concentration in certain territorial spaces while they go through the disarmament, demobilization and reintegration (DDR) stages, among others.

Legal process

Regarding the benefits in favor of those who participated in the hostilities, Art. 6 (5) of AP II specifies, with respect to NIAC contexts, that "At the end of hostilities, the authorities in power shall endeavour to grant the broadest possible amnesty to persons who have participated in the armed conflict, or those deprived of their liberty for reasons related to the armed conflict, whether they are interned or detained" (official text).

Guidelines

-Raise awareness among law enforcement personnel to conduct a vulnerability analysis of detainees from a gender perspective

Detainees are particularly vulnerable to violations of national and international rules and norms related to gender. The training should provide the knowledge and tools that are linked to detainees or detention centers, to assess each group of detainees, with a special emphasis on the cross-cutting factors of diversity and gender.

In particular, the cultural background of detainees, their age, possible language barriers and disabilities are some of the factors that may increase the risk of gender-related violence. It is illustrative for these purposes to consider the case of medical examinations or searches, which for detainees from certain cultures may be particularly uncomfortable if carried out by staff of the opposite sex.

Similarly, it is possible to consider effective access to complaints mechanisms, which may be affected by language barriers or discouraged when impunity/lack of accountability for gender-related violations is perceived as the norm in the social context of detainees.

In this context, the situation of persons detained by a non-State armed group is particularly adverse. Although the provisions of Article 3 of the Geneva Conventions are applicable in principle as a limit of humanity of acceptable conduct in a situation of deprivation of liberty, this is not sufficient to guarantee the protections of those persons who are rendered highly vulnerable in a detention scenario.

These detentions are generally punishable under the domestic law of the States; thus, since the non-State armed group is in itself in an illegal sphere of action, respect for these guarantees and the differential needs of the detained persons is largely violated.

Therefore, it is necessary to insist on the urgent need to raise awareness that, in a humane detention environment, regardless of the detaining entity, there is a gender focus that is materialized by respecting special and differentiated conditions and needs.

Persons deprived of their liberty
On the difficulties of detention by non-State armed groups, see ICRC, Strengthening IHL protecting persons deprived of their liberty in relation to armed conflict. https://www.icrc.org/en/document/detention-non-international-armed-conflict-icrcs-work-strengthening-legal-protection-0

In OSV contexts, there is a hardening of criminal policies that lead to a significant increase in the number of women in prisons for minor crimes, or for being involved in organized crime (*maras*, gangs or drug trafficking), in which they generally play a minor or insignificant role and their detention does not contribute to the dismantling of criminal groups.

In this context, the vulnerability of women detainees and the risks of gender-related abuses increase significantly, especially because they often spend long periods of deprivation of liberty as a result of the excessive use of pre-trial detention and poor public defense.

Deprivation of liberty also produces psychological and emotional damage for the detained woman, whether due to the distance from her loved ones, the absence of her children in the case of mothers responsible for their families, or the anguish of not knowing who will attend to their needs in her absence, among others.

Violence against women
United Nations General Assembly Resolution 61/143 on the Intensification of efforts to eliminate all forms of violence against women, adopted on December 19, 2006, highlights that “violence against women” means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life” (official text), and urged Nations, among other actions, to “ review and, where appropriate, revise, amend or abolish all laws, regulations, policies, practices and customs that discriminate against women or have a discriminatory impact on women, and ensure that provisions of multiple legal systems, where they exist, comply with international human rights obligations” (official text), among others; and, finally, provide training and skills building in gender equality and women's rights for legal and law enforcement personnel, among others.

-Raise awareness among members of the security forces of existing legal obligations and relevant standards on the treatment of detainees and, in particular, on the protection of detainees in relation to gender

It is a priority to create awareness-raising processes with a gender perspective among law enforcement personnel, with strict knowledge of the international and domestic standards in force, on the guarantees that must be respected for persons deprived of their liberty.

When applicable, IHRL provides several safeguards that protect all persons, including detainees. In particular, several treaties prohibit torture and any cruel, inhuman or degrading treatment or punishment. This prohibition is absolute—that is, it cannot be derogated from or suspended under any circumstances—and is also established in customary international law. In addition, the fundamental safeguards against abuse apply specifically to detainees.

Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment

The prohibition of torture or other cruel, inhuman or degrading treatment or punishment is established in the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the Inter-American Convention to Prevent and Punish Torture, and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, as well as in Art. 7 ICCPR, Art. 5 ACHPR, Art. 5 and Art. 8 ACHR, and Art. 3 ECHR. Treaty-based norms that expressly address the treatment of detainees include Art. 10 of the ICCPR on the obligation of the detaining State to treat all persons deprived of their liberty with humanity and with respect for their inherent dignity, as well as Art. 20 of the ACHR on the humane treatment of persons detained in connection with criminal proceedings.

A variety of IHRL norms tackle specifically matters relating to gender.

Discrimination on the basis of sex

On the prohibition of discrimination on the basis of sex, see the treaties dealing with gender-specific issues: the ACHPR Protocol on the Rights of Women in Africa (Maputo Protocol); the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará); and the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention).

A number of instruments, while not legally binding, provide relevant guidance on the treatment of detainees in accordance with international legal obligations and relevant standards. Some specifically address the treatment of female detainees. The content of these rules can be seen in the following guidelines.

Legal dispositions and rules

United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), Resolution adopted by the General Assembly on 17 December 2015, A/RES/70/175, 8 January 2016, Annex, p. 7; United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), adopted by General Assembly Resolution 40/33 of 29 November 1985; Body of Principles for the Protection of All Persons under Any Form of

Detention or Imprisonment by General Assembly Resolution 43/173 of 9 December 1988 (BoP); United Nations Rules for the Protection of Juveniles Deprived of their Liberty adopted by General Assembly resolution 45/113 of 14 December 1990 (RPJ); Resolution adopted by the General Assembly on 21 December 2010, annex, A/RES/65/229, 16 March 2011 (Bangkok Rules); and United Nations Standard Minimum Rules for Non-custodial Measures (Tokyo Rules), adopted by the United Nations General Assembly in December 1990.

Law enforcement personnel must be aware of the normative framework they are obliged to respect, especially the imperatives that prohibit discrimination on the basis of gender and those that incorporate judicial guarantees for persons in any kind of detention.

In a traditional NIAC, where there is a confrontation within the territory of a State between regular State Armed Forces and dissident Armed Forces or organized armed groups, IHL does not establish categories of protected persons or persons enjoying a particular status, in contrast to IAC where it is determined who are combatants and prisoners of war. Therefore, the rules of protection in a NIAC with respect to detainees will apply regardless of their role or participation or not in the hostilities, and equally cover detainees held by state forces and dissident groups.

It should be noted that, in this context, women, including pregnant women, as well as children and teenagers, are more exposed to all the negative consequences of combat and detentions. Within the dissident armed forces or organized armed groups, women, adults, teenagers or girls are more and more frequently found, who in the event of surrender or capture after a combat in the field may be deprived of their liberty and subsequently tried in the corresponding instances. Likewise, adult women or minors may be deprived of their liberty without any suspicion of having committed a crime. It is therefore important to emphasize that the obligations regarding the treatment of detainees in the framework of a NIAC must be guaranteed without any discrimination based on gender and the activity carried out in the hostilities.

Obligations regarding the treatment of detainees

The fundamental guarantees established in Art. 4 of AP II to the Geneva Conventions apply to all persons under the control of a party to the conflict, including persons deprived of their liberty; Art. 5 of the Protocol establishes a set of minimum requirements that must be considered for all persons deprived of their liberty for reasons related to the NIAC; Art. 7 of the Protocol (protection and assistance) covers all wounded and sick persons, including those deprived of their liberty. Likewise, Art. 9 of the International Covenant on Civil and Political Rights sets forth the rights of persons deprived of their liberty or detained.

Likewise, detention must have a reasonable duration, without unfounded delays such as those caused by inefficient administration of justice or improper defense. There must also be a system capable of recording arrests and detentions so that such information can reach the detainees' families and their lawyers, thus guaranteeing prompt access to defense.

Legal assistance to detainees

The American Convention has stated that legal assistance must respect the following criteria: (a) it must be exercised by a legal professional who satisfies the requirements of a technical defense through which the person is advised. On the possibility of exercising remedies against acts that affect rights (I/A Court H.R., Case of Nadege Dorzema et al. v. Dominican Republic, para. 132).

Law enforcement officials should be aware of the context in which OSVs occur in order to better identify existing legal obligations regarding the treatment of detainees. The ICRC uses the term Other Situations of Violence (OSV) to define civil disorder, riots, State repression, post-election violence, gang violence or demonstrations. These are situations in which authorities often resort to extensive use of military or police force to maintain or restore law and order. While these situations fall short of being categorized as armed conflict, the humanitarian consequences can be as serious, if not more so, as those of full-fledged armed conflicts. The first step should be to understand the context itself, through research and knowledge of national gender legislation and laws such as domestic violence prevention, anti-sexual harassment, as well as institutional gender policies, gender training processes for public servants, to safeguard women's rights and their human rights.

In OSV contexts, it must be clear that detentions must follow the law. The role of judicial guarantees in OSV contexts, especially in matters of detention, is fundamental. It is therefore advisable to familiarize oneself with the catalog of these safeguards to protect, ensure, or enforce the ownership or exercise of a right in the context of a judicial process.

Minimum Rules for the Treatment of Prisoners

Art. 8 of the ACHR, as well as the Mandela Rules, establishes the main guarantees for a detainee in the context of a judicial process, including: i) to know the reasons for the detention and the charges brought against the detainee; ii) the presumption of innocence; iii) the right not to testify against oneself; v) the right not to be coerced into making statements and not to be subjected to torture, cruel, inhuman or degrading treatment; vi) to be able to immediately inform one's family of the detention or transfer to another facility; (vii) to have communication and be visited; (viii) to be assisted by a trusted lawyer and to have a private interview with them; (ix) to have a judge examine the legality of one's detention, the conditions in which one is being held and decide whether or not one should be released; (x) and to be brought before a judge within a peremptory time limit.

Law enforcement officials should always take into account the gender-specific needs and circumstances of detainees, especially in the context of rehabilitation and social re-adaptation guarantees.

Authorities must comply with minimum gender standards to ensure proper treatment of those deprived of their liberty. Detainees should always be treated with dignity, meeting the specific needs of women, and protection should be provided against any attempt of harassment or sexual abuse and physical or psychological mistreatment, before, during and after their detention.

Women detainees

The Inter-American Court of Human Rights specified in the *Castro Castro v. Peru* case that women deprived of their liberty must not suffer discrimination and must be protected from all forms of violence or exploitation. Likewise, female detainees must be supervised and checked by female officers. Pregnant and breastfeeding women must be provided with special conditions during their detention.

The Committee on the Elimination of Discrimination against Women has pointed out that such discrimination includes gender-based violence, “that is, violence directed against women because they are women or that affects them disproportionately”, and that this includes “acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other forms of deprivation of liberty” (unofficial translation).

A key actor in the treatment of persons deprived of their liberty is played by the wardens who carry out the detentions and are responsible for maintaining it, who should be aware of the legislation in each country on gender-differentiated treatment in the case of women and children deprived of their liberty, as they are the guarantors of their rights.

Women deprived of their liberty in Latin America are generally affected by the lack of contact with their families, this is by restrictions on communication and visits. Detention in itself separates families that break up, since the woman in detention (in many cases a mother) is usually the nucleus of the family.

Mandela Rules

The Mandela Rules (see rules 36 to 39) prohibit indefinite or prolonged isolation. The Inter-American Court in the case of *García Asto and Ramírez v. Peru* stated that incommunicado detention, solitary confinement and the restriction of family visits constitute cruel, inhuman and degrading treatment that resulted in the violation of the physical, psychological and moral integrity of the victims.

The issue of psychosocial support for women deprived of liberty is rarely addressed. Various studies reveal that women are much more likely to suffer from mental health illnesses during their deprivation of liberty, due to the psychological impact of incarceration.

Psychosocial support for women detainees

The UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules) (rules 12 and 13) establish that “Individualized, gender-sensitive, trauma-informed and comprehensive mental health care and rehabilitation programmes shall be made available for women prisoners with mental health-care needs in prison or in noncustodial settings.” “Prison staff shall be made aware of times when women may feel particular distress, so as to be sensitive to their situation and ensure that the women are provided appropriate support” (official text).

In States with transitional justice mechanisms, having public and specialized assistance is of vital importance so that the interests and responsibilities of former members of demobilized armed groups can be duly represented. The lack of technical assistance, together with the

obstacles faced by demobilized women in their reincorporation, makes it difficult for them to access favorable treatment such as freedom or amnesty, of which they may be beneficiaries, but due to lack of knowledge they often continue to be imprisoned.

Another of the obligations regarding the deprivation of liberty that is relevant in scenarios of transition to peace are those related to social re-adaptation and rehabilitation. These are comprehensive systems in which States establish work, education and other plans and programs aimed at providing inmates with the necessary tools for the eventual return to society of persons deprived of liberty who actively participated in hostilities, a fundamental aspect for the consolidation of peace in any State.

Social re-adaptation of women deprived of their liberty

Article 5.6 of the ACHR establishes that: "punishments consisting of deprivation of liberty shall have as an essential aim the reform and social readaptation of the prisoners" (official text). The Inter-American Commission, in accordance with an evolutionary interpretation of the aforementioned article, established in the Preamble of the Principles and Best Practices that: "punishments consisting of deprivation of liberty shall have as an essential aim the reform, social readaptation and personal rehabilitation of those convicted; the reintegration into society and family life; as well as the protection of both the victims and society" (official text).

In the post-conflict period, transitional justice mechanisms may grant those who participated in the armed conflict on behalf of non-State armed groups benefits such as freedom under the condition of contributing to truth seeking and reparations, or amnesty, but it may also happen that others remain in prison, because the transitional mechanism did not contemplate this type of favorable treatment or because the category of crimes for which they are investigated or were convicted does not allow for these benefits.

With respect to the latter, since detainees are not entitled to reincorporation measures that often include emotional, academic, labor and economic stabilization, while they prepare to enter the labor market, it is a priority to adopt a differentiated process of resocialization with a gender approach.

This differentiated process strengthens the understanding of the role played in the reconciliation of a country as a resocialization measure by former combatants, who from a restorative approach and with a perspective of the demands for truth, justice, comprehensive reparation and guarantees of non-repetition, are part of peacebuilding and reconciliation scenarios.

Psychosocial reparation is a key aspect in these processes. For this reason, within the institutional roles of custody, efforts should be made to overcome the emotional and psychological difficulties derived from participating in an armed conflict, particularly for women who suffered sexual abuse, were forced to have abortions, were recruited as minors, or had to use contraceptive methods permanently against their will during their time in the group.

In addition, the ways of instilling shame, establishing what is allowed and what is not, and policing the individual's relation to their own body and bodies of others, varies between men and women. In this sense, social re-adaptation entails creating frameworks of attention at

different levels, both for women and men; in the case of the latter, it is necessary to work on identifying the subjective dynamics of the armed group and how these constantly violated women's rights to dignity, non-discrimination and humane treatment. For this reason, a new model of post-conflict relations must be constructed, not only for women in relation to their former companions in the group, but vice versa.

Demobilization of women involved in conflicts

According to the Office of the Special Adviser to the Secretary-General on Gender Issues and Advancement of Women (OSAGI) in its document referring to the implementation of Resolution 1325, called "National Implementation of Security Council Resolution 1325 (2000) in Latin America: Key Areas of Concern and Model Plan for Action" the demobilization of women who participated in armed conflict "does not adequately address the consequences of the sexual violence they have suffered before, during and after conflict... Many ex-combatant women and girls have suffered sexual violence during time spent within illegal armed groups. Rape, forced contraception, forced abortion, forced sterilization, sexual slavery and forced prostitution have been commonplace" (official text, para.78). When it comes to the rehabilitation of men who have participated in NIAC, the same document points out that boys forcibly recruited by these groups are more likely to be forced to participate in atrocities, which "gives rise to the need for special counseling and rehabilitation" (Official text, para. 98). Finally, the document notes that "little attention has been given to the way in which conflict-related circumstances influence the continuation of violence within the home following the cessation of hostilities. The application of a gender lens helps decision-makers to appreciate the importance of addressing domestic violence in the wake of conflict. A gender lens is important to recognize the impact of post-war stress experienced by male ex-combatants and internally displaced people. Women need to be protected from domestic violence, while the needs for treatment and therapy for men and boys who have been forced to commit atrocities have to be recognized" (official text, para. 100).

-Promote practical and academic tools for the training and education of members of the security forces on the application of protocols in the context of detentions to prevent any act of gender-related violence or abuse

It is necessary to ensure that members of the security forces develop appropriate skills for the prevention and repression of acts of gender-related violence, abuse and/or intimidation in detention centers. In order to develop appropriate skills for the prevention and repression of acts of gender-related violence, abuse and/or intimidation, it is important that members of the security forces know not only the legal framework, but also its application and the penalties that exist in the domestic legal framework, as well as the country's own legislation on gender, in addition to the applicable international treaties.

There must be clear and effective protocols for all personnel in command that establish precise instructions in prevention, training, accountability and the proper channels that can be activated in cases where abuses occur.

It is important to ensure that members of the security forces receive training that allows them to help or be proactive in addressing the needs of persons deprived of liberty based on their

gender, so that they can foresee how to guarantee those rights in the social, cultural and geographic conditions in which they find themselves. In addition, they should be aware of the existing mechanisms for filing complaints in the event of abuse and/or intimidation, as well as those for monitoring the management and administration of prisons.

Obligations of the prison staff

UN Basic Principles for the Treatment of Prisoners. Principle 4: "The responsibility of prisons for the custody of prisoners and for the protection of society against crime shall be discharged in keeping with a State's other social objectives and its fundamental responsibilities for promoting the well-being and development of all members of society" (official text).

The UN Standard Minimum Rules for the Treatment of Prisoners, Rule 46 (2):

"The prison administration shall constantly seek to awaken and maintain in the minds both of the personnel and of the public the conviction that this work is a social service of great importance, and to this end all appropriate means of informing the public should be used" (official text).

The UN Standard Minimum Rules for the Treatment of Prisoners, Rule 48:

"All members of the personnel shall at all times so conduct themselves and perform their duties as to influence the prisoners for good by their example and to command their respect" (official text).

The Code of Conduct for Law Enforcement Officials adopted by the General Assembly in its resolution 34/169 of 17 December 1979 states in its articles 2, 3 and 4 that law enforcement officials "shall respect and protect human dignity and maintain and uphold the human rights of all persons", "may use force only when strictly necessary and to the extent required for the performance of their duty" and that "no law enforcement official may inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment, nor may any law enforcement official invoke superior orders or exceptional circumstances such as a state of war or a threat of war, a threat to national security, internal political instability or any other public emergency as a justification of torture or other cruel, inhuman or degrading treatment or punishment" (official text).

Prevention Mechanisms (NIAC)

As stated in general terms, the creation of protocols for action with a gender perspective, so that those responsible for the use and employment of public force (police, military or others) act in accordance with the law and respect for human rights, is essential for prevention.

For preventing gender-related violence, abuse or intimidation in the context of detention, it is important to review, in a NIAC scenario, field detentions, i.e., those captures that are carried out during hostilities under particularly difficult climatic and geographic conditions, in territories very distant from urban centers.

In such circumstances, the minimum needs such as food, hygiene, medical assistance, protection against the consequences of hostilities must be met and they must be offered the

same conditions as those enjoyed by the forces in charge of their surveillance and care.

However, in order to provide optimal protection for detainees in the context of NIAC, prior planning of detentions in the field must be carried out, on the understanding that this detention is a natural consequence of the fighting. Hence, prior planning of military operations in the field will make it possible to anticipate the special needs of women and children in custody, but adapted to these special conditions.

On this point, it is important that planning considers the gender composition of the forces in the field, because this entails the provision of special requirements for women in custody and the guarantee of respect for the privacy of women and girls in detention, both in terms of rest and sleep and in the satisfaction of their physiological needs.

To this end, the recruitment of women in the Armed Forces in positions that also involve their direct participation in hostilities should be insisted upon because, although the female participation has increased in the Armed Forces of the States, it is more common for them to be limited to logistical and administrative functions.

Something similar occurs with the United Nations peace corps teams, in which women have been incorporated, although in a much lower percentage than the male personnel of the contingents, and of this percentage, most of them are usually in charge of health teams, perform administrative roles, are translators, or belong to logistical support units, but are not combatants.

Finally, the recommended protocol should incorporate the route to follow in the case of a child captured in the context of hostilities, because in these cases special protections apply, because of their status as minors and victims of forced recruitment; in these cases, they should generally be placed under the custody of the State entity responsible for the prevention and protection of children.

Prevention and the protection of childhood

Regarding the need for prior planning in field detentions in the context of NIAC, it is recommended to review the ICRC report “Strengthening International Humanitarian Law Protecting Persons Deprived of their Liberty”. (<https://www.icrc.org/en/download/file/6588/background-document-all-states-compliance-apr-2015.pdf>).

The context of the low participation of women in combat roles within state forces is addressed in the report “Women in Armed and Police Forces. Resolution 1325 and Peace Operations in Latin America” (<https://issat.dcaf.ch/Learn/Resource-Library2/Policy-and-Research-Papers/Women-in-the-Armed-and-Police-Forces.-Resolution-1325-and-Peace-Operations-in-Latin-America>).

For the safeguards for recruited and recovered children, see the International Convention on the Rights of the Child and its Optional Protocols and UN Security Council Resolution 1612. (https://www.un.org/ruleoflaw/files/SecurityCouncilResolution1612_en.pdf)

Control and Repression Mechanisms (NIAC)

Along with a normative backbone, both at an international and national level, it will be essential to create or improve, within the States, bodies such as ministries, institutions, inspectorates, or others, whose purpose is to control the detentions carried out in the context of NIAC.

For the effective control of abuses and behaviors that do not conform to the norms of the public security forces, it is recommended that the body in charge of this task have total independence and impartiality to review possible arbitrary actions or excesses, so that it has sufficient distance from any type of influence and interference in the analysis and follow-up of cases. Preferably, it is optimal that its composition be plural and diverse, so that the inclusion of military personnel brings operational experience and the dynamics of armed conflict; the inclusion of third parties could be a protection for detainees against any military bias and the incorporation of gender expert advisors will provide a perspective on the dimensions of possible harm and its differential effects in a context of detention.

Guidelines and control mechanisms

For some guidelines on detention control mechanisms in a NIAC context, see the ICRC report "Strengthening International Humanitarian Law Protecting Persons Deprived of their Liberty": (<https://www.icrc.org/en/download/file/6588/background-document-all-states-compliance-apr-2015.pdf>).

Another useful aspect for prevention and control are the routes for filing complaints, which must be effective, so that they denote the existence of effective tools for access to justice in cases of violation of rights in the context of detention. Particularly, priority attention should be given to those who report acts of abuse, exploitation or sexual violence.

Routes for filling complaints

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment provides that anyone who alleges they have been subjected to torture has the right to file a complaint and to have their case promptly and impartially examined by the competent authorities.

The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) compels signatory States to recognize the competence of the Committee on the Elimination of Discrimination against Women to receive and consider complaints expressed by individuals or organized civil society groups, which constitutes an enforceable accountability mechanism for acts of discrimination against women, as compared to the existing periodic reporting mechanism.

When there is gender-related violence, abuse or intimidation, either because there was no possibility of prevention or because prevention was deficient, there is a need to repress these highly reprehensible acts. Penalizing these acts also seeks to prevent their repetition and to improve the over all fight against these abuses, as well as creating a culture of respect towards everyone's human rights with the States.

Prevention Mechanisms (OSV)

Acts of disturbance of public order accompanied by acts of violence bring with them challenges for the authorities in charge of measures to maintain peace and public order, so it is important to adopt the necessary mechanisms to avoid the excessive use of force, such as: a) the incorporation of easy-to-understand manuals that become real rules of action in this type of situations and that develop differential handling in the presence of women, girls, boys and older adults; b) having personnel training in scenarios similar to real ones (simulations), to prepare them to face such situations without using force or deprivation of liberty, and strengthening capacities in violence reduction techniques, mediation and negotiation; c) designate responsible officials for these situations who have a training with a gender perspective and who respond to an adequate disciplinary system; d) The competence in these areas should be in the police forces and not in the military forces; e) The abstention of collective or indiscriminate detention practices; f) In particular, bear in mind that if it is necessary to resort to detentions, these should be carried out exclusively for the reasons and under the conditions legally established in the framework of the IHRL, the Constitution of each State and the Police Code; in any case, detainees should receive dignified and humane treatment without any type of discrimination or abuse for reasons of gender.

Standards for action

On guidelines to avoid arbitrary acts and excessive use of force in riot scenarios, see the ICRC document “Violence and Use of Force” (https://www.icrc.org/en/doc/assets/files/other/icrc_002_0943.pdf).

The Inter-American Commission on Human Rights in its document “Standards on the rights involved in social protest and the obligations to guide the response of the State” indicates that “Given the imperative social interest in the exercise of the rights involved in the contexts of protest for peaceful demonstrations for the democratic life of a nation, the Commission considers that in this specific sphere those considerations are all the more important for ruling out the participation of military and armed forces in such situations” (Official text, para.173). See: <http://www.oas.org/en/iachr/expression/publications/Protesta/ProtestHumanRights.pdf>

On the incompatibility of the guarantee of fundamental rights and collective detentions in riot scenarios, see the Inter-American Court Case *Bulacio v. Argentina* Judgment of September 18, 2003 (Merits, Reparations and Costs). I/A Court H.R., Case of *Servellón García et al. v. Honduras*, Judgment of September 21, 2006, para. 134.

Control and Repression Mechanisms (OSV)

In this context, it is essential to know the mechanisms and organizations that monitor and control the treatment of detainees, especially to ensure the minimum requirements for the wellbeing of women, pregnant women, nursing mothers or those who live with their child in prison, so as to be able to provide support or assistance and, when required, the activation of special mechanisms of protection.

Monitoring and control

The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which creates the Subcommittee on Prevention, states in Article 4 that the Subcommittee is empowered to conduct periodic visits to any State under its jurisdiction to the facilities in which persons are being deprived of their liberty, in order to strengthen the protection of such persons against torture and other cruel, inhuman or degrading treatments or punishments. Art. 19 establishes that States must put in place national preventive mechanisms, which shall have, among others, the power to periodically examine the treatment of detainees.

In a POC scenario, in which some former members of the dissident groups remain serving prison sentences for the most serious crimes or for crimes related to the armed conflict — depending on the adoption or not of a transitional justice mechanism and its scope—, it is advisable that the officials in charge are trained in both gender and transitional justice, so that they understand and internalize, especially with respect to demobilized women, that in addition to their role as combatants, they may be victims of recruitment, exploitation and sexual abuse, or forced abortions within the ranks.

-Train members of law enforcement on the national and international legal surrounding war crimes and crimes against humanity, as well as the responsibility of the superior for the actions committed by their contingents

It is a priority to inform law enforcement personnel about the international norms governing individual criminal responsibility for violations of the norms applicable to the treatment of detainees.

In the context of NIAC, there are two aspects of the system of international criminal responsibility that are of great interest for punishing the aforementioned conducts: the responsibility of the hierarchical superior and the absence of excuses for these crimes on the basis of due obedience.

The attribution of responsibility of superiors in military structures for crimes under international law committed by their subordinates entails that a superior is responsible when they knew, or should have known, that their subordinates committed or were going to commit criminal acts.

On the other hand, the commission of a crime in compliance with an order issued by a military superior does not in principle exempt someone from their responsibility and in no case exempts someone when it comes to genocide or war crimes.

On the responsibility of superiors

Art. 28, section (a) of the Rome Statute establishes that: "A military commander or person effectively acting as a military commander shall be criminally responsible for crimes within the jurisdiction of the Court committed by forces under his or her effective command and control, or effective authority and control as the case may be, as a result of his or her failure to exercise control properly over such forces, where:

- (i) That military commander or person either knew or, owing to the circumstances at

- the time, should have known that the forces were committing or about to commit such crimes; and
- (ii) That military commander or person failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution” (Official text).

Art. 33 states: “The fact that a crime within the jurisdiction of the Court has been committed by a person pursuant to an order of a Government or of a superior, whether military or civilian, shall not relieve that person of criminal responsibility unless:

- a) The person was under a legal obligation to obey orders of the Government or the superior in question;
- b) The person did not know that the order was unlawful; and
- c) The order was not manifestly unlawful” (Official text).

According to IHL norms at the end of a conflict in a NIAC context and in POC scenarios, the authorities must seek to grant the broadest possible amnesty. This benefit is used so that those who have committed punishable conducts are not tried for them or, if they have already been convicted, the corresponding penalty is not applied and any type of responsibility is eliminated, and these benefits can be understood as "peacebuilding tools".

Moving toward peacebuilding

Additional Protocol II to the Geneva Conventions of 1949 establishes the following in its Article 6.5: “At the end of hostilities, the authorities in power shall endeavour to grant the broadest possible amnesty to persons who have participated in the armed conflict, or those deprived of their liberty for reasons related to the armed conflict, whether they are interned or detained” (Official text). Regarding amnesties as a reconciliation mechanisms see Inter-American Court. Case Gomes Lund et al (“guerrilha do Araguaia”) v. Brazil. Judgment of November 24, 2010. Paragraph 130.

However, amnesty cannot be extended to war crimes, other international crimes or other serious violations of IHRL and IHL, such as genocide, crimes against humanity and torture, categories that generally include criminal conduct committed in the context of a NIAC with respect to women detainees.

Defending women's rights

In the case *Almonacid Arellano et al. v. Chile* (2006), the Inter-American Court established that an amnesty could not apply to crimes against humanity. In *Abdulbasit Yaman v. Turkey* (2004), the ECtHR emphasized that when a State agent is accused of crimes involving torture or ill-treatment, an amnesty or pardon should not be allowed.

Final considerations

The teleological purpose of punishment in criminal law in a democratic society is the reinsertion or social re-adaptation of the person who committed the crime, detention is understood then as way for the person to recover and be able to join the social environment in the end.

However, in Latin America the reality is that the purpose of social re-adaptation pursued by the norm is far from being fulfilled, and riots and violence are common in prisons, which are characterized by overcrowding, overcapacity and even self-government. In the case of women, on average only 5% of inmates are female, but both men and women suffer undignified prison conditions that undermine tertiary prevention.

In the case of an IAC, the Third Geneva Convention Relative to the Treatment of the Prisoners of War scrupulously develops the rules of internment of combatants in the hands of the holding power and as lessons learned from the Second World War.

In the case of a NIAC, it is possible to appeal to the dictates of public conscience and more specifically to the Martens Clause, given that non-State arms holders in particular do not usually respect the laws and customs of war of civilized nations.

In POC, the dominance of the political dimension should not overlook the fact that amnesty does not apply to those responsible for the commission of crimes against humanity, war crimes and genocide, i.e., heinous crimes that should be tried in the criminal jurisdiction of nation-States, with supplementary jurisdiction granted by the Rome Statute to the International Criminal Court, for those countries that have ratified it.

References

International Committee of the Red Cross. (2015). Violence and the use of force. Available at: [https://www.icrc.org/es/doc/assets/files/other/violencia-y-uso-de-la-fuerza_\(web\).pdf](https://www.icrc.org/es/doc/assets/files/other/violencia-y-uso-de-la-fuerza_(web).pdf).

International Committee of the Red Cross. (January 29-31, 2014). Strengthening international humanitarian law protecting persons deprived of their liberty. Available at: <https://www.icrc.org/es/doc/assets/files/publications/icrc-003-4230-new.pdf>

International Committee of the Red Cross. (June 8, 1977). Protocol II Additional to the Geneva Conventions of 1949 relating to the Protection of Victims of Non-International Armed Conflicts. Available at: <https://www.icrc.org/es/doc/resources/documents/misc/protocolo-ii.htm>

International Criminal Court (July 17, 1998). Rome Statute. Available at: [https://www.un.org/spanish/law/icc/statute/spanish/rome_statute\(s\).pdf](https://www.un.org/spanish/law/icc/statute/spanish/rome_statute(s).pdf).

Kril, F. (1985) The Protection of Women in International Humanitarian Law, International Review of the Red Cross, Geneva, 01-11-1985. Available at: <https://www.icrc.org/es/doc/resources/documents/misc/5tdlea.htm>

Office of the United Nations High Commissioner for Human Rights (December 16, 1966). Text in PDF format International Covenant on Civil and Political Rights. Available at: <https://www.ohchr.org/sp/professionalinterest/pages/ccpr.aspx>

Office of the United Nations Special Adviser on Gender Issues and Advancement of Women (OSAGI) (November 19-21, 2007). High Level Political Dialogue "National Implementation of Security Council Resolution 1325 (2000) in Latin American and Caribbean Countries". Available at: https://www.un.org/womenwatch/osagi/cdrom/documents/Needs_Assessment_LAC_sp.pdf

Organization of American States (June 9, 1994). Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará). Available at: <https://www.oas.org/es/mesecvii/docs/BelemDoPara-ESPANOL.pdf>

Protest and Human Rights. (September 19, 2019). Available at: <http://www.oas.org/es/cidh/expression/publicaciones/ProtestayDerechosHumanos.pdf>

United Nations Development Programme. (2016). How to Conduct a Gender Analysis: A Guidance Note for UNDP Staff. Available at: https://info.undp.org/sites/bpps/SES_Toolkit/SES%20Document%20Library/Uploaded%20October%202016/UNDP%20Guidance%20Note%20how%20to%20conduct%20a%20gender%20analysis.pdf

United Nations General Assembly . (January 8, 2016). United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules). Available at: https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-Seebook.pdf

United Nations General Assembly (14 December 1990). United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules). Available at: <https://www.ohchr.org/SP/ProfessionalInterest/Pages/TokyoRules.aspx>

United Nations General Assembly (14 December 1990). United Nations Rules for the Protection of Juveniles Deprived of their Liberty. Available at: <http://www.ordenjuridico.gob.mx/TratInt/Derechos%20Humanos/OTROS%2019.pdf>

United Nations General Assembly (2002). Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Available at: <https://www.ohchr.org/SP/ProfessionalInterest/Pages/OPCAT.aspx>

United Nations General Assembly (December 19, 2006). Intensification of efforts to eliminate all forms of violence against women. Available at: <https://undocs.org/pdf?symbol=es/A/RES/61/143>

United Nations General Assembly (December 9, 1988). Resolution 43/173. Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. Available at: <https://www.ohchr.org/SP/ProfessionalInterest/Pages/DetentionOrImprisonment.aspx>

United Nations General Assembly, Resolution A/RES/65/229. United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules). Available at: https://www.unodc.org/documents/justice-and-prisonreform/Bangkok_Rules_ESP_24032015.pdf

United Nations General Assembly, United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules). Available at: <https://www.ordenjuridico.gob.mx/TratInt/Derechos%20Humanos/OTROS%2018.pdf>

United Nations General Assembly. (July 6, 2015). Report of the Working Group on Arbitrary Detention United Nations Basic Principles and Guidelines on Remedies and Procedures relating to the Right of Everyone Deprived of Liberty to a Remedy before a Tribunal. Available at: <https://www.acnur.org/fileadmin/Documentos/BDL/2016/10440.pdf?file=t3/fileadmin/Documentos/BDL/2016/10440>

United Nations Security Council. (July 26, 2005). Resolution 1612 for the protection of children in armed conflict. Available at: <https://www.acnur.org/fileadmin/Documentos/BDL/2005/3635.pdf>
Women in armed and police institutions (2003). Available at: <https://www.resdal.org/genero-y-paz/ebook/Libro-mujer-RESDAL.pdf>

Women in armed and security institutions (2003). Available in Spanish at: <https://www.resdal.org/genero-y-paz/ebook/Libro-mujer-RESDAL.pdf>

CHAPTER VII - WOMEN'S ENGAGEMENT IN PEACE PROCESSES

“Since women know the price of peace so well, they are better equipped to prevent and resolve conflicts”

Kofi Annan, former
UN Secretary-General.

Women's participation in peace processes is key to achieve a lasting peace, since they are true agents of change on the ground and involved in all stages and phases of the peacebuilding processes, their presence enables more favorable and lasting outcomes when it comes to conflict prevention and resolution.

This chapter proposes a series of guidelines for gender mainstreaming in international operations, Non-International Armed Conflict (NIAC), Other Situations of Violence (OSV) and Post-Conflict (POC) scenarios. In this regard, it should be noted that, these scenarios pose different challenges. This chapter also goes over cases that serve as examples of the importance of women's participation in peace processes, as well as guidelines and recommendations to achieve said participation.

In order to achieve gender mainstreaming in peace processes and in OSV scenarios, it is necessary to determine whether situations of violence such as riots, rallies, demonstrations, social protest, internal disturbances, and those originating in organized criminal groups, in situations of urban violence or drug-related violence, where Law Enforcement Officials (LEO), security forces or armed forces responsible for fulfilling an internal security role may be involved.

On the other hand, a peace-building process involves the strengthening of democracy and justice, since these two go hand in hand, one cannot exist without the other, so it is necessary to reinforce the legal apparatus, in order to prosecute crimes that violate human and fundamental rights. When people feel that justice has been served, it is easier to forgive and start peace negotiations, while when there is a sense of impunity, there is no forgiveness and, consequently, it is not possible to build a lasting peace, in which women should not be exempt from participating.

Conceptual framework

The following is a description of concepts that are fundamental to understand women's participation in peacebuilding. These concepts are basic inputs for approaching, knowing and understanding the main international agreements regarding women's active participation in the different stages of peace processes.

-Peacekeeping operations

Peacekeeping operations are one of the most effective instruments to help countries make the transition from conflict to peace. Currently, these operations have a multidimensional nature, since they also facilitate social processes, protect civilians, assist in the process of disarmament, demobilization and reintegration of ex-combatants. In addition, they support constitutional processes and the organization of elections, protect and promote human rights, and help reestablish the rule of law.

The United Nations Security Council is in charge of approving these actions and the Department of Peacekeeping Operations is responsible for directing them with the support of the Department of Operational Support at UN Headquarters in New York, while the Member States provide troops and police.

Since 1948, a total of 71 operations have been deployed by UN Peace Operations. In 2019, the Secretary-General launched the Action for Peacekeeping (AMP) Initiative to renew mutual political commitment to peacekeeping operations (United Nations, 2021).

-Allegations of sexual exploitation and abuse against United Nations troop members

The majority of allegations of sexual exploitation and abuse against UN peacekeepers have taken place in the Central African Republic and the Democratic Republic of Congo. Those missions, known as MINUSCA and MONUSCO, respectively, accounted for 70% of all allegations against UN peacekeepers in 2020, although many of the allegations refer to earlier years. Among the abuses there are allegations of rape, including that of minors, although the most common are those categorized as "exploitative relationships" and "transactional sex." On numerous occasions, blue helmets have been accused of offering food or protection in exchange of sex to people in a vulnerable situation, often in the midst of armed conflicts.

In Haiti alone, nine teenagers of both sexes were systematically subjected to sexual exploitation by at least 134 blue helmets between 2004 and 2007. The offenses included both sex in exchange for food and money and rape, including gang rape (United Nations, 2020).

In Africa, several soldiers were recently charged with the sexual exploitation of women, including a paternity claim following one of the incidents. In April 2021, the UN mission in South Sudan announced an investigation into a possible case of sexual abuse against the blue helmets, after four underage girls were caught sneaking into one of their bases and one of them revealed that a member had offered to pay them in exchange of touching. This is the second recorded incident in South Sudan in the last two months. The first was in February, when 46 troops were expelled from their base after being accused of sexual abuse in exchange for money by local women.

A total of 120 blue helmets were returned to their home countries after committing sexual abuse against women, teenagers and children in the city of Berberati in 2017. The Central African Republic is one of the most serious cases of abuse committed by blue helmets in the world, due to the large number and progressive increase of allegations, many of which involve minors, and which have been received since 2014 (United Nations, 2019).

Despite the passage of time, the situation remains unchanged. In March of this year, an investigation by the United Nations Integrated One-Dimensional Stabilization Mission in the Central African Republic (MINUSCA) found that the situation in the country "has deteriorated to the point where the battalion is no longer reliable due to poor leadership, lack of discipline and operational deficiencies."

-Peace processes

Peace processes consist of meetings, negotiations, and agreements involving individuals such as military, politicians, community or religious leaders, and other participants attempting to resolve a conflict by peaceful means, whether it is an international or a non-international conflict (International Institute of Humanitarian Law, 2019, p. 119).

For OSV and POC contexts, it is considered necessary to include, as key participants, the leaders of social groups, especially those that are organized by women, since they can provide a better perspective of the conflict, when facing these scenarios such as those generated by social protests, analyzed in this paper.

It should be noted that these social leaders are, in many cases, women victims of conflict, so it is necessary to review the role of these women as social leaders not only in the context of peacebuilding, but also in their active participation within armed groups in NIAC, or those behind the rise of social protests leading to OSV.

On the same note, peace processes can also be understood as a set of actions, organized in phases or stages that seek to achieve peace as a final result; among the phases or stages are the identification of the problem, meetings, negotiations and agreements, in which all interested parties can participate.

So the main objective of peace processes is "to try to resolve a conflict by peaceful means", which is very appropriate for NIAC contexts, but not so for OSV and POC contexts, since a lasting peace may not be achieved. Therefore, a more appropriate objective for these scenarios would be: "to attempt to resolve a conflict and maintain a state of peace by peaceful means".

-Conflict prevention

Aims to set the stage for a sustainable and lasting peace, as set out in the General Assembly and Security Council Resolutions on peacekeeping adopted in 2016 (A/70/262 and S/2282, respectively), which cover activities to prevent the outbreak, escalation, continuation and recurrence of conflict, further reinforcing this approach. The UN works on a variety of aspects throughout the conflict cycle, negotiating with the parties that are generating these acts of violence, helping to seek negotiated outcomes to bring about an end to conflicts, providing the necessary assistance to these countries to achieve reconciliation and thus rebuild resilient and inclusive societies, all based on diplomatic initiatives with very discreet activities between the parties.

In addition to the General Assembly and the Security Council, the Peacebuilding Commission and the Human Rights Council play an important role in advising, directing and supporting the UN's efforts to prevent conflict and maintain peace (International Institute of Humanitarian Law, 2019, p. 119).

-Conflict resolution

It is a way for two or more parties to find a peaceful solution to a disagreement between them. Generally, such purpose is achieved after a process of negotiations, whose main objectives are the following:

- a) To reach a solution all parties can agree on;
- b) To work as quickly as possible to find this solution, and
- c) To improve, not damage, the relationship between the parties in conflict.

Conflict resolution through negotiation is good for all parties involved. Often, each party will gain more by engaging in negotiations than they would by leaving and, on some occasions, it grants one group the opportunity to obtain resources that would otherwise be beyond their reach (International Institute of Humanitarian Law, 2019, p. 120).

-Peacebuilding

It consists of a series of measures aimed at reducing the risk of conflict or its recurrence. This is achieved through the early identification of situations or problems that can create conflicts or violence, so the State should strengthen its capacities for conflict mediation. In fact, the term "mediation" should be the central axis for all three of the discussed scenarios.

Including the active participation of women in peace processes in NIAC, POC, would offer greater understanding to their dynamics and better results would be obtained in peacebuilding strategies, which must be coherent and adjusted to the specific needs of the country in question, based on national involvement, including a well-defined order of priorities, as well as the set of activities aimed at achieving the aforementioned objectives to overcome these scenarios (International Institute of Humanitarian Law, 2019).

-Peacebuilding in a post-conflict scenarios (POC)

It is defined as a complex, holistic and multidimensional process that encompasses efforts to improve peacekeeping from military (restoration of law and order), political (governance), economic (rehabilitation and development) and social (justice and reconciliation) conditions.

It aims to maintain peace during post-conflict, taking into account the roots that originated the violence, which are often influenced by poverty, exclusion, inequality, discrimination and serious violations of human rights. Hence, it is necessary to gender mainstreaming in these types of scenarios, where women play a very important role for reconciliation and peacekeeping (International Institute of Humanitarian Law, 2019).

-Mediation

The process by which a third party assists two or more parties, with their consent, to prevent, manage or resolve a conflict by helping them develop mutually acceptable agreements.

-Other Situations of Violence (OSV)

These can be defined as internal disturbances and other situations of internal unrest, with a high degree of violence. It is possible that non-State actors are relatively well organized so, differentiating OSV and NIAC scenarios can only be achieved through a case-by-case analysis, that considers the intensity of the violence experienced (ICRC, 2012).

International agreements and women's participation in peace processes

At an international level, the main agreements in this area have been developed since 1975 following the first women's conference held in Mexico City and has been enriched through the norms emanating from the United Nations Security Council.

-World Conferences on Women

The UN has organized four world conferences on women, held in Mexico City (1975), Copenhagen (1980), Nairobi (1985) and Beijing (1995). The latter was followed by a series of five-year reviews.

The Fourth World Conference on Women, held in Beijing in 1995, marked an important turning point for the global gender equality agenda. The Beijing Declaration and Platform for Action, adopted unanimously by 189 countries, constitutes an agenda for women's empowerment and took into account the key global policy document on gender equality. The Beijing Declaration and Platform for Action sets out a series of strategic objectives and actions to ensure the equal treatment of women and men (United Nations, 2021).

Consequently, the Report of the Special Committee of the Whole in the 23rd special session of the General Assembly held in New York in 2000, establishes the achievements and obstacles in the attainment of the objectives of the Platform for Action, as well as noting the importance of the approval of the Rome Statute of the International Criminal Court, among other instruments, that establish that sexual violence can be a *war crime* when committed in the context of an armed conflict or a *crime against humanity* in other circumstances. It also highlights the importance of women in peacebuilding, peacemaking and conflict resolution.

After the Beijing Conference, an evaluation of the measures adopted has been carried out every five years, and in 2000 the General Assembly decided to hold its 23rd special session. The evaluation, titled "Women 2000: Gender Equality, Development and Peace for the Twenty-first Century", was held in New York and resulted in a political declaration and new measures and initiatives for the implementation of the Beijing Declaration and Platform for Action.

As this document points out, it is worth highlighting the fact that "men must participate in the promotion of gender equality and share responsibility with women" (United Nations, 2001, p. 8).

Within this context, it is worth highlighting the concern to end impunity for crimes committed against women in situations of armed conflict, the recognition of the contributions of women to peacebuilding and conflict resolution, the development of programs to disseminate and apply guidelines for the protection of refugee women and meet the needs of displaced women, the need to provide more comprehensive support to refugee and displaced women, the need to incorporate a gender perspective in the planning and implementation of humanitarian assistance activities, and the need for gender mainstreaming in the planning and implementation of humanitarian assistance activities.

In addition, support from humanitarian relief organizations, civil society and non-governmental organizations was provided, mainly in terms of technical training for personnel involved in addressing the needs of women in situations of armed conflict or in caring for refugees, i.e., knowledge and tools for the care and assistance of women who have suffered trauma.

Later, the 2005 evaluations took place within the context of the 49th session of the Commission on the Status of Women of the Beijing Platform for Action.

In 2010, the 15-year review of the Beijing Platform took place during the 54th session and in 2015, the 20-year review took place during the 59th session of the Commission, which addressed the processes developed for the purpose of gender equality, provided a solid basis for the full, effective and accelerated implementation of the commitments made in Beijing and also advocated for the role of gender equality and women's empowerment in the post-2015 development agenda.

For their part, there was acknowledgement of the progress made while, at the same time, recognizing that no country has fully achieved equality and empowerment of women and girls, that the overall progress has been slow and uneven, that significant gaps remain and that new challenges have emerged in the implementation of the critical areas of poverty, education, armed conflict and decision-making, among others (UN Women, 2015, p. 3). The review and appraisal following the 25th anniversary of the adoption of the Beijing Platform for Action was to take place during the 64th session of the Commission to be held in March 2020 but was suspended due to the coronavirus pandemic (COVID-19).

Global Norms and Standards on Women, Peace and Security

The main internationally recognized rules and norms associated with women, peace and security are the United Nations Security Council Resolutions, which have been issued from 2000 onwards, including the following:

-United Nations Security Council Resolution 1325 (2000).

This Resolution comprises the first action from the UN Security Council to establish a legal and political framework, which recognizes the importance of women's participation, as well as the inclusion of the gender perspective in peace negotiations, humanitarian planning, peacekeeping operations, peacebuilding in post-conflict situations and governance.

The Security Council reaffirms the important role of women in the prevention and resolution of conflicts and in peacebuilding, always stressing the importance of their equal participation and full involvement in all efforts aimed at the maintenance and promotion of peace and security, and the need to increase their participation in decision-making processes related to conflict prevention and resolution, ensuring the protection of the rights of women and girls during and after conflicts, ensuring gender mainstreaming in peacekeeping operations and particularly in multidimensional peace support operations.

Therefore, Member States are urged by the Secretary General to ensure the increased representation of women at all decision-making levels of national, regional and international institutions and mechanisms for the prevention, management and resolution of conflicts, as well as to consider increasing the participation of women at decision-making levels, the appointment of women as special representatives and special envoys to carry out missions on their behalf.

The Secretary General also called for the promotion and increase of guidelines and training materials on the protection, rights and special needs of women, as well as on the importance of women's participation in all peacekeeping and peacebuilding measures.

In addition, the Secretary General calls on all those involved in the negotiation and implementation of peace agreements to adopt a gender perspective, taking into account the special needs of women and girls during repatriation, resettlement, rehabilitation, reintegration and post-conflict reconstruction; in order to include measures to support local women's peace initiatives and indigenous conflict resolution processes, to involve women in all peace agreement implementation mechanisms and to ensure that the human rights of women and girls are protected and respected, particularly with regard to the constitution, the electoral system, the police and legal system; there is also a call for increased UN development funds for the protection of women and children (Security Council, 2000).

-United Nations Security Council Resolution 1820 (2008)

First of all, the Resolution highlights and reaffirms the various issues already addressed in Resolution 1325 of 2000, concerning the need to protect persons adversely affected by armed conflict, women and girls who are particularly targeted by acts of sexual violence, including as a tactic of war designed to humiliate, dominate, terrorize, disperse or forcibly relocate civilian members of a community or ethnic group, and that sexual violence used in this way may in some cases persist after the cessation of hostilities.

It also expresses its concern that, despite repeated condemnation, there is still violence against women and children in situations of armed conflict, including sexual violence used as a tactic of war, either when it is used systematically to achieve military or political ends or when it is opportunistic, taking advantage of cultural factors and the overarching impunity.

The Resolution identifies sexual violence as a problem for international peace and security that requires a security response. Furthermore, it recognizes that such acts can exacerbate situations of armed conflict and constitute an impediment to the restoration of peace and security. It also notes that rape and other forms of sexual violence may constitute a war crime, a crime against humanity or an act of genocide (United Nations, 2008).

-United Nations Security Council Resolution 1888 (2009)

The Resolution reaffirms the need for continued compliance with Resolutions 1325 (2000), 1612 (2005), 1674 (2006), 1820 (2008) and all associated declarations, but expresses concern once again over the lack of progress in reducing sexual violence in armed conflict and post-conflict situations, particularly against women and girls.

It urges States and non-State actors involved in conflict to comply with their obligations under international law and associated prohibitions on all forms of sexual violence, stressing the importance of civilian and military leaders, in accordance with the principle of command responsibility, demonstrates commitment and political will to prevent sexual violence and to combat impunity and enforce accountability, reiterates the need to increase women's participation, and reinforces calls for gender mainstreaming in all decision-making processes, especially in the early stages of post-conflict peacebuilding, among others (United Nations, 2009).

-United Nations Security Council Resolution 1960 (2010).

The Resolution establishes, firstly, the need to continue to comply with the resolutions and declarations associated with resolution 1325 (2000) and the concern about the slow pace of proceedings related to sexual violence in situations of armed conflict, especially against women and children, and —considering that sexual violence occurs in armed conflict and post-conflict conditions around the world— reinforces the need to end impunity and prosecute those responsible for genocide, crimes against humanity, war crimes and other crimes, since only a small number of perpetrators of sexual violence have been brought to justice.

While reiterating the need for civilian and military leaders, in compliance with the principle of command responsibility, to demonstrate a commitment and political will to prevent sexual violence, combat impunity and ensure the accountability of perpetrators. The resolution also emphasizes the responsibility of States to end impunity and prosecute those responsible for genocide, crimes against humanity, war crimes and other heinous crimes perpetrated against civilians, which is why it calls for the preparation of lists of perpetrators and annual reports on those suspected of committing or being responsible for acts of sexual violence. It also provides for the strategic, coordinated and timely collection of information and submissions to the

Security Council on sexual violence associated with conflict situations and urges States to make time-bound commitments to address the issue (United Nations, 2010).

-United Nations Security Council Resolution 2106 (2013)

This Resolution, like the previous ones, expresses concern about the implementation of measures to address sexual violence in conflict and post-conflict situations, stressing the importance of the prosecution of alleged perpetrators of sexual violence and the determination of the causes of such violence.

Furthermore, it reaffirms the importance that all actors, the Security Council and parties to armed conflict, as well as all UN Member States and entities, should implement actions to improve the quality and timeliness of information for the prevention and response to sexual violence, enhancing the establishment and implementation of monitoring, analysis and reporting arrangements. All these actors should make and implement concrete and time-bound commitments to combat sexual violence, including rape in armed conflict, post-conflict and other relevant situations.

Additionally, it emphasizes the need for commanders to prohibit sexual violence in all codes of conduct and manuals, including accountability measures and the ability to reinforce the training of all forces deployed in such scenarios (United Nations, 2013).

-UN Security Council Resolution 2242 (2015)

This is the last of the Resolutions that have been implemented continuing the reinforcement of Resolution 1325 (2000), and subsequent statements associated with women, peace and security as a major component in addressing the challenges of achieving global peace and security.

This resolution has considered an increase in violent extremism that can lead to terrorism, rising numbers of refugees and internally displaced persons, and the global impacts of climate change and health pandemics, and therefore calls for greater participation in the leadership of women and women's organizations in developing strategies to counter violent extremism and terrorism employed by certain groups to increase their power (United Nations, 2015).

The Resolution pushes for new targets for the numbers of women peacekeepers, including incentives for troop-contributing countries; establishes the need for more expert women leaders at all levels of decision-making; and points the need to train mediators on the impact of inclusive processes and how to achieve them, clearly recognizing the evidence linking women's participation to more sustainable peace agreements.

The Resolution also emphasizes the need to address the critical funding gap for women's organizations, pointing to the Global Acceleration Instrument on Women, Peace and Security and Humanitarian Action as a vehicle for attracting resources, coordinating responses and accelerating the implementation of measures (UN Women, 2021).

Case study

The following are some examples of women's participation in peace agreements and the importance of their contributions.

-Colombia — Post Conflict

The 2016 Final Peace Agreement between the Government of Colombia and the Revolutionary Armed Forces of Colombia-People's Army (FARC-EP) is a good international example of women's participation.

When formal talks began in Havana, Cuba, in November 2012, only one of the twenty negotiators was a woman. In 2013, civil society leaders organized a National Women and Peace Summit to demand an inclusive peace process, and by 2015, women made up 20% of the government negotiating team and 43% of FARC delegates (a level that reflected the percentage of female combatants in the guerrilla group).

Women also contributed to the peace process at all levels, including through official sub commissions, in particular the first-ever Gender Sub commission, and by playing relevant roles in the Government's Office of the High Commissioner for Peace. Women's participation on both sides of the formal negotiating table as well as in civil society helped ensure the success of Colombia's peace efforts with FARC over the years.

Hence, it is essential to add an analysis in accordance with the peacebuilding process, which considers the barriers that limit women's participation in this type of process, such as:

- a) Mechanisms for women's participation: in some cases, the women who participate in the peace process are those who are related to the same commanders of the FARC armed group, having a biased criterion for the resolution of the conflict; therefore, they do not directly represent the interests of women victims or combatants and do not express the voice of those who do not get to exercise their right to participate in politics.
- b) Lack of educational credentials: This generates an underestimation of their own capacities to participate in post-conflict peace and political processes.
- c) Women's negative perception of politics in peace processes: Women who are able to participate in peace processes sometimes avoid doing so because they see politics in a negative light due to corruption scandals and the pursuit of particular interests, which generates a reluctance to participate in politics.

-Mexico — Other Situations of Violence: Importance of the involvement of women in peace process

As discussed throughout the Handbook, Latin America is considered the most violent region in the world, where Other Situations of Violence (OSV) have been predominant. .

This scenario is a reality from which Mexico has not been able to escape, since in recent decades the Aztec country has gone through a severe crisis of insecurity and violence as a result of the enormous power of organized crime, which has long disputed the power of the State, which has led the country to repeatedly occupy the first places at regional and global level, for its levels of violence and number of homicides. In 2017 alone, the homicide rate in Mexico was 24.8 per 100,000 inhabitants, four times the international average: 6.1 per 100,000 people (UNODC, 2019).

In addition to the wave of violence that plagues the country, there is also a high level of impunity in terms of convictions for intentional homicide. The year 2018 is considered the most violent in Mexico's recent history, with more than 33,000 victims of this heinous crime. In contrast, 9 out of 10 intentional homicides go unpunished (Impunidad Cero, 2019).

This scenario and the thousands of systematic human rights violations, which also exponentially affect women, as well as the terrible actions of organized crime such as torture, the disappearance and trafficking of persons for labor exploitation or sexual slavery, the sale of organs, murders and incessant confrontations between security forces, have led specialists to argue that Mexico is experiencing a Non-International Armed Conflict (CDIHLU, ITESO, and CMDPDH, 2019).

In this sense, a series of questions have been raised, such as the following: to what extent can the international community intervene in Non-International Armed Conflicts and Other Situations of Violence to protect the population? What international legal framework should govern in this scenario, as well as what role should women play in determining the peacebuilding process in Mexico?

The current scenario shows the enormous challenge that exists to achieve the construction and consolidation of peace. However, as we have seen, the participation of women can be a determining factor in their role as mediators in situations of NIAC, OSV and POC where, without a doubt, promising results can be achieved.

Guidelines and recommendations

We will now establish some guidelines and recommendations to incorporate good practices and guidelines for ensuring women's involvement in peacekeeping operations.

-Training to reinforce the importance of women's participation in peace processes and its correlation with the implementation and maintenance of peace agreements

The participation of women in peace processes is of fundamental importance to their success, a situation that has been demonstrated as women in different parts of the world have been able to participate in peace processes in varying numbers and at different levels. Regardless of their number and level of participation, the presence of women on the ground, in negotiation or mediation teams, has made these peace processes more viable and lasting than when they are produced solely by men.

Some studies argue that women's participation in peace negotiations increases the durability and quality of peace; thus, it has been shown that peace agreements signed with female delegates are associated with a more durable peace and demonstrate a higher rate of implementation. On the other hand, the absence or low number of women in peacebuilding processes denies them the right to influence the outcomes that affect them and their entire community.

Peacebuilding processes include carrying out activities aimed at mitigating risks that may arise around peacebuilding, conducting visits to communities, holding discussions, addressing marginalization and building trust to ensure real and sustainable peace. Such activities can be carried out most effectively when a mixed team of women and men work towards a common goal in peacebuilding and peacekeeping processes.

It is relevant to consider that women's participation should be cross-cutting at all levels, both in formal and informal processes. For example, women played a very important role in promoting social cohesion in the Iraqi communities that were affected by the Islamic State of Iraq and Syria (Da'esh), bringing together people from different backgrounds to overcome factions and division in their societies. The priorities that women address include issues related to human rights, justice and rebuilding communities, which are important issues that are not often effectively and comprehensively raised and resolved in formal processes (UN Women, 2021).

-Ensuring greater participation of women in NIAC and POC scenarios through IHL and gender mainstreaming education

Almost two decades after Security Council Resolution 1325/2000 visualized the enormous importance of women's inclusion at the peace negotiation tables, —and despite the fact that women represent half of the world's population (World Bank, 2020) and are the gender most severely affected by violence in conflicts— efforts to achieve a greater inclusion of women in peacebuilding negotiations have been insufficient.

Currently, women's participation in peacebuilding and peacekeeping processes remains very limited because there is still a huge gap between what is established in the various commitments made by countries to achieve greater inclusion of women in peace negotiations and what happens in practice.

There are several cases that have highlighted the existence of women capable of leading peace movements and promoting the recovery of communities after a conflict, it has also been shown that when women participate in the negotiation tables for peace processes, the possibility that the agreement will last more than fifteen years increases by 35%, and still women "are almost never present in peace negotiations" (UN Women, 2020).

In the last 30 years, women have only made up 2% of mediators, 8% of negotiators and 5% of witnesses and signatories in all peace processes (United Nations, 2018); in 2020 alone, of 95,000 peacekeepers, women accounted for only 4.8% of military personnel and 10.9% of police personnel in UN peacekeeping missions while only 6% of uniformed military, police, justice and corrections personnel in field missions are women (United Nations, 2021).

Due to the above, it could be established that peace agreements lack a gender perspective, which undoubtedly affects their results because they probably do not address several of the situations that directly or indirectly affect women.

The scenario described demonstrates the enormous need to strengthen training on the guidelines and principles established in the Convention on the "Elimination of All Forms of Discrimination Against Women", which ratifies gender equality, as well as raising awareness of the enormous importance of the inclusion of women in international operations for the construction and consolidation of peace.

This is not only in accordance with the series of commitments established to protect women's rights in the United Nations Security Council resolutions described above, but also within the guidelines that take into account these concepts to expand training on the gender perspective in Non-International Armed Conflicts (CANI), Other Situations of Violence (OSV) and Post-Conflict.

Today, the changing nature of conflicts, their level of violence and the dramatic consequences that mostly affect the civilian population, have strengthened the enormous importance of women in the role of "peace agents" for the consolidation of a stable and lasting peace.

Therefore, the inclusion of a gender perspective in peace operations in armed conflict, OSV, NIAC and post-conflict, allows those who will join a peacekeeping operation, to be updated in the face of new scenarios of violence and conflict that are developing today, where ensuring the participation of women in all peace processes is essential. Not only will it be possible to build more egalitarian and inclusive societies with the participation of women, but it will also be possible to comprehensively address the new challenges that hinder the maintenance and consolidation of peace, as well as to strengthen the durability of the agreements established in peace processes.

On the other hand, it should be noted that one of the basic principles of human rights, provided for in the Universal Declaration of Human Rights (1948), is that men and women are equal, there are no gender distinctions, equality being the basis of any democratic society where there is a commitment to justice and human rights. But few States comply and ensure equality between men and women, who continue to be discriminated against and victims of human rights violations.

Discrimination occurs in almost every country in the world, so there should be State protection, either directly or through the legal system. Ensuring gender mainstreaming is a way of identifying and documenting the differences in power, roles, resources, norms, needs and interests of women, men, girls and boys in a community or group, helping to understand the society in which we live.

The United Nations Declaration on the Elimination of Violence against Women recognizes the urgent need for universal application of the rights and principles of equality, security, freedom, integrity and dignity of all human beings.

Non-discriminatory education between boys and girls is the best option to combat discrimination and create a culture of respect for human rights and gender equality; for this, in many cases it is necessary to change a society, especially its cultural habits or idiosyncrasies. Hence, it is necessary that the States start a change through basic education that covers human rights for boys and girls, continuing in all school phases until reaching university, and that raises awareness of the importance of equality, which can help prevent the occurrence of violence against women and girls.

According to the Beijing Platform for Action, it is essential for educators to develop the critical judgment and analytical skills of their students. There is growing evidence that empowering women strengthens humanity as a whole. For example, economies grow faster, and families are healthier and better educated. Thus, education is a way to promote justice and, therefore, the strengthening of democracy, which in turn results in a sustainable and solid culture of peace.

But it is of no use for States to ratify the international instruments that bring recommendations regarding greater participation of women in peace processes, if there is not a greater cultural change that seeks to empower women and their role in scenarios of NIAC, OSV and POC.

Finally, for young men and women students of military and police academies, the study of Human Rights, International Humanitarian Law, types of violence and war crimes convictions, as well as the concepts of NIAC, OSV and POC situations, should be included in their curricula. In other words, it is key to take actions that bring forth a necessary change in administrative culture.

-Assess trends in women's political participation, focusing on recent actions at a regional level with the aim to improve it and enhance peacebuilding

It is important to look again at the experiences of women who are part of post-conflict scenarios, and who live the day-to-day life of the peace processes, such as the women who were in the ranks of armed groups in a NIAC. In this regard, one of the biggest critiques by these women is the lack of opportunities they effectively have to participate in political life and decision-making processes. Considering the mechanisms for selecting women candidates, in countries such as Colombia and Peru, most of the lists are headed by women related in some way to male leaders who, in the end, are the ones who make the decisions.

In addition, there is a lack of public policies regarding family life for demobilized women who must take care of their children, on the one hand, but who wish to integrate into political life and public decision-making, on the other. Public policy in the peace and post-conflict processes should consider supporting women in achieving their objectives in different spheres, and prevent them from feeling that they must assume a burden of responsibilities. It should allow demobilized women who are reintegrating into society to combine family life with professional life, so that success in both areas is not an impossible task to accomplish.

In these contexts, and mainly in the post-conflict stage, in order to achieve an effective reconstruction and consolidation of peace that ensures gender mainstreaming, normative reforms and affirmative actions in favor of women should be promoted.

An example of a good practice in this regard is the recent reform made to the Code of Democracy of Ecuador; published in the Official Registry of the country on February 3, 2020, which is in force for the General Elections to be held in 2021. This reform, among other aspects, incorporates the prosecution of gender-based political violence, as well as the obligation for political organizations to register in the lists for multi-person and single-person elections under criteria of parity and generational inclusion.

Having specific legislation that ensures the participation of women in electoral processes, in turn ensures a gender perspective and therefore that specific actions can be managed from positions of political power so that women who have been part of a NIAC from different roles can be reintegrated into civil and political life, under proper conditions for this, which is important for the achievement of peace.

-Strengthening mediation as a necessary tool to promote the participation of women in peace processes and in the NIAC, OSV and POC scenarios

It is advisable to form teams of international mediators, men and women, capable of acting in search of peace agreements through dialogue. It is pertinent to promote an international network of men and women mediators in conflicts of diverse nature, with the purpose of incorporating a gender perspective in the mediation process and agreements aimed at providing protection to those most affected during the development of conflicts, post-conflict and OSV, which safeguard the human, social and political rights of the entire population with a gender perspective, understanding the differences that exist between men and women.

Mediation is important in conflict resolution processes because it helps the parties reach an agreement. Mediation in the peace processes of NIAC, OSV, or POC, plays a very important role since it brings the parties closer to a possible solution and the maintenance of peace. These processes offer a fundamental opportunity for States and societies to reformulate their political, socio-economic and security positions in order to lay the foundations for sustainable peace. Based on the experiences of women's participation within the framework of the Colombian conflict it can be established that:

- a) The participation of women provides these scenarios with greater trust and understanding when mediating in search of a possible solution or agreement between the parties.
- b) Women, being a preminent actor in these scenarios, clearly understand the dynamics in which a NIAC, OSV and POC are developed.

The role of women and the consideration of gender in conflict resolution remain marginal elements in post-conflict resolution and reconstruction processes, despite the measures adopted by UNSCR 1325/2000 and the commitments made to increase women's participation in mediation and peacekeeping processes.

However, there are national, regional and continental frameworks that complement UNSCR 1325/2000 in this effort, but they have not been sufficient because they do not provide adequate mechanisms or tools for the training of women victims, who can acquire a different role as mediators, considering that they have first-hand knowledge of the dynamics of this type of scenarios, such as NIAC and OSV; and who could even support the follow-up plans in the agreements of a POC.

In recent years, several women's networks or associations have been established, such as Women Mediators across the Commonwealth (WMC), African Women Mediators (FremWise-Africa), Femmes Africa Solidarité (FAS), Nordic Women Mediators (NWM) and the Mediterranean Women Mediators Network (MWMN), Red Nacional de Mujeres Excombatientes de la Insurgencia (COL), Asociación Regional de Mujeres (AMOR), Liga de Mujeres Desplazadas.

- a) Red Nacional de Mujeres Excombatientes de la Insurgencia (COL), was born in 2000 as a collective of women who belonged to armed guerrilla groups. It was created by women former combatants who, since the 90's, had surrendered their weapons and who, during their process of reintegration into civilian life, suffered great inconveniences and damages. They promote gender mainstreaming to create alternatives that contribute to reconciliation and the maintenance of peace through the exercise of democratic citizenship.
- b) Asociación Regional de Mujeres (AMOR), began its work in the Colombian regions affected by the conflict with the objective of promoting women's rights and their conscious and active participation in the materialization of equitable and inclusive municipalities. In times of heightened armed conflict, AMOR played a leading role in maintaining the social fabric; today it promotes the process of reconciliation and peace in the region.
- c) Liga de Mujeres Desplazadas, is a grassroots women's organization that emerged in 1998 with the mission of fighting for the restitution and defense of the human, individual and collective rights of displaced women and their families, both nationally and internationally; they also defend the right of civilians in situations of armed conflict, the rights of women in general as well as the rights of displaced women.

-Strengthen strategies for the inclusion of women with the objective of eliminating the gender gap in peace processes

Throughout history, the role of women during armed conflicts has been underestimated, which is why it is necessary to reinforce it and make visible those women who have assumed essential roles and participated actively as combatants in armed conflicts, both of an international and non-international nature.

Strategies for women's participation in peace processes represent great challenges that must be addressed at each stage of the conflict, for which it is necessary for the processes to be cross-cutting in all stages, during conflict prevention, during the actual conflict and after its end.

Existing normative frameworks require peacekeeping and peacebuilding missions to promote gender mainstreaming at all levels and support the implementation of all gender-sensitive instruments. Gender-sensitive provisions in peace agreements are critical in laying the groundwork for inclusion during the peacebuilding phase.

In Latin America, the situations of NIAC, OSV and POC show a different and endemic panorama, due to the prevailing asymmetry between the State and non-State actors involved, which complicates scenarios revolving around negotiations for the cessation of hostilities.

In this context, strategies for gender mainstreaming in peace processes become essential, given the need for female former combatants' inclusion in public life and their role in society.

Women's participation in the different scenarios of war has an indefinite number of ramifications. The ways in which they participate have transformed over the years. Thus, in the late 19th and early 20th centuries women carried out tasks such as founding towns, healing the wounded, working as informants, tasks that would be set aside once the hostilities ended, however now women have an active militancy that sometimes guides their life and their actions as political subjects (Herrera & Pertuz, 2015, p. 151).

With the objective of strengthening the role of women, there are broader measures for them to participate in all phases of conflict prevention, resolution and recovery. States, regional organizations and the UN have a responsibility of providing spaces at the peace negotiation tables for women.

One of the main instruments that has enabled this participation has been Resolution 1325/200 of the United Nations Security Council and the subsequent resolutions that complement it. Several strategies to implement these resolutions, as well as implementing other legal instruments that enable a gender mainstreaming in public policies, have been developed.

There should be a focus on increasing women's leadership in conflict resolution and peacebuilding, primarily through mediation processes. Mediators work within the framework of the UN Charter, relevant Security Council and General Assembly Resolutions, UN rules and regulations, global and regional conventions, as well as international humanitarian, criminal and human rights law applicable in a given situation.

Similarly, the figures of peacebuilding and state building are essential in the post-conflict stage and in the construction of agreements, for which women must be present from the beginning and throughout these stages.

The partial inclusion of women in peace processes limits the scope for women to participate fully in negotiations and effectively restricts their impact, which is why these processes must be accompanied by broader structural efforts, as well as respect for women's rights which should be reflected in the outcome of these processes (Taylor, 2015).

In 2013, when few formal mediation processes had effectively included women, the UN Department of Political Affairs (DAPCP) developed a curriculum based on interviews with 30

mediators and initiated a series of High-Level Seminars on Gender and Inclusive Mediation Processes, organized by the Governments of Norway and Finland with their respective partners, the Peace Research Institute Oslo and the Crisis Management Initiative, the seminars provided a space to explore alternative ways to design more inclusive and effective peace processes.

It is important to develop capacities to include a gender analysis in crucial stages such as in POC, in order to overcome the constraints that tend to be present in national settings and the deficit in the fulfillment of commitments to carry out true inclusion beyond the agreements.

Achieving the inclusion of women will ensure that subsequent processes are conducted adequately taking into account the needs, capacities and priorities of men and women alike, as well as ensuring that peacebuilding and state building processes do not negatively affect them in any way and that all actors are aware of gender inequalities (Robinson & Cordaid, 2016).

Promoting the participation of women in public policy scenarios, civil society and social activism at a local level while promoting dialogue with national and international actors, will ensure a holistic approach for peacemaking actions that will impact the design and implementation of public policies. To this end, instruments such as the CEDAW, the 2030 Agenda through its Sustainable Development Goals (SDGs) and Resolution 1325/2000 can create actions in the State and be incorporated in the national development plans of each country.

Women's participation in the security sector has been considered critical to the success of UN peacekeeping missions. However, it is worth emphasizing that the number of female military personnel deployed in current peacekeeping missions and military operations is still very low. On average, only 3% of UN mission personnel are women, most of whom serve as support staff rather than actively participate in protection missions.

As estimated by the Council on Foreign Relations, the rate of female participation in peacekeeping forces has changed slowly over the last quarter century, going from 1% overall in 1993 to only 4 percent of military peacekeepers and 10% of initial staff in 2017, well below the UN targets of 15% and 20% respectively.

Almost half of the troop-providing countries do not contribute female military observers or Staff Officers at all (Bigio, J. & Vogelstein, R, 2018). It is necessary to increase training for female officers and soldiers, for women involved in politics and for female participants in peace processes; for this, it is necessary to make visible the positive results of the inclusion of women in negotiations, as well as in their interventions in the field during international operations, and to extrapolate in a positive way their inclusion to NIAC, OSV and POC scenarios. In order to make the positive results visible, it is necessary to establish processes for their monitoring and evaluation, with the aim of establishing good practices in this area.

Final remarks

At an international level, legal instruments such as UN Resolution 1325/2000, the Sustainable Development Goals of the UN Agenda 2030, the CEDAW, the Beijing Platform, the Istanbul Convention among others, may not entail binding actions in the domestic legislation of each country.

However, these tools arise from the need to promote structural changes that contribute to the increase of women at the negotiation tables, in an active role of participation, as well as in military, police and peacekeeping operations. Linking these instruments as part of public policies will increase the credibility of these processes and will be a step forward in the reconstruction of the social fabric that will lead to successful reconciliation and post-conflict reconstruction, laying the foundations for a solid and inclusive nation.

Making the role of women visible from all perspectives in peace processes will open the way to legal instruments that eliminate the bias that currently limits women to the role of victims, it will be able to, instead, create cooperation structures that work towards the transition to peace while considering women's needs from all angles, at different stages of the NIAC or OSV.

The creation of mechanisms to monitor compliance with the resulting agreements, where the participation of women in peace processes is promoted, will be essential to ensure their implementation. Through monitoring and evaluation schemes at all levels will allow measuring the level of compliance and commitment of the parties and will allow for the agreements to move from words to actions that contribute to peace building.

Each country is different and so should be their strategies for peacebuilding and gender mainstreaming. Therefore, peace agreements should be reviewed and adapted to their political, economic and social context, as well as taking as a reference the participation models of other international experiences that exemplify good practices and lessons learned that contribute to the development of *ad hoc* strategies for women's participation, whether in a NIAC, OSV or POC, and move from underrepresentation to equitable and inclusive participation in each of these contexts.

Female personnel in the armed forces in Latin America

According to the latest version of the 2016 Comparative Atlas of the Situation of the Armed Forces in Latin America of the Latin American Security and Defense Network (RESDAL), on average only 10% of military personnel in the Armed Forces of Latin American countries were female.

Dominican Republic and Venezuela are the countries that had the highest percentage of women within their armed institutions with 21.76% and 21%, respectively, while Bolivia and Ecuador were presented as the countries with the least number of women framed in their Armed Forces with 2% and 2.9% respectively. See full report: <https://www.resdal.org/assets/atlas-2016-esp-completo.pdf>

In the case of Argentina, women currently represent 21% of the total number of troops, and

have reached the rank of General in the Army, Rear Admiral in the Navy and Commodore in the Air Force. See Seminar on Gender Integration in Defense and Security in the Americas, Inter-American Defense Board, June 30, 2020, conducted by Zoom platform, minute 03.32.40-03.32.51, available at: <https://www.jid.org/?p=27949>.

The participation of women in peace processes is undoubtedly an essential part of gender mainstreaming in NIAC, OSV and POC contexts. Latin America as a region only contributes with 3% to 5% of female military personnel, so it would be convenient to adopt a greater presence of female military and civilian personnel in peace missions, trying to replicate experiences such as that of Bangladesh, which had an all-female police company deployed in the field with optimal results.

References

Barnes, K. (OCT 2016). www.cordaid.org. (D. S. Zwaan, Ed.); available at: <https://www.cordaid.org/en/wp-content/uploads/sites/3/2016/10/Cordaid-Handboek-Gender-Peacebuilding-and-Statebuilding-2016-LR>

Herrera & Pertuz. (2015). *Journal of Social Studies*, 53; available at: <https://revistas.uniandes.edu.co/doi/10.7440/res53.2015.12>

International Institute of Humanitarian Law. (2019). *Mainstreaming Gender Perspectives in International Operations*. (G. Venturini, Ed.) San Remo: Humanitarian Law Institute.

Security Council. (OCT 31, 2000). www.acnur.org; available at: <https://www.acnur.org/fileadmin/Documentos/BDL/2006/1759.pdf>

UN Women. (08/16/2021) ; Available at: <https://www.unwomen.org/es/what-we-do/peace-and-security/global-norms-and-standards>

UN Women. (2020) ; Available at: www.unwomen.org. <https://www.unwomen.org/es/what-we-do/peace-and-security>

UN Women. (2021). UN Woman. (S. and. Peace Section, Ed.) ; Available at: <https://www.unwomen.org//media/headquarters/attachments/sections/library/publications/2021/proceedings-womens-meaningful-participation-in-peace-processes-es.pdf?la=es&vs=414>

UN Women. (MAR 2015). UN Women; Available at: <https://www.unwomen.org/-/media/headquarters/attachments/sections/csw/59/declaration-sp.pdf?la=es&vs=4800>

United Nations (2019) UN received 259 allegations of sexual abuse and exploitation in 2018; available at: <https://news.un.org/es/story/2019/03/1453051>

United Nations (2020) UN pledges to tackle sexual abuse of women in Haiti by blue helmets; available at: <https://news.un.org/es/story/2020/01/1468411>

United Nations. (08/14/2021). UN Women. Retrieved on August 10, 2021, <https://www.unwomen.org/es/how-we-work/intergovernmental-support/world-conferences-on-women#mexico>

United Nations. (08/17/2021). www.un.org; Available at: <https://www.un.org/es/our-work/maintain-international-peace-and-security>

United Nations. (16 DEC 2010). www.un.org; available at: [https://www.un.org/ga/search/view_doc.asp?symbol=S/RES/1960\(2010\)](https://www.un.org/ga/search/view_doc.asp?symbol=S/RES/1960(2010))

United Nations. (19 JUN 2008). Security Council; available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N08/391/47/PDF/N0839147.pdf?OpenElement>

United Nations. (2001). UNDOC; available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N01/362/68/IMG/N0136268.pdf?OpenElement>

United Nations. (2021). www.peacekeeping.un.org; Available at: <https://peacekeeping.un.org/es/women-peacekeeping#:~:text=En%202019%2C%20de%20las%2095.000,peace%20de%20las%20Naciones%20Unidas>

United Nations. (30 SEP 2009). www.un.org; available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N09/534/49/PDF/N0953449.pdf?OpenElement>

United Nations. (JUN 24, 2013). www.un.org; available at: [https://www.un.org/ga/search/view_doc.asp?symbol=S/RES/2106\(2013\)&Lang=S](https://www.un.org/ga/search/view_doc.asp?symbol=S/RES/2106(2013)&Lang=S)

United Nations. (OCT 13, 2015); available at: https://www.un.org/ga/search/view_doc.asp?symbol=S/RES/2242%282015%29&referer=/english/&Lang=S

World Bank. (2020). www.bancomundial.org; available at: <https://datos.bancomundial.org/indicador/SP.POP.TOTL.MA.IN?end=2020&start=1960&view=chart>

ANNEXES

ANNEX 1 — Women and law enforcement in conflict and post-conflict situations: guidelines and rules²¹

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) establishes that State Parties must take measures to eliminate all forms of discrimination against women, guaranteeing the exercise and enjoyment of their human rights, including those related to participating in the creation of government policies, holding public office and exercising public functions at all levels of government, understanding that this includes security and justice.

This Convention establishes obligations among the State Parties to modify the sociocultural patterns of conduct of men and women to eliminate prejudices and practices that are based on the idea of inferiority or superiority of either sex or on stereotyped roles between men and women; guaranteeing, among other issues, co-responsibility between men and women in the care and development of their children.

Thus, the State Parties to the CEDAW have an obligation and responsibility to ensure equal rights between men and women in the sphere of education with access to the same curricula, evaluations and teaching staff at the same level, eliminating any stereotyped concept of male and female roles at all educational levels, including those corresponding to the professionalization of the public force.

Meanwhile, regarding the workforce, the CEDAW establishes that it is the right of women to freely choose their work, profession or employment, as well as the right to the development of aspirations, equal opportunities to access work, promotion to high positions or command during their professional career, which impacts all stages of the professional career of the public force, with respect to all recognized labor rights, including the prohibition of dismissal for reasons of pregnancy, maternity leave or marital status.

The Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women —"Belém Do Pará Convention"— establishes that violence against women means any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere; and that every woman has the right to a life free of violence in both the public and the private spheres. In light of this legal instrument, the States Parties make commit to adopt all appropriate measures to prevent, punish and eradicate violence against women, including the modification of laws, regulations or legal and customary practices that support the persistence or tolerance of any form of violence against women. In adopting these measures, State Parties shall take special account of the vulnerability to violence that women may suffer by reason of, *inter alia*,

²¹ This working paper, presented by the International Institute of Humanitarian Law (IIHL) of Sanremo, is the product of the Workshop "Women and Public Force: Guidelines and Rules" which is part of the project "The Complex Present of Latin America: Contributions for a Positive Evolution", developed by its Department of Special Projects and Training Activities for Latin America, headed by Roberto Augusto Moreno, and sponsored by the Ministry of Foreign Affairs and International Cooperation of the Italian Republic and represented by Fausto Pocar, Honorary President of the IIHL. This workshop was coordinated by Daira Arana Aguilar and advised by Marcos Pablo Moloeznik, with the collaboration of the following specialists: Viridiana López Herrera, Marcela Páez, Víctor Jesús González Jáuregui, Isabel Durán Murillo, Elizabeth Vargas García, Ruth Stoffels, Luisa Fernanda López Peña and Jhenifer Mojica.

their race or ethnic, migrant, refugee or displaced status, pregnancy, disability, age or socioeconomic status, or because of armed conflict or deprivation of their liberty.

Resolution 1325 (2000) of the United Nations Security Council should not be overlooked either, as it establishes a historical legal and political framework through which the importance of women's participation is recognized, as well as the need to include a gender perspective in peace negotiations, humanitarian planning, peacekeeping operations, peacebuilding in post-conflict situations and governance, that is, in all scenarios of armed conflict, other situations of violence and post-conflict.

It is important to remember that gender perspective arises following an analysis on the historical and cultural construction of the differences between women and men and how they relate in all spheres of society, including on a symbolic and material level, and that by ensuring gender mainstreaming in public policies of any kind, it becomes a tool for observing and analyzing the impact of people's opportunities, roles and social interactions, so that programs, projects and policies can be designed and adapted based on the different needs and difficulties that men and women may experience.

Likewise, in order for this perspective to have a broader scope, it is necessary to incorporate an intersectional and intercultural approach, given that the differences between people do not lie solely in their gender condition, but are crossed by categories such as ethnicity, nationality, religion, and socioeconomic status, among others.

The contexts, realities and regulatory framework of law enforcement in Latin America are diverse, which prompts the search for general considerations that support the role of those who have the obligation to ensure gender mainstreaming in these institutions.

Regarding the key actors when it comes to gender mainstreaming in law enforcement, some—though not all—are: 1) Governments (States), understanding that it is the actor tasked with creating public policies; 2) Public Force Institutions, in charge of executing public policies for the benefit and attention of the population; and, 3) Members of said institutions, who must put a gender perspective into practice in order to provide differentiated attention on the basis of gender in each of the scenarios of armed conflict, other situations of violence or post-conflict.

1.- Guidelines for the effective inclusion of women in conflict prevention and resolution²²

Members of the security forces play a fundamental role in protecting the right to life, liberty and security of persons, in guaranteeing equality and non-discrimination of women in the exercise of their rights and in protecting them from attacks to which they are specifically or especially subject by virtue of the Convention on the Elimination of All Forms of Discrimination against Women and other international instruments for the protection of Human Rights and International Humanitarian Law, in the case of Non-International Armed Conflict (NIAC) and International Armed Conflict (IAC).

²² **Guideline** here is understood as a model, a guide or recommendation to govern oneself in certain aspects.

The importance of women's participation and leadership at the tables of dialogue, mediation and negotiation in situations of armed conflict, whether of a national or international nature, in other situations of violence, in conflict prevention processes as well as in post-conflict contexts is highlighted in UN Resolution 1325 (2000) and the subsequent Resolutions of the Security Council: 1820 (2008); 1888 and 1889 (2009); 1960 (2010); 2106 and 2122 (2013); 2242 (2015) and 2467 and 2493 (2019), all of which have addressed the issue of women's rights, peace and security tackling aspects that cover sexual violence as a tactic of war and for gender mainstreaming in peace processes, among others.

General remarks

A gender perspective, as an analytical category, shows that the very concept of gender allows us to understand the different dimensions of discrimination against women and the strategies needed to neutralize or reduce it. It thus accepts that such discrimination is a generalized reality and that the institutional and regulatory response has not been sufficient in any of the dimensions considered.

Although steps have been taken to raise awareness about the roles that women should play in all areas related to the armed conflict, especially in those processes related to peace and transitional justice, this entails establishing prevention and protection measures, as well as taking actions to increase the presence of women in the resolution of social and political conflicts, the results of said actions will always be positive.

Thus, the following guidelines are suggested.

Law enforcement institutions and their agents

-Guideline: Train and raise awareness among security forces and their agents on the need to include women so that they participate on an equal footing with men in conflict prevention and resolution, as well as in all peacebuilding processes

-Commentary:

In the police forces of Latin America and the Caribbean the presence of women has been a relatively recent —starting around 70s— and gradual if not slow process. One of the arguments for incorporating women in police forces was based on the perception of these bodies as "repressive" as opposed to the idea of the "modern" approach that has been adopted as inclusive and that reinforces the objective advantages of women's participation in police forces.

-Guideline: The security forces should adopt provisions and practices of transparency and accountability for their actions. These should be particularly focused on the different events in which the deployment of force has been recorded. It should also open relevant spaces for dialogue with civil society to possible opportunities, as well as good practices to be replicated in future events, taking into consideration the relevance of gender mainstreaming in the interest of conflict prevention. Specifically, it will be necessary to develop and implement

gender/sex sensitive and specific indicators on violence against women, which are clear, precise and useful for the prevention, early warning, termination and prosecution of this type of violence.

- Commentary:

In order for citizens to have confidence in the processes and actions deployed by the public force, it will be necessary to have a system of transparency and accountability that allows for the evaluation and creation of measures to change the performance of these basic institutions of the State, as well as their members.

The events in which the deployment of force or the extended presence of troops are especially relevant, since their task is usually to contain violent events; therefore, creating dialogues and intervention mechanisms allows for the identification of good practices and prosecuting practices that, on the contrary, should be eradicated in the future.

Civil society and non-governmental organizations

Guideline: Civil Society Organizations (CSO's), Non-Governmental Organizations (NGO's), collectives and interested individuals should be trained and made aware of the need and benefits of including women in decision-making in all processes related to conflict prevention, resolution, peacebuilding and peace consolidation

- Commentary:

According to the UN Secretary General's March 2021 Report to the Commission on the Status of Women, under the title *Women's full and effective participation and decision-making in public life, as well as the elimination of violence, for achieving gender equality and the empowerment of all women and girls*, to achieve gender equality and the empowerment of all women and girls, it can be stated that "Women play an influential role in public life outside formal public institutions through their involvement in women's organizations and feminist movements, as well as in other civic engagement, including the media, labor unions and academia. Through those channels, women and gender equality advocates successfully promote legislation and mechanisms to advance gender equality and to eliminate laws that are discriminatory against women. They play a critical role in requiring decision makers to be accountable for upholding the human rights of women and girls" (official text, paragraph 30).

-Guideline: Organized civil society, through NGOs, CSOs, collectives and women's groups, should raise awareness on gender equality and influence public policies that contribute to the real and significant presence of women in government institutions, including the police and Armed Forces

- Commentary:

According to the global statistics of the Secretary General of the United Nations Organization in the March 2020 Report on Women's full and effective participation and decision-making, women are still far from participating in processes related to both armed conflicts and peace processes. By 2008, of the 33 peace processes, only 4% of women were at the negotiation and mediation tables; and 7% of women were advisors and government representatives.

According to these data, the information provided during the preparation phase of local, national and international operations should train and raise awareness among participants on the urgency of including women.

Women's movements have steadily increased since 1975. However, one of the problems is that there have not been effective associations among these groups to reach a constructive dialogue that facilitates negotiation/mediation processes and includes perspective of civil society. Accordingly, it is necessary to create spaces for the inclusion of women representatives of civil society groups to ensure that their voice is heard and included and that cooperative approaches are created.

Women victims of violence

-Guideline: Establish educational and cultural mechanisms that go against practices and prejudices that tend to perpetuate the superiority of one sex over the other. Similarly, recognize in the current legislation of the States the right of women to physical and moral integrity and prosecute domestic violence.

-Commentary:

According to the UN Women report of 2011 entitled Progress of the World's Women: In Pursuit of Justice, violence against women and girls "is both an extreme manifestation of gender inequality and discrimination, and a deadly tool used to maintain women's subordinate status (official text, "

For its part, the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará) (1995) is one of the most important of its kind within the international community, as it binds member countries of the Organization of American States (OAS) that have ratified or acceded to it.

Specific considerations

On the other hand, it is important to keep in mind the scenarios of armed conflict, other situations of violence and post-conflict.

-International and Non-International Armed Conflicts

Women are the main victims in situations of armed conflict. The absence of economic, political and social stability in contexts of internal and international armed conflicts is a source of risks and threats to the security of women and girls.

Law enforcement institutions and their agents

Guideline: In order to address in a cross-cutting manner the aspects related to women's participation in conflict prevention and resolution, law enforcement institutions should create, to the extent of their possibilities, spaces for awareness-raising and participatory dialogue with organized civil society, academia and any other sector, with the aim of cooperating in the

design and implementation of tools to improve women's participation in conflict prevention and resolution.

- Commentary:

Diverse and numerous civil society organizations have sought to collaborate with law enforcement, to promote the understanding and relevance of incorporating the gender perspective in their actions (both within the institutions and when they are deployed), so it is considered a good practice to permanently establish spaces for dialogue and joint work between civil society and law enforcement.

Among these activities is the review of good practices applied at the local level, in order to consider how to address the concerns and specific characteristics of women of all groups and social characteristics in the various environments in which they live.

It is considered that, in order for society's organizations to be able to continue contributing to the practical work with law enforcement agencies, financial support for them should be promoted, as well as the development of joint projects based on the development of the gender perspective, in order to build trust in the rest of society regarding the guidelines that support the actions of law enforcement agencies.

In addition, it is important to highlight the relevance of multidisciplinary groups that collaborate with civil society, as this may help to create an all-encompassing vision of the challenges to be addressed, as well as of the responses that may help law enforcement to perform their duties efficiently and at the service of the population.

It is important to point out that these working groups should have interlocutors who represent and articulate particularly the concerns of women and populations at risk of abuse with the deployment of actions by the security forces.

Meanwhile, in order to integrate aggressors into the best practices programs, it is considered essential to understand the dynamics that spread when violence against women is identified by the civilian population.

Organized civil society

Guideline: Civil society organizations, working together with government institutions, will seek to identify law enforcement institutions as allies, to achieve the inclusion of women in the prevention and resolution of conflicts in order to promote synergy between all parties involved in the design of actions and decision making that will enable the creation of a prompt and appropriate policy aimed at making decisions to better prevention and management of armed conflicts and other situations of violence that negatively affect the coexistence of communities and the respect for human rights, especially for women's and children's rights.

Commentary:

It is important to carry out awareness and education campaigns towards the bulk of the civilian population on the impacts of gender violence against women and the forms in which it manifests itself, as well as its penalties and the mechanisms for attention and prevention provided by State institutions.

Civil society should be identified as an ally and not as an "enemy" of the security forces, in such a way that information and knowledge can be processed, making it accessible and understandable to the rest of the civilian population.

Synergies are important for organized civil society and society as a whole to recognize the security forces as institutions that generate trust and are willing to care for and protect them, so that coherent and cohesive responses can be given to the civilian population.

Women victims of violence

Guideline: Train the civilian population, especially women, in the application and in demanding compliance with the guidelines of Human Rights and International Humanitarian Law for their benefit; with special emphasis on women who have been victims of some type of violence in the internal and/or international armed conflict based on their gender.

-Commentary:

According to Charlotte Lindsey (2000), States and parties in conflict must do everything possible to uphold respect for the safety and dignity of women in times of war, and women themselves must be more closely involved in all measures taken on their behalf. Every State bound by IHL treaties has a duty to promote rules for the protection of women against any form of violence in war, and if violations are committed, is obliged to prosecute those responsible. If women have to endure so many tragic effects of armed conflict, this is not due to deficiencies in the rules that protect them, but primarily to the fact that these rules are too often ignored. The general and specific protection to which women are entitled must become a reality. Constant efforts must be made to promote knowledge of IHL and compliance with its obligations by the general population, using all available means for its dissemination and understanding. The responsibility for improving the critical situation of women in times of war must be shared by all.

-Other Situations of Violence

For the International Committee of the Red Cross, the humanitarian effects of other situations of violence are usually greater in scope and magnitude than armed conflicts.

Law enforcement institutions and their agents

Guideline: Train and provide conceptual and empirical tools on human rights and soft law instruments to law enforcement members (especially those in command) to assess the situation and, based on this, apply appropriate protection measures for the civilian population, especially those considered vulnerable, such as women, girls and boys.

-Commentary:

The importance of categorizing other situations of violence goes beyond a theoretical exercise. This categorization has, in fact, direct consequences both for authorities and for victims of violence, especially for women, girls and boys, as it allows the application of special and offering protection in accordance with the legal situation (ICRC, 2015).

Organized civil society

Guideline: Strengthen the role of civil society and create better channels of collaboration between them and law enforcement institutions. To this end, the formation of citizen neighborhood networks should be encouraged in order to undertake violence prevention actions within the communities.

-Commentary:

Civil society, through its various organizations, should cooperate with law enforcement to promote the understanding and relevance of gender mainstreaming in its actions, especially with the identification of good practices (both within the institution and when deploying its actions). Therefore, it is considered a good practice to permanently establish spaces for dialogue and joint work between civil society and law enforcement.

In addition, it highlights the relevance of the existence of multidisciplinary groups in collaborations with organized civil society, as this may help to generate an all-encompassing vision of the challenges to be addressed, as well as of the responses that may help the security forces to carry out their work efficiently and at the service of the civilian population.

Women victims of violence

Guideline: To the extent possible, governments, through their institutions, should develop tools to bring citizens, especially women victims of violence, closer to law enforcement. Similarly, it should develop technological mechanisms such as the creation of apps that facilitate communications, as well as the reporting of the facts to the authorities.

-Commentary:

Enabling anonymous, but effective reporting mechanisms, allows authorities to intervene in situations of violence before they escalate in intensity, without compromising the safety of those making the claim; since many times these are an everyday part of the community and not outsiders, and therefore they and their families can become easy and identifiable "targets" of attacks.

Develop mobile apps to maintain communication without it becoming inoperative. For example, in Mexico City, the *Mi Policía* app was designed and implemented to report kidnappings, the presence of domestic violence among neighbors, and the detonation of firearms in the vicinity, among others. As another example, in Zacatecas (Mexico) there is an app for emergency calls about kidnappings and domestic violence. Meanwhile, eye witnesses help to identify the presence of irregular armed groups in certain areas, encrypting the communication to prevent it from being traced.

-Post-conflict

Women play a central role in the challenge of peace building.

Law enforcement institutions and their agents

Guideline: In the post-conflict context, the security forces will adopt provisions and practices of transparency and accountability for their actions, focusing on opening spaces for dialogue with civil society, to identify areas of opportunity, as well as good practices to be replicated in future events, taking into consideration gender mainstreaming.

-Commentary:

In order for citizens to have confidence in the processes and actions deployed by law enforcement in post-conflict contexts, it will be necessary to have a system of transparency and accountability to evaluate and generate actions that modify the performance of these institutions, as well as that of their members.

Women's participation in dialogue and mediation is important, they should have representative roles in order to create dialogue and mechanisms to identify good practices, as well as to prosecute abuses and demand reparations when required it.

Organized civil society

Guideline: Promote civil society's commitment to work on concrete proposals related to gender mainstreaming in order to prevent and eliminate discriminatory behavior and violations of human rights, particularly women's rights in post-conflict situations. Promote the participation of women as representatives to occupy political executive or leadership positions.

-Commentary:

It is important to carry out awareness and education campaigns towards the bulk of the civilian population on the importance of women's participation in social and political life and in the processes leading to achieve and consolidate peace. Women's participation in the political arena and in decision-making bodies should be encouraged.

Women victims of violence

Guideline: Ensure that all public institutions adopt and comply with legislation created with the goal of zero tolerance for violence, abuse and discrimination against women in the post-conflict stages, and provide funding for human rights monitoring mechanisms.

Commentary:

It is practically impossible to achieve gender equality if women are not included in post-conflict mechanisms. Hence, women's decision-making should be addressed as part of the commitments of local and national governments under human rights instruments.

2.- Minimum Rules Gender Mainstreaming in Law Enforcement²³

The purpose of establishing minimum rules for gender mainstreaming in law enforcement is to provide general guidelines to the three previously identified actors, in any national context, to achieve an effective incorporation of the gender perspective in the institutions of the public force in order to contribute to the current efforts to eliminate all forms of discrimination against women within these basic institutions of the State.

Governments

International legal instruments establish an indisputable responsibility for governments to reduce acts of discrimination and violence against women in all institutional and social spheres.

In the case of law enforcement, the following lines of action are recommended to contribute to the fulfillment of these obligations:

- a) Prepare diagnoses on gender equality within law enforcement institutions so that, based on the information gathered, the necessary adjustments can be made to increase the participation of women in law enforcement and avoid acts of discrimination. Diagnostic exercises can be carried out by gender observatories in the public security forces, which are considered a good practice worldwide and which, in addition, constitute a mechanism that allows institutions to self-evaluate themselves.
- b) Adopt specific policies for gender mainstreaming in the security and defense sector. These policies should be included in each of the public force institutions, within the framework of a national public policy. It is also suggested that these have action plans, allocation of specific resources to the extent of governmental possibilities, clear designation of responsibilities and the establishment of a supervisory institution or mechanism, with highly qualified personnel, sufficient autonomy and a clear mandate, to verify compliance with the established policies and make recommendations.
- c) Systematically review the national norms and internal regulations governing the formation, functioning and actions of law enforcement institutions, in order to identify and, if necessary, modify those provisions that may be discriminatory on the basis of sex.
- d) Design regulations and guidelines with indicators and clear and comprehensive definitions of concepts associated with gender equality, in order to standardize the criteria that guide the actions of all government entities, including law enforcement institutions, with the aim of preventing each entity from making interpretations that may be contrary to the international and national normative framework in this area.
- e) Promote a planned and systematic change in the institutional culture characterized by various forms of discrimination and gender violence, through awareness-raising, sensitization and transformation of gender stereotypes identified in the diagnoses, by

²³ A rule is understood as a formal guideline, a norm that must be complied with because it has been agreed upon, and failure to comply with it entails a sanction of some kind.

means of instruments such as communication campaigns and social networks, elaboration of specific materials, experiential workshops for tactical and operational application, and linkage with other civil society actors with experience in the prevention of gender violence. Culture change is fundamental for gender mainstreaming policies and frameworks of action to materialize.

Law enforcement institutions

Law enforcement institutions present areas of opportunity for gender mainstreaming. Therefore, it is considered necessary to address the following issues:

- a) Ensure the necessary conditions for the entry, permanence and promotion of women²⁴. In this regard, differentiated measures should be adopted, ranging from the acquisition and allocation of equipment in accordance with the physiological needs of the sexes, to the establishment of rights and obligations that allow for the compatibility of maternity and having a career. Knowledge of the specific needs of each institution can only be achieved with an adequate diagnosis, involving all areas of the institution and constant professionalization in the field.
- b) Implement actions aimed at strengthening family co-responsibility, the reconciliation of family, personal and professional life, and career development, among which the following may be considered, in accordance with the specific needs and capabilities of the institution:
 - i. Awareness-raising, dissemination of information and training to promote co-responsibility in family and household management and administration, as well as co-parenting for the upbringing and care of children.
 - ii. Non-exclusion of women from certain groups or tasks, when the reasons given are associated with maternity, and encouraging that participation in such groups is a matter on which women can decide.
 - iii. Making the necessary adjustments to the facilities, including breastfeeding rooms, nurseries and other spaces for the care of the children of members of law enforcement.
 - iv. Institutionalization of paternity leave, in equal time periods to those recognized for women, in order to promote the co-responsibility of the members of the forces in the care of children.
 - v. Providing training processes during working hours, in order to achieve an adequate work-life balance for all members of the security forces.
- c) Create special units or groups that assume the function of gender focal points within law enforcement institutions, with the purpose of facilitating and accelerating gender mainstreaming in internal and external actions. This is an institutional decision that must have the support of the commanders and the recognition of the importance of the functions that these units and individuals perform.

²⁴ During the Workshop, there was agreement on the importance of incorporating women into law enforcement institutions, taking into account the capacities established by the institution and constant professionalization; and that calls for admission and promotions should not be based on gender, but on personal aptitudes.

- d) Establish clear rules that prioritize suitable profiles, aptitudes, trajectory and individual performance of the personnel involved, regardless of gender, to guarantee the participation of women in certain forces, groups or tasks.
- e) Establish zero tolerance policies or guidelines for gender-based violence committed by its members, both within the institution and towards external persons. These should be materialized in their codes of conduct and regulations, formulated based on the analysis of the gender perspective and the intersectionality and intercultural approach, and that contemplate both procedures for file complaints and investigating, as well as prosecuting these acts.
- f) Adequately disseminate the prohibitions, procedures and sanctions for gender-based violence, which should include all members of the security forces, including agents assigned to the most distant areas or deployed in peace missions.
- g) Create, if not already in place, instances and mechanisms for reporting, processing and accompanying victims of gender-based violence within the institution. In this regard, it is recommended that a support network for victims of gender-based violence be created within the institutions to listen to them, guide them and accompany them during the procedure.
- h) Implement, for field operations, a delegation of gender advisors, through whom complaints and accompaniment of victims of gender-based violence can be channeled, and who can also make recommendations to the institution on the appropriate approach to the situation or any other aspect in which the gender component may be absent.
- i) Make accountability processes transparent, not only to the victims of gender-based violence within the institution, but also to the communities in which the acts have been perpetrated, making known with absolute clarity and in an accessible language, the actions of investigation and penalties imposed. This can help to build or reestablish trust in the institution and its procedures. It is important to mention that the confidentiality of the personal data of the victims and the persons directly involved must be guaranteed in every process.
- j) Establish guidelines and protocols to identify and respond —from a broad perspective— to violence against women, including physical, psychological, sexual and economic violence, as well as the different environments and contexts where it may occur (family, public space, work environment, settlements of migrants, refugees and displaced persons, armed conflict, disarmament, demobilization and reintegration processes).
- k) Incorporate a gender perspective with an intersectional and intercultural approach in the action protocols, considering the particularities of the approach required by Afro-descendant and indigenous women, girls and elderly women, migrants, among other populations that may be in a situation of vulnerability.
- l) Mainstream the gender perspective in all recruitment and selection processes, education, training, specialization, as well as in action protocols. This means that in each of these processes, the perspective should be incorporated into all programs, courses and other training activities, including the basic ones that all members of the security forces receive upon entry.

Members of law enforcement institutions

The efforts made by governments and law enforcement institutions are expected to be materialized in the performance of the people who are part of them, therefore the following aspects are recommended to be implemented by law enforcement personnel:

- a) Know and understand the national and international legal framework that must be observed and the internal regulations of the institution in terms of gender perspective and violence against women, in order to be in a position to identify any unlawful act within and outside the institution.
- b) Ensure that their actions avoid reinforcing gender stereotypes or roles that limit the exercise of women's human rights inside and outside the institution, including the undervaluing of women's activities outside the area of care or administrative matters.
- c) Regardless of the unit or function they perform, or the hierarchy they hold within their institution, the personnel shall report to the competent authorities any event involving gender-based violence, so that action may be taken in accordance with the law.
- d) The members of the public force with competence to hear, investigate or resolve a complaint of gender-based violence have the duty to act with due diligence and in accordance with the law, avoiding revictimization or any other form of violence.

3.- Rules for the actions of the security forces with a gender perspective.

The security forces should seek to adapt the actions of its members to the highest national and international standards of respect and protection of the human person. In this sense, *gender perspective*, understood as an analytical tool to address the disparities between men and women, is essential for respecting and protecting the rights of women.

Rules for Armed and Auxiliary Forces in Armed Conflict Contexts

-Rule: During the planning of military operations, the Armed Forces and auxiliary forces to be engaged in combat (such as Intermediate Forces and Police), shall incorporate measures related to the gender perspective, with special emphasis on the protection of women.

-Commentary:

The design of military operations should incorporate, in addition to planning, deployment and execution, accountability and that this be the subject of adequate institutional oversight, including individuals and institutions with expertise in gender issues and violence against women.

It is possible to ask, why give women a favorable treatment? To answer this question, we must turn to the concept of equality: first, formal equality, which refers to the fact that the text of the law protects all persons without distinction and requires that such protection be equally accessible to all persons in the situation described by the legal norm. The two fundamental principles of formal or *de jure* equality are: equal treatment of equal cases and unequal treatment of unequal cases. Therefore, the right to equal protection before the law means that

the law cannot be applied differently to persons in similar situations and, equally, that it cannot be applied identically to persons in different situations.

Secondly, substantive equality, which is equality in fact, *de facto* or material, representing the actual realization, the materialization, of equality between women and men. It therefore entails the modification of the circumstances that prevent people from fully exercising their rights and accessing opportunities through structural, legal or policy measures.

In view of this situation, jurisprudence and doctrine have established a principle of differentiation, which makes it possible, without violating the principle of non-discrimination, to give unequal treatment to the unequal situations through affirmative actions that in many cases are reflected in laws and rulings that allow for affirmative actions in favor of certain groups that are in a state of greater vulnerability.

It should also be considered, as pointed out by the Economic Commission for Latin America and the Caribbean (ECLAC), that the process of evaluating the consequences for women and men of any planned activity applies to laws, policies or programs in all sectors and at all levels, which inexorably includes the consequences of military operations. It is a strategy to make women's as well as men's concerns and experiences an integral element in the design, implementation, monitoring and evaluation of policies and programs in all political, economic and social spheres, so that women and men benefit equally, and inequality is prevented from being perpetuated; this must be incorporated into the military field.

Hence, norms related to gender mainstreaming should be integrated into military operations handbooks to prevent them from being merely secondary or unconnected norms.

Adopting a gender perspective when addressing the issue of sexual violence during armed conflict makes it possible to identify the risks and potential vulnerabilities to which it may give rise, to determine the ways in which to work to prevent it, to better understand how to improve the victim's accessibility to care systems, and to adopt appropriate responses.

-Rule: In order to adequately and effectively monitor military operations from a gender perspective, the Armed Forces and auxiliary or complementary forces shall incorporate objective gender indicators.

-Commentary:

It is necessary to mainstream gender aspects through an action plan with implementation, monitoring, evaluation and reporting indicators, which evaluate the work climate and its integration into the institutional culture.

Such indicators will be of valuable help to make subsequent reports on progress and situation diagnoses, the degree of compliance with the rules and commitment of the Armed Forces on the gender perspective.

The indicators in question could be periodically reviewed by an institutional or Defense Sector Observatory, which will make it possible to determine quantitative and qualitative progress, as well as the corrections and adjustments that should be implemented.

-Rule: The military training processes in the Armed Forces and in the reserves —through their educational institutions— shall enable gender mainstreaming, thus allowing it to be part of the military doctrine.

-Commentary:

The military and auxiliary forces that are in the hierarchical line of command, both in terms of Officers and non-commissioned officers (active or in reserve status), have the obligation to provide equal and non-discriminatory treatment with protected persons during armed conflicts, respecting their integrity and dignity, based fundamentally on the principle of humanity.

Likewise, discipline, as a value inherent to the Armed, Intermediate and Police Forces, must be an effective tool to internalize concepts on the gender approach and perspective, which, once learned, must be complied with and executed during military operations and, consequently, orders or instructions contrary to the gender perspective must be avoided.

United Nations Security Council Resolution 1325/2000, as well as other relevant resolutions concerning gender perspective, should be incorporated into the instruction handbooks.

Rape and other forms of sexual violence are absolutely prohibited by International Human Rights Law (IHRL) at all times and by International Humanitarian Law (IHL), both in international and non-international armed conflicts.

IHRL can complement IHL in situations of armed conflict, especially with regard to acts of sexual violence that have no nexus to armed conflict, and can also provide guidance on the interpretation and application of IHL prohibitions against sexual violence.

-Rule: During the planning of military operations, mixed work teams with specialists in gender perspective shall be integrated to participate as Gender Advisors.

-Commentary:

These gender advisors will not only advise during the deployment and execution of military operations but will also verify the condition of the infrastructure in rear areas, civilian settlements and in prisoner of war camps or others where women are installed, to ensure that they are in conditions to meet the specific needs of women and girls.

Mainstreaming with the incorporation of gender advisors in the mission means that it will be linked to the command tasks at the highest level of the mission and that the career plans, in order to serve these purposes, will be designed with the definition of positions with specific responsibilities assigned in terms of mainstreaming, as well as the recognition and highlighting of these responsibilities in the exercise of their specialized legal advice.

This may also lead to the establishment of gender officers in different groups and areas of the military institutions.

Rule: In the Armed and Auxiliary Forces, even during the development of military operations, the respective channels for filing complaints and other attention routes for acts that constitute gender-based sexual violence must be created, in addition to fostering and promoting a culture of denunciation, and in the investigation processes the presence of women in the phases of detention, interrogation and deprivation of liberty must be included.

-Commentary:

Specific, mandatory protocols for action will have to be established, in order to have minimum elements with clear definitions, good practices, investigation procedures, acts that will be sanctioned and types of sanction, whether administrative, disciplinary and/or criminal. In addition, they must contain protection measures for aggrieved women and for those who report such acts.

Institutions should provide due attention and assistance, in addition to informing the corresponding higher hierarchical echelon, so that specialists in gender issues can intervene and provide adequate and effective treatment.

In cases of commission of crimes, the existence of a criminal legal framework should be ensured to punish sexual and gender-based violence, both of the Armed Forces and of the members of the responsible arms holders or non-State armed actors, which punishes these crimes in a prompt and expeditious manner and with the utmost severity.

Likewise, when dealing with women victims of violence, the officials who deal with the complaints must refrain from seeking any type of negotiation or mediation with the perpetrator, and at all times give priority to the protection of the physical and mental integrity of the victim of violence over any other matter and adopt the pertinent measures to avoid revictimization.

It is very important to bear in mind that sexual violence is a gender phenomenon, given that it affects women, men, girls and boys differently. It is linked to and arises from harmful social practices based on traditionally dominant ideas of gender and the power dynamics that surround them.

In order to identify potential risks, gender analysis during military planning must collect, evaluate and analyze the broadest possible information on the presence of women, men, children and elderly people in the conflict zone, on their membership in the civilian population or the Armed Forces or organized armed groups involved in the conflict, and on their affiliation to ethnic, religious or minority groups.

-Rule: The Armed Forces and auxiliary agencies are obliged to safeguard sensitive data obtained through complaints of discrimination and gender violence. This obligation includes classifying the information obtained in order to safeguard the rights to honor and dignity of the victims.

-Commentary:

In this matter, the affected party must be informed regarding their rights and about the courses of action they can or should take in relation to the classification of the information, as well as in their right to privacy of their personal communications.

Rules for law enforcement in other situations of violence

-Rule: *Members of the security forces must be educated and trained on the use of force in the context of other situations of violence, and gender mainstreaming should be mandatory in the training process.*

-Commentary:

This will ensure that members of law enforcement—including the military who serve as law enforcement—become familiar with standards of action oriented to other situations of violence (OSV).

There must be an *ad hoc* regulatory framework for the State's response to OSV, which guarantees the protection of people's rights with the highest international standards.

Undoubtedly, the security forces require specialized knowledge to participate in the reestablishment of public order; therefore, concrete guidelines must be developed and introduced as well as guidelines for the monitoring and evaluation of doctrines, guaranteeing and ensuring the effective protection of women, and creating a notion that all actions must respect human rights and include a gender perspective.

Specific and concrete action protocols must also be defined to establish the elements for the appropriate use of force.

In addition, possible disciplinary consequences must be clearly established and incorporated into the corresponding administrative and disciplinary protocols and mechanisms.

-Rule: *States, when issuing their domestic regulations on the employment or use of force by members of the security forces in OSV must incorporate the gender perspective.*

-Commentary:

There should be a legal mandate that establishes the State's obligation and responsibility to provide training with a gender mainstreaming for law enforcement.

-Rule: *Law enforcement should guarantee respect for human rights without discrimination, applying the basic principles of IHRL and incorporating a gender perspective, when acting in contexts of isolated and sporadic acts of violence.*

-Commentary:

To this end, it is necessary that, through the State, laws and regulations on the use of force in the different contexts of violence that do not constitute armed conflicts be enacted, and that

these reflect international standards and through them a gender perspective, in all aspects, so that the members of law enforcement know the precise guidelines to be applied.

Law enforcement officials, in addition to international human rights law and the domestic law of their respective State, have the following specific international instruments (*soft law*) at their disposal: Code of Conduct for Law Enforcement Officials, adopted by United Nations General Assembly Resolution 34/169 on December 17, 1979 and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Havana from August 27 to September 7, 1990. These instruments have been incorporated into most of the countries' national legal systems and have become mandatory. In addition, Resolution 1325 of the Security Council of the United Nations Organization

-Rule: In the case of the Armed Forces, even during their participation in the control of internal order, the respective channels for filing complaints and the routes of attention for violations should have a gender perspective.

-Commentary:

It is important to establish specific, concrete, mandatory protocols of action with clear definitions, good practices, investigation procedures, detailing the acts that will be prosecuted and the types of possible penalties, be these of an administrative disciplinary or criminal. In addition, it should contain protection measures for women or for those who report such acts.

Institutions should provide due attention and assistance, in addition to informing the corresponding hierarchical level, so that specialists in gender issues of the institution can intervene and provide adequate and effective treatment.

In cases where crimes are committed, the existence of a criminal legal framework should be ensured to punish sexual crimes and gender-based violence by the security forces, in a prompt and expeditious manner and with the utmost severity.

Likewise, when dealing with victims of violence, officers should refrain from seeking any type of negotiation or mediation with the aggressor, and the protection of the physical and mental integrity of the affected party or victim of violence should be prioritized at all times over any other matter.

Rules for United Nations Peace Operations Forces and Border Security Forces

-Rule: Prior to deployment, troops assigned to United Nations Peacekeeping Operations should be trained to have the capacity to deal with specific cases of violence against women, ensuring maximum dissemination of information. All personnel involved in the different functions and tasks within the missions must be familiar with the regulations that incorporate a gender perspective.

-Commentary:

The agreements of the United Nations (UN) or other international and regional organizations contain clauses guaranteeing sensitivity and training in gender issues, but above all, accountability mechanisms for their members must be established.

It is essential to plan, deploy, execute and be accountable for previous diagnoses that promote actions geared towards the specific needs of people with a gender perspective and multicultural approach. In these cases, the memorandums of understanding and SOFA (Status of Forces Agreement) signed by the UN with the host States must include channels for receiving complaints for gender-based violence, avoiding situations of impunity.

-Rule: UN personnel should carry quick reference brochures and leaflets to enable the application of procedures that incorporate the gender perspective and, through cases, they can learn the best action to take in different situations of violence against women.

-Commentary:

This measure would reinforce the correct participation of the troops fulfilling UN missions, granting a powerful tool that allows the blue helmets an accurate and quick intervention in the face of actions that go against gender mainstreaming.

-Rule: That SOFA and Memorandum of Understanding should incorporate a gender perspective and standards associated with UN Resolution 1325/2000 as well as standards to ensure their compliance.

-Commentary:

This would be a guarantee for the receiving State, that troops destined to fulfill missions under UN mandate in its territory will not incur in sexual violence against women, in addition to the fact that the obligation for gender mainstreaming in international operations should not only be incumbent upon military and civilian commanders and superiors.

Failure to integrate a gender perspective in international operations may increase gender inequalities and lead to violations of the legal and ethical norms governing the conduct of its participants.

-Rule: The gender perspective and the different conditions of women and girls in migration processes and those displaced across borders must be considered.

-Commentary:

Specific and concrete protocols for action should be established with clear definitions, good practices and a description of the acts that will be subject to prosecution.

Rules in post-conflict situations

-Rule: In post-conflict scenarios, the security forces must identify social and community leaders who are human rights leaders, in order to provide them and their families with adequate protection.

-Commentary:

These women are generally victims of threats and differentiated violence, such as threats to their children or threats with sexual violence. In view of this, the security forces must identify them beforehand and guarantee their protection and that of their families, in addition to submitting the respective reports and liaisons with the relevant entities. Likewise, a registry should be kept that allows them to be summoned for work and social integration workshops, as a means to rebuild the social fabric in their area of influence and facilitate the reconciliation process.

-Rule: Law enforcement must behave in a cordial, friendly and empathetic manner in order to generate a climate of trust that guarantees the smooth running of the peace process with women victims of the armed conflict.

-Commentary:

Bearing in mind that the security forces, to a large extent, tend to be intimidating for women victims linked to the different post-conflict development programs, law enforcement members who have direct dealings with these people should inspire trust and empathy; to this end, it is desirable that from the first approach the member of the security forces introduce themselves by name, ask the person's name and make use of expressions that show that they are willing to respect, listen and collaborate.

-Rule: Diagnoses should be carried out on the risk situations of women victims with the aim of mitigating or minimizing them.

-Commentary:

In the case of an area that was immersed in the armed conflict, the security forces must carry out a diagnosis of the risk situations of the women victims present in the area, since there may have been various risk situations that could be repeated, such as having been victims of sexual violence in the context of the armed conflict or after it. They may have been victims of violence, torture or cruel treatment based on gender, they may have been victims of sexual slavery in any of its forms, they may have been in sanitary conditions contrary to health and human dignity, or even pregnant or breastfeeding women who are not guaranteed good hygiene and health conditions, among other risky situations. In the event of such situations, the security forces must prepare the respective report, process it through the regular channels and carry out the respective accompaniment.

Rule: In any operation of law enforcement in a post-conflict zone, channels of complaint must be enabled in the event of any type of problem of the population, especially women.

-Commentary:

This norm is vital because it will allow women to have an adequate channel for presenting their complaints and thus avoid, as far as possible, discrimination based on sex or gender, in addition to having a measurable pattern of how much violence remains or is rising against women during the post-conflict process, and consequently know that physical, psychological, sexual, symbolic or any other type of gender-based violence is present and that the

negligence or lack of attention paid by members of law enforcement to the complaints or their incorrect processing may generate more risks for people in a situation of manifest vulnerability.

-Rule: In the processes of peace negotiations and reconstruction processes, women should have an equal quota of participation.

-Commentary:

In situations of armed conflict or serious human rights violations resulting from other situations, women should be an important part of the teams that are formed for peace negotiations and subsequent reconstruction processes. They often sustain the social fabric of their communities and social structures during the most critical moments of violence, they are leaders of humanitarian initiatives, they are the basic nutritional and spiritual support of families and in this context, they provide —within their limited possibilities— security to their families. Consequently, their role cannot be overlooked when integrating the teams that will negotiate peace, since they are part and at the same time the main victims of the conflict. Their intervention is also obligatory and valuable in subsequent processes to promote measures that favor gender equality, so that it can serve as a tool to address gender-based violations.

4.- Recommendations for effective reconciliation and forgiveness processes with a gender perspective.

Latin America is a pioneer in the application of transitional justice. Since the 1980s, several Central and South American countries have opted to establish truth commissions, grant reparations to victims and, in some cases, prosecute human rights violators. Notwithstanding these undeniable advances, some democracies in the region are fragile and several problems of the present can be explained by an ill-gotten legacy of the past.

In particular, in this region there have been at least eleven truth commissions, several unofficial memory initiatives and, in more than eight countries, criminal prosecutions have been carried out. At least six official reparations programs for victims have also been implemented, as well as the construction of various spaces for the preservation of historical memory.

Although transitional justice is a mechanism used by societies to confront the legacies of past violence and consolidate democracy, "[...] the main challenge in Latin America is to demonstrate its effectiveness in dealing with the problems of the present: armed conflicts, the emergence of new armed actors, organized crime, impunity and the weakness of the rule of law. The construction of a shared historical memory, the reparation due to victims, the establishment of individual responsibilities and the reform of its institutions are still pending tasks" (unofficial translation, International Center for Transitional Justice, 2009).

The reality of democracies in Latin America registers important institutional and material progress. Paradoxically, however, contrasts persist and can be seen in elements such as inequality in the distribution of wealth, the lags and limitations of the educational system, the lack of recognition of the rights of indigenous peoples, women victims of sexual and domestic violence, human rights defenders, environmental leaders and journalists who are threatened or murdered, as well as the recruitment of minors to join armed groups and organized crime. In

some countries, forced disappearances, summary executions and torture have reached alarming proportions. Added to this is the abuse of force by the security forces, as well as the impunity of those responsible for committing abuses.

But it is social inequality and endemic violence that separates and differentiates Latin America from the rest of the world, making it the most inequitable and violent region in the world.

Within this framework, the following recommendations are put forward for consideration in order to strengthen the implementation of the elements of transitional justice from a personal and institutional dimension that will promote or contribute to reconciliation scenarios under mechanisms that allow for a return to trust others (interpersonal trust) and basic institutions and face a past impregnated by abuses, with special emphasis on women.

Legal Basis

The obligation of States to respect and guarantee human rights as a fundamental principle of coexistence between States and persons subject to their jurisdiction is enshrined in international law. This imposes the incorporation of effective remedies for persons who are victims of violations of these rights. Article 2.3 of the International Covenant on Civil and Political Rights (1976) states that "[...] any person whose rights or freedoms as herein recognized are violated shall have an effective remedy". Similarly, Article 25.1 of the American Convention (1969) provides that "Everyone has the right to simple and prompt recourse, or any other effective recourse, to a court of law".

In transitional processes, the UN understands that effective remedies are those that "recognize and respect the rights of victims and the accused, in accordance with international standards, paying special attention to the groups most affected by the conflicts and the breakdown of the rule of law [...]" (UN, Security Council, 2004: Para. 64. F).

The most extensive record of State obligations with respect to victims of serious human rights violations has been summarized in "The updated set of principles for the protection and promotion of *human rights* through action to *combat impunity*" (UN, 2005), known as the Joint Principles, and the "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law" (UN Resolution, 2005).

The aforementioned principles recognize that States have four non-defeasible obligations in the face of human rights violations, which today are what we know as Victims' Rights, and which the jurisprudence of the Inter-American Human Rights System has considered as obligations applicable in transition processes (Organization of American States, 2004); being these: the satisfaction of the right to justice; the right to truth; the obligation of reparation for the victims, and; finally, a special and complex obligation is indicated which is the adoption of guarantees of non-repetition of the facts, which depends both on the fulfillment of the previous three, as well as institutional reforms, vetting and other measures aimed at preventing the violations from happening again.

In this regard, the UN Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Repetition, Pablo de Greiff, considers that the rights to truth, justice, reparation and guarantees of non-repetition "constitute a series of interrelated areas of action that can be mutually reinforcing in the process of redressing the consequences of massive human rights abuse and violations" (UN, General Assembly, 2012). He also notes that while all these rights can be said to be aimed at achieving justice, a distinction must be made between their immediate, mediate and final objectives, which allows him to conclude that these four rights "contribute to the achievement of two mediate objectives, namely, providing recognition to victims and building confidence, as well as two final objectives: contributing to reconciliation and strengthening the rule of law".

The Rapporteur concludes that:

Faced with the immensity of the task of redressing the aftermath of gross violations of human rights and serious violations of international humanitarian law [...] international experience, as well as studies, suggest that the full implementation of the four components of the mandate [victims' rights] offers various interested actors, primarily victims, more powerful reasons to understand the measures as attempts to bring justice after the violations committed than their uncoordinated or piecemeal implementation. (Unofficial translation, UN, General Assembly, 2012, Para. 22)

Also, he stated on reconciliation:

A concept of reconciliation consistent with both this international experience and the text of the resolution, which also clarifies the contribution that these four areas of action can make to the achievement of reconciliation, would posit that reconciliation is, at a minimum, the circumstance in which people can regain mutual trust as equal rights holders. This means that people under the jurisdiction of a given state properly adhere to the norms and values on which the institutions that govern it are founded; have sufficient trust that those who work in those institutions also do so on the basis of those norms and values, including the norms that make people equal rights holders; and are sufficiently confident of each other's willingness to abide by and support those norms and values (unofficial translation).

Principle 1 of the catalog elaborated by Louis Joinet consecrates the Right to the Truth about past events, as well as about the circumstances and reasons that led to the massive and systematic violation of Human Rights and International Humanitarian Law, as inalienable. Undoubtedly, the right "of the victims and society to know the whole truth about the events that occurred is an essential element in a process of transitional justice and reconciliation" (unofficial translation, Zalaquett, J., 1995, p. 6 and ff; Gómez Isa, 2008, p. 167).

The IACHR, in different judgments, has given orders to materialize the element of guarantee of non-repetition of the violations suffered by the victims. An example of this is the "Street Children" case (Villagrán Morales et al.) vs. Guatemala, in which the IACHR (2009) made a series of decisions that took into account the names of the victims by determining that they

should be named after educational centers. For the Court, this decision will contribute "to raise awareness to avoid the repetition of harmful acts such as those that occurred... and to keep alive the memory of the victims" (unofficial translation, Zalaquett, J., 1995, p. 6 et seq; Gómez Isa, 2008, p. 167).

Recommendations

General

1. Assume that reconciliation can in no case be conceived as an alternative to justice or as an end that can be achieved independently of the application of the elements of truth, justice, reparation, and guarantees of non-repetition.
2. Define the scope of reconciliation in accordance with the context of each State or territory.

Commentary:

The formulas for applying successful reconciliation processes in one country cannot be replicated identically in others, because one of the main characteristics of reconciliation is that it depends on the context and background of each State.

Truth (Resolution 60/147 of 2005 of the United Nations General Assembly)

3. It is recommended that States, through law enforcement, implement internal transparency mechanisms for the early identification of Human Rights violations and breaches of International Humanitarian Law, especially those that have a special impact on the lives of women and people in vulnerable situations.

Commentary:

Taking the initiative that confirms the zero tolerance for human rights violations within the public forces —especially the Armed Forces— contributes to the process of institutional trust necessary for any transition towards peace. These mechanisms that warn about possible violations can be of various kinds, such as reporting, institutional transparency, internal investigations, alerts, or other similar mechanisms that allow the public force to identify early on human rights violations and breaches of IHL and those responsible within the institution, for the activation of disciplinary and criminal proceedings as appropriate. The above, as a good practice that reduces the risks of these violations, without the need for a court order to do so.

4. Declassify files unilaterally, in order to contribute to the clarification of situations involving members of the security forces in alleged violations of human rights and breaches of IHL, with special emphasis on those situations in which the fundamental rights of women were violated.

Commentary:

The declassification of defense and national security archives is recommended as a contribution to the rights to truth and justice in the transition processes. The main party called upon to provide truthful information is the State, so that the judicial and truth processes have

contrasting information, and are not biased only with the information provided by the victims and civil society.

5. The victims and their organizations, especially those made up of women, must incorporate autonomous truth-telling exercises that allow them to present reports on the events they suffered before the institutions of the transitional justice process.

Commentary:

In the exercise of the right to truth enjoyed by the victims, regardless of the institutional figures of transitional justice agreed upon by the States, it is advisable that the victims and their organizations develop their own autonomous exercises of documentation and truth, as a result of which they can prepare and submit reports to the truth commissions and transitional jurisdictions. These truth-telling exercises have a special relevance insofar as they gather from a direct source the accounts, testimonies and primary evidence of those who suffered the armed conflict. These collective spaces for truth-building generate greater trust in the case of violations that have violated women's sexual and reproductive integrity and freedom.

Reparation

6. Adoption of reinforced guarantees to ensure the participation of women in restorative justice processes, defined as a process through which all parties involved in a specific offense meet to collectively resolve how to deal with its aftermath and future implications (Marshall, T., 1999).

Commentary:

Restoration, since it is based on arrangements between victims and perpetrators, requires that the guarantees of participation reinforced in spaces for dialogue for women be fulfilled. Carrying out restoration exercises without conditions or guarantees entails risks of re-victimization, negative impacts on women victims and perpetrators, and distrust in institutions and peace processes. States must be permanent guarantors in these restorative dialogue processes, since they cannot renounce their duty to promote people's rights, given their different conditions of vulnerability; for this reason, they must guarantee the conditions for participation and dialogue to take place, and concur in the implementation of reparation measures, as well as allocate financial resources to implement the agreements reached.

7. Special recognition in the analysis of the damages of women victims of sexual violence in post-conflict contexts, that is, those referring to the impacts generated after the event.

Commentary:

reparation in these cases should include damages to the social, mental, sexual and reproductive spheres in most of the events of this nature that affect women's relationship life.

Satisfaction (based on UN Security Council Resolution 1325).

8. Strengthen mechanisms for civil society and victims' participation in peace processes, with the adoption of public policies that allow for effective participation with differential approaches.

Commentary:

As part of their participation in the development of peace processes, and as active subjects in the construction of formulas for conflict resolution and restorative justice, the victims are the first to be called upon to intervene with decision-making capacity in various instances of dialogue: providing legal and psychosocial accompaniment, guaranteeing their protection and guarantees of non-repetition, promoting organization and association among victims and, addressing the differentiated needs that victims require to participate, due to their gender, race, age and special conditions.

9. States shall promote programs for the prevention of the recruitment of children by organized armed groups.

Commentary:

The entry of children into the ranks of armed groups is a constant in conflict scenarios, who within the groups are subjected to other types of crimes. Children lose their families, their lives and their dignity. For this reason, it is transcendental to promote reconciliation scenarios of a State that this dynamic does not repeat itself.

10. Jointly analyze —State and social organizations— the situations of special vulnerability in which the victims find themselves, for the design of affirmative measures for participation and according to their needs.

Commentary:

In the case of female victims, within these affirmative measures to guarantee their participation, special attention should be paid to the necessary pedagogy on human rights and the use of assertive communication to facilitate the understanding of the spaces for dialogue, support with measures aimed at the care of children and other people dependent on the female victims, the provision of logistical resources necessary for their participation, and the strengthening of female leadership in victims' organizations.

11. Implement the gender approach with specialized psychosocial assistance to facilitate dialogue processes.

Commentary:

In the case of truth reconstruction spaces with victims who have suffered gender-based and sexual violence, psychosocial assistance specialized in a gender perspective must be available to guide and accompany the entire dialogue process, both for victims, perpetrators and public officials involved in the process. Likewise, the dialogues should be assisted by state agencies responsible for the special protection of women. These spaces for dialogue should provide safe environments and maintain a level of confidentiality necessary to prevent further

damage to the dignity of the victims, and in any case, their disclosure shall require their prior consent.

12. The spaces for dialogue between actors in conflict must have a territorial and inclusive approach.

Commentary:

must involve young people, indigenous and Afro-descendant people, women, the elderly, and the victims themselves.

13. Foster a culture of acceptance of mistakes, acknowledgment of responsibilities and public apologies through genuine acknowledgements within the security forces.

Commentary:

Public apologies or acts of genuine acknowledgment of responsibility are the main factor of satisfaction for victims (IACHR, 2004) to the extent that they dignify their name, disseminate the truth of what happened and given the type of violence, constitute factors of reparation, as, for example, in the case of forced disappearance, by incorporating relevant information for the search for missing persons. When the recognition comes from the public forces of the State, it constitutes an important step in the generation of trust that improves the legitimacy of the institutions in the peace-building processes.

14. Emphasize the free and spontaneous exercise of the experience of forgiveness.

Commentary:

Forgiveness is a personal practice to which victims and perpetrators, regardless of their religious beliefs, have a free and spontaneous right. It is an intimate process to be elaborated by individuals, and it is recommended that it be done with adequate psychosocial support and accompaniment. It cannot be forced in any way, nor can the guarantee of rights be conditioned to the practice of forgiveness. In cases of differential impacts on women, the gender approach must necessarily be incorporated. In the event that these practices of forgiveness converge with other practices of satisfaction or symbolic reparation, the States must support them concurrently as appropriate.

15. Victims and their organizations should promote the exercise of restorative social practices as a component of the satisfaction of victims' rights.

Commentary:

Victims and their organizations are encouraged to incorporate restorative social practices, memory, reconciliation and symbolic exercises of reparation, among other autonomous manifestations that revindicate the role of victims, repair the damages suffered and contribute to the exercise of democratic transition and generation of conditions for peace. Victims have the right to these social practices, which cannot be restricted or influenced by the State. The State shall respect and guarantee the free exercise of victims and organizations in the development of these practices and shall provide them with support from the institutions of

transitional justice and the promotion of human rights, especially to make society in general understand the meaning and importance of these practices.

16. Generate spaces for prior consensus between the State, victims and perpetrators on the conditions under which public acts of recognition should be carried out so that they result in reparations.

Commentary:

It is recommended that States, victims and their organizations promote a preparatory stage for public acts of recognition where the conditions under which they should be carried out are defined in order for them to be restorative. For this, the victims must have the necessary legal and technical advice to understand the scope of the act of recognition, there should be a materialization of their right to the truth through their perpetrators' assumption of responsibility. The memory and dignity of the victims must also be honored, and the characteristics of the act of public recognition must be agreed upon in a way that satisfies the victims (IACHR, 2004).

References

American Convention on Human Rights (1969), available at: https://www.oas.org/dil/esp/tratados_b32_convencion_americana_sobre_derechos_humanos.htm

Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (2005). UN General Assembly Resolution 60/147, available at: <https://www.ohchr.org/sp/professionalinterest/pages/remedyandrepairation.aspx>.

Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990), available at: <https://www.ohchr.org/SP/ProfessionalInterest/Pages/UseOfForceAndFirearms.aspx>

Cartagena Declaration on Refugees (1984), available at: <https://www.acnur.org/5b0766944.pdf>
Charter of the United Nations (1945), available at: <https://www.un.org/es/about-us/un-charter>

Code of Conduct for Law Enforcement Officials (1979), available at: <https://www.ohchr.org/sp/professionalinterest/pages/lawenforcementofficials.aspx>

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (1979), available at: <https://www.ohchr.org/sp/professionalinterest/pages/cedaw.aspx>

Convention Relating to the Status of Refugees (1951), available at: <https://www.acnur.org/5b0766944.pdf>.

Geneva Conventions of August 12, 1949, available at: <https://www.icrc.org/es/doc/assets/files/publications/convenios-gva-esp-2012.pdf>

Global Compact for Safe, Orderly and Regular Migration (2019), available at:
<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N18/452/03/PDF/N1845203.pdf?OpenElement>

Gómez Isa, F (2008) "El fenómeno de la impunidad: luces y sombras en América Latina", *Pensamiento Iberoamericano*, No. 2, pp. 163-185; available at:
<https://dialnet.unirioja.es/servlet/articulo?codigo=2873338>

IACHR, Judgment, "Street Children" Case (Villagrán Morales et al.) v. Guatemala (2009), available at: https://www.corteidh.or.cr/CF/jurisprudencia2/ficha_tecnica.cfm?nld_Ficha=321

IACHR, Judgment, Plan de Sánchez Massacre v. Guatemala (2004), available at:
https://www.corteidh.or.cr/docs/casos/articulos/seriec_116_esp.pdf

Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (Convention of Belém do Pará). August 14, 1995, available at:
<https://www.oas.org/juridico/spanish/tratados/a-61.html> and
https://www.oas.org/dil/esp/convencion_belem_do_para.pdf

Inter-American Court of Human Rights (IACHR) (2004), Case of the Plan de Sánchez Massacre v. Guatemala; available at:
https://www.corteidh.or.cr/CF/jurisprudencia2/ficha_tecnica.cfm?nld_Ficha=202

Inter-American Court of Human Rights (IACHR) (2009), "Street Children" Case (Villagrán Morales et al.) vs. Guatemala; available at:
https://www.corteidh.or.cr/CF/jurisprudencia2/ficha_tecnica.cfm?nld_Ficha=321

International Center for Transitional Justice (2009) "Transitional Justice in Latin America: confronting the dilemmas of the present from the legacies of the past", available at:
<https://www.ictj.org/es/publication/justicia-transicional-en-am%C3%A9rica-latina-enfrentando-los-dilemas-del-presente-partir-de>

International Committee of the Red Cross (2020), The Use of Weapons and Equipment in Law Enforcement Operations, available at: <https://www.icrc.org/es/document/el-empleo-de-armas-y-equipamiento-en-las-operaciones-para-hacer-cumplir-la-ley>

International Covenant on Civil and Political Rights (1976), available at:
<https://www.ohchr.org/sp/professionalinterest/pages/ccpr.aspx>

Lindsey, C (2000) "Women and war", *International Review of the Red Cross*; available at:
<https://www.icrc.org/es/doc/resources/documents/misc/5tdp9q.htm>

Marshal, T. (1999). *Restorative Justice: An Overview*, London: Home Office, available at:
<https://fbga.redguitars.co.uk/restorativeJusticeAnOverview.pdf>

Organization of American States (2004) Report of the Inter-American Commission on Human Rights on the demobilization process in Colombia. Washington, D.C., OEA/Ser.L/V/II.120, available at: <http://www.cidh.org/countryrep/colombia04sp/indice.htm>

Principles adopted by the United Nations (UN) Commission on Human Rights (2005) Resolution on impunity, UN Doc. E/CN.4/RES/2005/81, available at: <http://www.derechoshumanos.net/normativa/normas/onu/lesahumanidad/2005-Principios-actualizados-lucha-contra-impunidad.pdf>

Resolution number 60/147, Principles Adopted by the UN General Assembly on December 16, 2005; available at: https://legal.un.org/avl/pdf/ha/ga/ga_60-147/ga_60-147_s.pdf.

Rome Statute of the International Criminal Court (1998), available at: [https://www.un.org/spanish/law/icc/statute/spanish/rome_statute\(s\).pdf](https://www.un.org/spanish/law/icc/statute/spanish/rome_statute(s).pdf)

UN Charter (1945), available at: <https://www.un.org/es/about-us/un-charter>

UN E/CN.4/RES/2005/81, Principles adopted by the United Nations Commission on Human Rights, Resolution on impunity; available at: https://www.coljuristas.org/documentos/libros_e_informes/principios_sobre_impunidad_y_reparaciones.pdf

UN Human Rights Guidelines on the Use of Less Lethal Weapons in Law Enforcement (2021), available at: <https://hchr.org.mx/wp/wp-content/uploads/2021/05/Orientaciones-de-las-Naciones-Unidas-en-materia-de-derechos-humanos-sobre-el-empleo-de-armas-menos-letales.pdf>

UN Secretary-General's Bulletin ST/SGB/1999/13 United Nations Secretary-General's Bulletin 1999, on the performance of Blue Helmets in peacekeeping operations.

UN Security Council Resolution 1325. S/RES/1325 (2000), (October 13, 2000), available at: [https://www.un.org/womenwatch/ods/S-RES-1325\(2000\)-S.pdf](https://www.un.org/womenwatch/ods/S-RES-1325(2000)-S.pdf).

UN Security Council Resolution 1820. S/RES/1820 (June 19, 2008), available at: http://archive.ipu.org/splz-e/cuenca10/UN_1820.pdf

UN Security Council Resolution 1888. S/RES/1888 (September 30, 2009), available at: <https://www.acnur.org/fileadmin/Documentos/BDL/2011/8237.pdf>

UN Security Council Resolution 1889. S/RES/1889 (October 5, 2009), available at: <https://www.acnur.org/fileadmin/Documentos/BDL/2011/8236.pdf>

UN Security Council Resolution 1960. S/RES/1960 (December 16, 2010), available at: <https://www.acnur.org/fileadmin/Documentos/BDL/2011/8324.pdf>

UN Security Council Resolution 2106. S/RES/2106 (June 24, 2013), available at: <https://www.acnur.org/fileadmin/Documentos/BDL/2014/9577.pdf>

UN Security Council Resolution 2122. S/RES/2122 (Oct. 18, 2013), available at: <https://www.acnur.org/fileadmin/Documentos/BDL/2014/9580.pdf>

UN Security Council Resolution 2242. S/RES/2242 (Oct. 13, 2015), available at: http://www.realinstitutoelcano.org/wps/wcm/connect/5a1d09804a348d37a386af207bacc4c/U NCS_Resol2242_Mujeres_Paz_Seguridad.pdf?MOD=AJPERES&CACHEID=5a1d09804a348d37a386af207bacc4c

UN Security Council Resolution 2467. S/RES/2467 (April 23, 2019), available at: [https://undocs.org/pdf?symbol=es/S/RES/2467\(2019\)](https://undocs.org/pdf?symbol=es/S/RES/2467(2019))

UN Security Council Resolution 2493. S/RES/2493 (October 30, 2019), available at: [https://undocs.org/pdf?symbol=es/S/RES/2493\(2019\)](https://undocs.org/pdf?symbol=es/S/RES/2493(2019))

UN, Economic and Social Council (2020) "Women's full and effective participation and decision-making in public life, and the elimination of violence, to achieve gender equality and the empowerment of all women and girls: Report of the Secretary-General", E/CN.6/2021/3, available at: <https://undocs.org/es/E/CN.6/2021/3>

UN, General Assembly (2012) 21st session. Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-repetition, Pablo de Greiff. A/HRC/21/46. para. 21, available at: https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A-HRC-21-46_sp.pdf

UN, Security Council (2004) The rule of law and transitional justice in conflict and post-conflict societies. Report of the Secretary-General. S/2004/616; available at: <https://www.un.org/ruleoflaw/es/key-documents/>

Universal Declaration of Human Rights (1948), available at: <https://www.un.org/es/about-us/universal-declaration-of-human-rights>

Zalaquett, J. (1995), "Confronting Human Rights Violations Committed by Former Governments: Principles Applicable and Political Constraints", *Transitional Justice*, 1 (1995), United States Institute of Peace Press.

ANNEX 2 —Highlights and key ideas addressed during the Webinar of October 20 and 22, 2021

Report by Marcos Pablo Moloeznik²⁵

Within the framework of the Project "Women and Public Force in conflict and post-conflict situations: guidelines and rules", in charge of the International Institute of Humanitarian Law (IIHL), and with the sponsorship of the Ministry of Foreign Affairs and International Cooperation of Italy, there were two intensive days of webinars, in which the presentations by recognized experts and key actors yielded the following results:

—Day 1—

Each of the 3 presentations of the first day shared, as a common denominator, a concern for a critical issue: sexual and gender-based violence, present both in current armed conflicts and during the development of isolated and sporadic acts of violence or other situations of violence, whose humanitarian effects are often devastating, making themselves felt in the medium and long term.

Sexual violence against women related to armed conflict and its criminal repression in international jurisprudence

Fausto Pocar²⁶

Firstly, he pointed out that this type of crime is by its very nature characterized by *invisibility* (most of these crimes are not reported and therefore do not come to the attention of the authorities), which is due to a variety of factors, and by widespread impunity.

Second, rape and other forms of sexual violence are expressly prohibited by International Humanitarian Law (IHL) and International Human Rights Law.

Thirdly, the basis for considering them as war crimes (heinous crimes with no statute of limitations) is found in the prohibition of torture and other cruel, inhuman and degrading treatment.

In this context, it is useful to present the contrast between the proceedings of the International Criminal Tribunal for the former Yugoslavia and the International Criminal Court.

Thus, in Case No. IT-95-17/1-T Prosecutor v. Anto Furundzija of the International Criminal Tribunal for the former Yugoslavia²⁷, the Croatian military officer was convicted of sexually subduing a Bosnian woman to extract information through torture, while emphasizing the

²⁵ Professor-Researcher at the University of Guadalajara (Mexico) and Visiting Professor at the International Institute of Humanitarian Law (IIHL) since 2013.

²⁶ Honorary President IIHL, Sanremo, Professor Emeritus at the University of Milan (Italy) and former President of the International Criminal Tribunal for the former Yugoslavia.

²⁷ Available at: <https://archivos.juridicas.unam.mx/www/bjv/libros/11/5212/23.pdf>

gravity of the rape as a war crime. The judgment of December 10, 1998 against the perpetrator established a precedent.

Next, cases No. IT-96-23-T and No. IT-96-23/1-T were presented regarding the events in the region of Foca²⁸ where there were mass rapes of Muslim women and girls in detention centers by Bosnian Serb fighters. Thus, Kunarac, Kovac and Vukovic were indicted by the Prosecutor, who qualified the crimes committed by the three accused as torture and also rape. On February 22, 2001, the Trial Chamber (a year later confirmed by the appeals Chamber) had to decide whether to try them independently or not, and concluded that there were different elements: while torture is aimed at achieving a result, rape is characterized by penetration of the victim's body. Hence, the sentence establishes the concurrence of crimes, that is, the cumulative conviction for two different crimes: rape and torture. For the first time in history, this war crime (sex crime) is recognized as an independent crime both in international armed conflicts and in non-international armed conflicts.

For its part, the International Criminal Court (ICC) does contemplate sexual crime and rape in the Rome Statute; the emblematic case being the indictment against Jean-Pierre Bemba Gombo, commander-in-chief of the rebel group Mouvement de Libération du Congo, for the commission of war crimes and crimes against humanity, in light of his responsibility in the exercise of command and control over his subordinates. On March 21, 2016, the first decision on sex crimes by the ICC, makes visible the military strategy based on the appropriation of women's bodies as spoils of war. To arrive at this judgment, the jurisprudence of the International Criminal Tribunal for the Former Yugoslavia is taken. It broadened the concept of "invasion of the body of a person" (woman or man, boy or girl), with penetration with an object or with any part of the perpetrator. The ICC rests recognizes that rape can be materialized by force or by the threat to use force, under a coercive situation of abuse of power, i.e., its essential characteristic is the inability to give free consent.

However, on June 8, 2018, the ICC Appeals Chamber decided to acquit the accused, withdrawing the first instance indictment, thus overturning a unique ICC position²⁹. There is, therefore, no clear ICC declaration with respect to crimes of sexual violence.

Considerations on the Course "Women and Public Forces in Conflict and Post-Conflict Situations"

*Luisa Fernanda López Peña*³⁰

The speaker drew attention to the connection between the initial expectations and the content and scope of the course itself.

Thus, at the beginning of the course "Women and the security forces in conflict and post-conflict situations", participants had the following three expectations: a) to address the

²⁸ Available at: <https://archivos.juridicas.unam.mx/www/bjv/libros/11/5212/24.pdf>

²⁹ See: <https://www.coalitionfortheicc.org/es/news/20180621/jeanpierre-bemba-gombo-absuelto-por-la-camara-de-apelaciones-de-la-cpi>

³⁰ Advisor to the Amnesty and Pardon Chamber of the Special Jurisdiction for Peace of Colombia, she served as Coordinator of the IHL course "Women and Public Forces in Conflict and Post-Conflict Situations".

problems of girls and women combatants from the perspective of gender violence; b) to have more information on discrimination against women in times of peace and war; and c) to obtain tools on women's participation and their contribution to peace-building processes.

The course was organized around four main themes: the *continuum* of violence, the role of women in mediation, negotiation and peacebuilding processes, women's life within non-State armed groups, and gender mainstreaming in truth reporting.

- a) *Continuum* of violence is a concept used to refer to violence as a constant in the lives of women that is expressed in all moments, spaces and contexts in which they live their lives. This term was coined in 1988 based on the understanding that practices such as incest, physical and emotional abuse, sexual harassment, sexual exploitation, forced maternity and sexual violence in armed conflicts are all expressions of oppression against women and are not independent phenomena. There is, therefore, a continuity of these forms of violence over time that manifests itself in the different stages of women's lives, from childhood, to adulthood and old age; but it also manifests itself historically, with violence against women being a reality that has transcended from generation to generation for several centuries.

We also speak of a continuum of violence in space, which consists of the manifestation of violence in the private and public spheres, and includes places such as the home, the workplace, the streets, as well as different contexts, both in armed conflict and in other situations of violence, and even in situations of peace. Thus, violence ends up becoming a constant that links different moments and spaces of women, regardless of the situation. This continuum allows us to understand violence against women as a historical and structural problem based on gender discrimination.

- b) *The role of women in mediation, negotiation and peacebuilding processes* is based on the recognition of the importance of gender mainstreaming in armed conflicts, since it is women and girls who suffer the most from their consequences. Evidence shows that women and girls are in a position of extreme vulnerability in armed conflicts, since in this context discriminatory behaviors are exacerbated, which are expressed in considerations of power and supremacy of men and few opportunities to participate in decision-making.

Gender mainstreaming in the analysis of armed conflicts does not imply that women should always be treated as victims, nor men as the sole perpetrators of violence: rather, it is a matter of establishing protection measures and also of rethinking actions that make it possible to increase the presence of women in the political resolution of conflicts, as a guarantee that gender will be effectively considered as a priority issue in situations of extreme risk for women in conflict zones.

Hence the need to establish protection measures and to incorporate women in peace processes. Both Resolution 1325 (2000)³¹ and the seven subsequent United Nations (UN) Security Council resolutions highlight —as a strategic issue— the incorporation

³¹ Available at: [https://www.un.org/womenwatch/ods/S-RES-1325\(2000\)-S.pdf](https://www.un.org/womenwatch/ods/S-RES-1325(2000)-S.pdf)

and mainstreaming of gender issues in peace processes, in light of the central role of women in contributing significantly to achieving and consolidating peace, i.e. guaranteeing lasting peace.

This has made it possible to advance in the inclusion of gender issues, as well as the problems and needs of women in peace agreements and post-conflict programs. United Nations (UN) data have corroborated that women's participation in the road to peace triples the chances that the agreements will last over time, helps to better understand the causes of the conflict and its alternative solutions, as well as to promote measures that respond to the different needs to consolidate peace over time.

Hence, the UN Security Council has adopted, among others, the following general measures: including women as delegates of the parties involved in the negotiation, as mediators or members of mediation teams, as political negotiating groups composed exclusively of women in defense of their own interests, as witnesses, as representatives of women's organizations in civil society, as mediating advisors with a gender perspective, and as members of technical committees dedicated to gender issues. If good work is done in this field, the implementation of the measures found in the post-negotiation agreements will spread more easily, ensuring success in the establishment of a lasting peace.

- c) *Women's life within non-State armed groups*, whose first stage since the emergence of the armed struggle is characterized by the limited role of women. This situation changed radically in the 1980s, when the representation of women reached up to a third of the combat strength of guerrilla movements (in the cases of Salvador, Nicaragua, Guatemala and Colombia), surpassing the traditional domestic role. On the one hand, there has been an increase in the presence of women in groups of a political-military nature; but, on the other, there has been an increase in the forced recruitment of women into the ranks of these non-state armed groups.

Paradoxically, in these groups that postulate the armed struggle for power in order to carry out a revolution with radical proposals, the dominant masculinities, stereotypes and stigmatization of traditional society are reproduced (the cultural dimension survives), which is reflected in the limitations of leadership, of obtaining and effectively exercising command (in Colombia there was only one woman in the General Staff). Additionally, maternity was a critical, there was an iron control of pregnancy, practice of abortion, regardless of any consideration of the mother's health and even, if births were not avoided, the abduction and delivery of the child to third parties.

The incorporation of women into non-State armed groups presents three chronological milestones: incorporation, life in the ranks, and disengagement. In the case of incorporation, the causes identified for the Latin American case were: the abandonment of the State versus the constant presence of this armed group in the region, which translates into a closeness of the guerrilla with the communities; the influence of friends or relatives; trust in the ideology promulgated by the armed group; family influence, since there are family members active in the organization or due to conflicts within it; a taste for military life; forced recruitment; having a partner within

the organization who gradually seduces the woman to join; wanting to challenge male family authority, such as fathers or brothers, within the framework of a traditional family order; or economic reasons. Often several of these motives are intertwined.

Once inside non-State armed organizations, issues such as motherhood, relationships, intimacy, life and death acquire a completely different value. Thus, guerrilla women must substantially modify the cultural references that had been assigned to them. This is what has been called the process of acculturation, which entails women making profound changes in their gender identity in order to adhere, not without conflict, to a hegemonic male culture present in the insurgent groups. Thus, we find that already within the group, women see that the gender dynamics do not differ much from what it was on the outside, when they lived traditionally in their community. The fact of submitting themselves to a hierarchical structure, dominated by men, in which their interests are lost under the mantle of the group's homogenization, to the practice of routines aimed at disciplining and training them in military matters, makes the power relations within the armed group more similar to the order outside of it, the same order from which they were escaping.

The war and their participation in it as combatants confront women with a great challenge: having to masculinize themselves in order to wage war, which goes from dressing in military uniforms to displaying tenacity and bravery as a challenge and a necessity to be accepted within the group, compromising their own identities. Within the organization, they are told that as women they are free to make their own decisions, although in practice their sexual and reproductive life is already controlled by the group, and the real possibilities of holding positions or positions of power within the organization are quite limited.

In general, what can be seen from the testimonies of women who have belonged to guerrilla groups in Central and South America, and in Africa, is that for some of them this militancy meant the opportunity to become involved in a collective political project, to prove to themselves and to a group that they are capable of leaving their mark in areas historically dominated by men, but it has also left them with ruptures that are difficult to heal, such as their own identity, the way they see and feel themselves as women, and in many, many cases harming their dignity and personal integrity.

- d) *Gender approaches and truth reporting*, which highlights the need to provide training to gender units, that is, to provide knowledge and transmit sensitivity to those who interview victims, in order to identify in a safe, confidential and sensitive manner the experience of victims, especially survivors of sexual violence.

In the public hearings of the Truth Commissions, gender must be given due importance in their procedures, for example there have been hearings exclusively dedicated to women, because those who testify must be in a dignified and safe environment, have accompaniment to prepare their testimonies, anticipate the questions, have protection and security measures to prevent social exposure of the victims and avoid further damage when returning to the community.

In the case of women victims of human rights violations in general and sexual violence in particular, the problem of their self-identification as victims arises: many

do not recognize themselves as victims, do not perceive the crimes committed against them as human rights violations, or downplay their importance by prioritizing other situations, such as the deaths or disappearances of their children or husbands, which leads to a self-erasure of their own suffering. In particular, in the case of sexual violence, silence prevails, not only because of guilt, shame or fear of stigmatization, but also because they are convinced that any claim may be useless due to the lack of institutional protection. Faced with this, and the risk of a possible distortion of the historical record, a proactive strategy of support and confidence building is required to motivate women and, in general, victims of sexual violence to come forward with statements.

The conclusion on this issue is that the Truth Reports have progressively moved from the scant mention of women to a focus on rape or sexual and gender-based violence, and to a more comprehensive analysis addressing issues such as the role played by women in the history of the conflict, the conditions that facilitated the abuses committed against them, and the situation of women victimizers. The final reports increasingly seek to better understand that human rights violations develop on the basis of previous situations of inequality, hierarchical relations, discrimination and ethnic, social and gender inequality, which are aggravated during and after human rights violations; this is recognized in the recent ruling of the Inter-American Court of Human Rights on the *Bedoya Lima et al. v. Colombia Case* (2021), which vindicates and evidences the structural violence of what it means to be a woman and a journalist³².

Sexual and gender-based violence against members of the troops themselves: new challenges for International Humanitarian Law (IHL)?

*Dalila Seoane*³³

Dr. Seoane's central theme, of an unprecedented nature, addresses sexual and gender-based violence (in a broad sense, going beyond rape) against members of the troops themselves, an infraction traditionally sanctioned by the military or internal criminal law of each party to the conflict.

The speaker starts by analyzing the nature of the prosecution of this type of crime against women within armed force, and wonders if this is a new challenge connected to IHL; in other words, whether it should be understood as a war crime —and therefor have no statute of limitations— and enter the jurisdiction of international organizations.

This legal argument is based on the vision of Henry Dunant, on customary IHL and on the norms of the applicable treaties, which provide a mantle of legal protection for combatants and non-combatants and is based on the principle of a shared humanity.

³² The case relates to a series of alleged human rights violations stemming from the kidnapping, torture and rape of journalist Jineth Bedoya Lima for reasons related to her profession and the alleged failure of the State to adopt adequate and timely measures to protect her and prevent the occurrence of such events; available at: https://www.corteidh.or.cr/docs/tramite/bedoya_lima_v_otra.pdf

³³ Argentinean criminal lawyer, she has solid experience as a litigator and academic in International Criminal Law, International Humanitarian Law and International Human Rights Law.

Hence, it is expressly forbidden to commit acts of torture and attacks on life and personal dignity against members of the armed forces outside combat, due to wounds or illness, whether they are "friends or foes".

In addition, the war crimes described in Article 8 of the Rome Statute refer to different types of underlying crimes that can be committed in the context of an armed conflict. Even in the case of sexual and gender-based violence, no special status is required with respect to the victims, nor are they required to have a specific status (as a protected person).

Recently, the International Criminal Court has considered in the Bosco Ntaganda case³⁴ that sexual and gender-based violence committed by combatants of one of the parties to the conflict against members of its own forces may constitute war crimes under the Rome Statute. This conclusion is based on two main arguments. On the one hand, because "the crime per se does not include any victim status requirement"; and, on the other hand, the prohibition of such acts can also be derived from the applicable IHL.

In this context, the objective of the presentation was to deepen the arguments on the protection provided by IHL to the forces themselves during an armed conflict and to examine their consideration as possible victims of war crimes.

To sum up, the first day of the webinar had three brilliant presentations, which put into context the relevance and pertinence of the Project "Women and Public Forces in Conflict and Post-Conflict Situations: Guidelines and Rules" of the IIHL.

—Day 2—

Throughout the second day, selected topics were addressed regarding the importance of women in law enforcement, as well as the importance of intersectionality in the implementation of transitional justice mechanisms in Colombia, which was reflected in the results of the Workshop "Women and Security Forces: Guidelines and Rules", developed remotely by the International Institute of Humanitarian Law (IIHL). In this way, case studies in the historical development and proposals for improvement were addressed, as a result of the collective effort promoted by the IIHL.

The history of women's participation in the military forces

*Javier Alberto Ayala Amaya*³⁵

Women in uniform have been opening spaces as leaders in the Colombian military instrument in a dynamic way; this is due to the fact that since women began to be part of the military, there have been changes in the course of military missions and in the institutions' daily life as well.

³⁴ Available at: <https://revistas.urosario.edu.co/index.php/anidip/article/view/7158>

³⁵ Brigadier General and Commander of the Strategic Transition Command of the Colombian Army.

Thus, human and interpersonal relations have become friendlier and more cordial. Women have been moving from supporting roles into administrative and operational management. Women through their own merits and skills have gain space in the field and reached positions of power, up to the ranks of Majors General of the Republic.

Every day, the women of the National Army, Navy and Air Force prepare themselves and work towards peacebuilding, development and democracy in their country.

It should be noted that women have been a vital part in the transformation of their respective forces and leaders when it comes to the creation of new organizational structures designed for reconciliation and post-conflict, i.e. Offices of Victims, Gender, Human Rights, Land Restitution, Historical Memory, Family and Welfare, among others.

The National Government, by means of Decree 2129 of October 7, 1976, allowed the first 12 women professionals in areas such as medicine, law, administration and education to enter the military ranks in the category of officer in the administrative corps of the National Army. Subsequently, in 1983, 84 non-commissioned officers were admitted to the ranks in the technical specialties of health, accounting, archiving and education.

On January 14, 2008, 62 female cadets entered the Military School to take the officer training course for a period of three years, allowing representation in the command and leadership of troops, because until then the role played by women had been in positions in the administrative area. At the end of their training on December 7, 2010, 48 of them obtained a professional degree in Military Sciences, which accredited them as officers in the rank of Second Lieutenant in the specialties of logistics, intelligence and communications, and from that moment they were assigned to several units to serve as commanders, assuming this essential responsibility of control was reflected positively in the welfare of their subordinates and the fulfillment of the mission.

It is important to highlight in this whole process that in mid-2016 the National Army created the Gender Equity Office, which has as its mission, firstly, to be in accordance with the international and national regulatory framework on women's rights, and at the same time, to facilitate the advancement of women in all fields of the National Army. Likewise, through this unit, the Gender Observatory of the General José María Córdova Military Cadet School was strengthened. That same year, the Constitutional Court paved the way for women who voluntarily decided to participate in combat operations under the same conditions as men, since previously it was only possible in areas such as logistical, administrative, social, cultural and ecological support.

At the beginning of 2017, for the first time in the history of the Military School of Sub-officers Sargento Inocencio Chincá in Tolemaida, spots were opened for female personnel who decided to embrace the career of sub-officer at arms, since the young women who had been promoted as sub-officers since 2009 did so as members of the administrative corps without exercising troop command.

At present, female cadets of the National Army have the opportunity to train at the General José María Córdova Military Cadet School as officers in the logistics, intelligence,

communications and aviation arms, and some of them, in the next three decades, will reach the rank of General of the Republic. In such a way that, currently, there are fewer and fewer spaces in which women do not have access and do not have the same opportunities as men within the Military Forces.

In the National Navy, the inclusion of women in the ranks of officers began in 1984, which explains why today they are present in warships and someday may even command the Force. However, the presence of women in the Marine Corps became effective as of January 13, 1997, after the High Tribunal of Bogotá endorsed a decision of the Constitutional Court contained in Ruling T-624 of 1995, which would open the doors to all Colombian women aspiring to become officials, lieutenants and frigate lieutenants. A decade later, in 2015, a woman with the rank of Lieutenant Commander assumed control of a Marine Infantry Battalion in the Colombian Pacific Region.

The first female cadets of the Navy graduated at that time as maritime administrators specialized in logistics and had the opportunity to continue with the naval career until they reached the rank of Admiral.

In 1979, the Colombian Air Force incorporated its first 32 female officers in the administrative corps. Later, as a historical milestone, in April 1992, the first group of female sub-officers was incorporated: 25 young women integrated Course 5 of Sub-officers of the Administrative Corps, at the time, bringing true support to various technical areas.

In 1995, the project that would graduate the first School Sub-officers, who would have command and would opt to become military pilots of the Colombian Air Force, began.

Thus, it was that in 1997, 16 women and 48 men were received at the Military Aviation School (EMAVI) to begin their training, a process that concluded with their graduation in December 2000, when 7 of the 16 Cadets obtained their pilot wings. These pioneers of military aviation in Colombia have performed with honor and courage as combat, transport and reconnaissance pilots. This historic event in military aviation has reoriented and reaffirmed the vital role played by women in the Colombian Armed Forces because, although the history of women in the armed forces has been a complicated journey, their strength has allowed them to win spaces traditionally reserved for men.

Undoubtedly, during the second half of the twentieth century, enormous progress was made in terms of gender equity in the Colombian Armed Forces, and today the results can be seen in a series of positions achieved by women in different scenarios. For more than thirty years, these Colombian women have gained previously unthinkable spaces, constantly working to serve the country by fulfilling the Force's institutional mission, being multipliers of excellence, ethics, honor and loyalty. The promotion of women to the rank of General is, as one of them stated, "a path that encourages those of us who want to continue using our knowledge at the service of others, of those of us who, with our work, dedication and love for Colombia, aspire to always be working for a good cause" (unofficial translation).

The role of women in the Military Forces, during the last decades, has been crucial in administrative tasks. They make a vital contribution in the support of combat services and the

strengthening of the fulfillment of the constitutional mission of the Armed Forces: the defense of sovereignty, independence, the integrity of the national territory and the constitutional order.

Military women have the mission to help the country achieve the goal of a stable and lasting peace and to be protagonists in the post-conflict process.

Throughout the history of the military in Colombia, women have been another pillar for the maintenance of democracy and have been in command to face situations of the highest complexity. This has resulted in the fact that currently all of our women are, in addition to being leaders in every sense of the word, an example of tenacity, dedication and courage for their fellow soldiers, subordinates and communities of origin.

In the transition period that Colombia is going through, the Military Forces will provide support for the implementation of the Final Agreement for the Termination of the Conflict and the Construction of a Stable and Lasting Peace, between the National Government and the FARC-EP on November 24, 2016. For the implementation of this Agreement—which is the first in the world to incorporate the gender approach in a comprehensive manner to overcome the particular obstacles that women have faced during more than five decades of internal armed conflict— women themselves are called upon to play a leading role in national reconciliation.

It is worth highlighting and praising the work carried out by women in the Armed Forces, recognizing the importance of their sensitivity, strength, courage and bravery in the construction of peace. Their leadership in the post-conflict process will be key to the fulfillment of the mission of the Military Forces, which would not be possible without the participation of these mothers, daughters, sisters, wives and friends.

Colombia should be proud because it has a multifaceted military, which, just as they give great importance to the role of men in scenarios such as combat, at the same time exalt the feminine spirit to create bridges with civil society, approach the heart of the family and contribute to the maintenance of democracy and peace. Therefore, it is not surprising that in Colombia the number of women joining the military forces is increasing every day. This speaks of a change in Colombian culture, in which men and women alike are understanding that the Military Forces are a concrete and vehement way to contribute to peace in Colombia in a holistic manner.

On October 31, 2000, the United Nations Security Council unanimously adopted Resolution 1325 on Women, Peace and Security. This resolution is considered one of the corner stones of gender mainstreaming in the prevention, management and resolution of armed conflicts. In turn, it recognizes that in armed conflicts women suffer disproportionate and different consequences, as they are targets of specific forms of violence and abuse, including sexual violence and exploitation. Hence, the objective of this resolution and the ones that followed (Security Council Resolutions 1820, 1888, 1889, 1960 and 2122) is to strengthen the participation of women in decision-making arenas in the prevention and transformation of conflicts.

The full exercise of women's citizenship in contexts of armed conflict has proven to be a fundamental element due to their capacity and effectiveness for change; for example, they exert pressure on decision-makers to initiate, resume or conclude peace negotiations. Likewise, their participation as active members in peace agreement negotiation teams has historically generated an increase of 35% in the achievement of agreements lasting 15 or more years; in other words, the exercise of women's full citizenship in contexts of armed conflict is not only a question of the right to participate and be represented, but is also a key element in guaranteeing the achievement of a stable and lasting peace.

Women joining land, sea or air armies are increasingly participating on an equal footing in the maintenance and preservation of local and international security. In addition, the participation of women in law enforcement is beneficial for society, as it is an additional guarantee of respect for the human rights of civilian women.

In conclusion, the members of the Colombian Armed Forces pay a heartfelt tribute to our women: to their effort, their dedication, their tenacity and their courage. Personally, I can say that I am proud of the work that these thousands of women carry out day after day to demonstrate to society as a whole what our Colombian military is made of. Let this medium also serve to extend an invitation to women from all latitudes of the national territory to see in the Military Forces the opportunity to put their tenderness and the strength of their feminine heart, to bring peace to all Colombian homes.

Results of the Women and Public Forces: Guidelines and Rules Workshop

*Daira Arana Aguilar*³⁶

In her capacity as coordinator of the Workshop Women and Law Enforcement: Guidelines and Rules, within the framework of the Project "Women and Public Forces in Conflict and Post-Conflict Situations: Guidelines and Rules", the most relevant aspects of said activity and its main findings are presented.

Thus, for four weeks, people from different working circles such as academia, law enforcement, civil society and other governmental and non-governmental institutions, worked in the Workshop "Women and Public Forces: Guidelines and Rules", to discuss various issues affecting the performance of law enforcement with respect to the inclusion and care of women within and by the institution, as well as the most effective processes of forgiveness and reconciliation.

Unlike the "Women and the Police Force" course, the workshop did not pursue formative objectives, i.e., its design was not intended for the participants to learn new things. The workshop was aimed at creating spaces for discussion and analysis on the central theme "Women and public Forces in conflict and post-conflict situations", which would provide all the necessary inputs to generate four documents, namely:

³⁶ General Director of the international affairs organization Global Thought (Mexico) and Coordinator of the IIHL workshop "Women and Public Force: Guidelines and Rules".

- a) Minimum rules for the inclusion of gender mainstreaming in law enforcement.
- b) Rules for the performance of law enforcement with a gender perspective.
- c) Guidelines for the effective inclusion of women in conflict prevention and resolution.
- d) Recommendations for effective reconciliation and forgiveness processes that include a gender perspective.

All this with the purpose of providing general and specific guidelines to law enforcement institutions, governmental and non-governmental organizations, on the importance of women's issues in the broad agenda of gender, peace and security.

It should be noted that these documents are part of the fourth stage of the Project, which is a publication that will be available for consultation by all those who wish to do so. Therefore, I will focus on the main general findings and the discussions that were present around them.

However, it is important to mention that, taking into account the Latin American current scenario, the term Public Forces generally involves police and military institutions. This is relevant to dimension the scope of the Workshop's reflections and discussions.

Regarding the main findings of this interdisciplinary and multinational dialogue, the following aspects can be highlighted:

- a) Gender mainstreaming within law enforcement involves cross-cutting aspects that go beyond incorporating women within the institution and requires political will to be successful, it has to be intersectional, it has to be based on respect for the human rights of all people, particularly women, and it requires a great commitment to modify cultural aspects within the security forces linked to the concept of the *macho* or hegemonic masculinity.
- b) In order for law enforcement to act, in any of the possible scenarios, be they international or non-international armed conflicts, other situations of violence or post-conflict scenarios, with a gender perspective and in response to the particular needs of women, they must be fully aware of the different needs of men and women and be aware of the particularities of women's rights and their exercise. The concept of equality, both formal, i.e., that which is embodied in laws, and substantive, i.e., that which is embodied in concrete actions, was considered as transcendental in the design of rules that could guide the use of the different levels of force that can be carried out by law enforcement institutions in their multiple scenarios of action.
- c) The women, peace and security agenda is not limited to conflict and post-conflict scenarios and involves not only women victims of some type of violence, but society as a whole. Women are not only victims of violence, but are also active participants of multiple scenarios, including those related to the exercise of violence.
- d) Forgiveness and reconciliation in post-conflict situations can only be achieved if there is genuine interest on the part of the parties to achieve harmonious interactions between them and if there is a capacity to listen and empathize with the other.

An extremely important reflection, and with which I would like to conclude my intervention, is that the workshop participants highlighted the importance of understand Public Forces, not as an enemy to the full exercise of rights, but as an allied institution in charge of protecting all

people. They also pointed out the importance of these forces to have a dialogue with other institutions or organizations in order to ensure gender mainstreaming within law enforcement.

To recapitulate, I hope that these documents will be relevant not only for law enforcement institutions in Latin America, but for any institution interested in the issues of gender, peace and security.

Intersectionality in transitional justice implementation

*Xiomara Cecilia Balanta Moreno*³⁷

The speaker presented several considerations on gender mainstreaming, what it means to have an ethnic-racial approach and the concept of intersectionality with regard to the implementation of transitional justice, especially from what has been built in Colombia with the creation of the Comprehensive System of Truth, Justice, Reparation and Non-Repitition (Spanish acronym SIVJRNR)³⁸ and especially from the Special Peace Jurisdiction (Spanish acronym JEP)³⁹.

The JEP, in accordance with its normative framework, has the mandate to guarantee the right to justice of women who were victims of the armed conflict, for which it requires adopting a comprehensive approach that encompasses the reality of the violence to which they were exposed, particularly indigenous, Afro-descendant and Romani women, since their victimization is accompanied by other situations and identities that increase their vulnerability and their exposure to different forms of discrimination.

It should be emphasized that, historically, women have been the object of stereotypes and in many cases have been excluded from the social and political life of their communities. This is because the role assigned to us in society has been marked by a pattern of inequality and submission, which has permeated not only the daily and personal life of each woman, but also the institutional framework, the economy, power relations and the ways in which violence is exercised.

³⁷ Magistrate of the Amnesty or Pardon Chamber and Coordinator of the Ethnic-Racial Commission of the Special Jurisdiction for Peace of Colombia.

³⁸ The Integral System of Truth, Justice, Reparation and Non-Repitition was created by point 5 of the Peace Agreement and is composed of: (i) the Commission for the Clarification of Truth, Coexistence and Non-Repitition; (ii) the Search Unit for Persons Reported Missing; (iii) the Special Peace Jurisdiction; (iv) comprehensive reparation measures for peace-building and guarantees of non-repetition. The purpose of the System is to consolidate a transitory or temporary institutional scenario that is sufficient and appropriate to satisfy the rights of the victims of the armed conflict and contribute to national reconciliation. Available at: <https://www.jep.gov.co/JEP/Paginas/Sistema-Integral-de-Verdad-Justicia-Reparacion-y-NoRepeticion.aspx>

³⁹ The Special Peace Jurisdiction (JEP) is the justice component of the Comprehensive System of Truth, Justice, Reparation and Non-Repitition, created by the Peace Agreement between the National Government and the FARC-EP. The JEP has the function of administering transitional justice and hearing crimes committed in the framework of the armed conflict that took place before December 1, 2016. The existence of the JEP may not exceed 20 years. JEP was created to satisfy the rights of victims to justice, provide them with truth and contribute to their reparation, with the purpose of building a stable and lasting peace. The work of the JEP focuses on the most serious and representative crimes of the armed conflict, according to the selection and prioritization criteria defined by law and the judges. In particular, it may hear crimes committed by former FARC-EP combatants, members of the security forces, other State agents and civilian third parties. Regarding the latter two, the Constitutional Court clarified that their participation in the JEP would be voluntary. Available at: <https://www.jep.gov.co/JEP/Paginas/Jurisdccion-Especial-para-la-Paz.aspx>

Violence against women often exists at the intersection of various forms of discrimination, which in turn constitutes a complex reality that manifests itself in multiple and particular oppressions. This means that women, due to their own worldview and cultural identity, as well as for belonging to the female gender, are discriminated against.

Gender inequality is a reality and discrimination on ethnic and racial grounds is another scourge that adds to the multiple situations that women have to face every day; this forces us to introduce positive actions in our legal and administrative systems, as well as in our social and political relations, that contemplate all the factors that make up discriminatory treatment and that also allow us to eliminate those structural situations that foster these scenarios of inequality and vulnerability.

On the other hand, in the Colombian case, it must be recognized that women have played a fundamental role in the processes of resistance in their communities, as well as in the reconstruction and strengthening of the social fabric affected by the armed conflict. It is an institutional duty not only to recognize their victimization, but also to *always prioritize the voice, perspectives and points of view* of women as a source of knowledge, culture and worldview.

-Approaching Intersectionality

In general, it is recognized that the motive, the context and even the form of violence exercised against women are influenced by the stereotypes and conceptions of inferiority. Thus, these forms of violence frame aggressions that humiliate and degrade women simply because they are women, either because of the role they play in society, their family status, their physical appearance, their ethnicity, among other discriminatory motives. From this arises the need to adopt an intersectional perspective, which consists of analyzing cases of gender discrimination or violence not only based on this factor, since in many cases it is necessary to make visible and understand that "different types of discrimination converge, generating an intersection or overlapping of identities and, thus, very different ways of experiencing discrimination", which has specificity and cannot be understood without the concurrence of different risk and segregation factors in the same case⁴⁰.

This is the concept of intersectionality as proposed by Kimberlé Crenshaw at the World Conference against Racism in 2001, when she considered that the strands that hegemonic feminism was defending in its political struggle did not take into account the experiences of black women who, in some significant aspects, are different from those of white women⁴¹[41]. Therefore, she pointed out that the objective criterion of discrimination cannot be limited to

⁴⁰ Zaikoski, D. (2016) "General recommendation 33 of the CEDAW Committee as a standard of access to justice for women and girls". *Perspectivas de las Ciencias Económicas y Jurídicas Journal*. Vol. 6, No. 2. Santa Rosa: FCEyJ (UNLPam); EdUNLPam; ISSN 2250-4087, pp. 43-59. DOI <http://dx.doi.org/10.19137/perspectivas-2016-v6n2a03>

⁴¹ The term intersectionality starts by recognizing that "gender, race and class interact and jointly define their particular situation of social disadvantage [...] While it is true that all women are in some way subject to gender discrimination, it is also true that other factors related to women's social identities, such as class, caste, race, color, ethnicity, religion, national origin, sexual orientation are 'difference makers' in the way different groups of women experience discrimination. These differential elements can create problems and vulnerabilities that are unique to particular groups of women, or that disproportionately affect some women relative to others." See; La Barbera, M. C. (2017), "Intersectionality", in *Economía Revista en Cultura de la Legalidad* N° 12 (April 2017 - September 2017); available at: <https://e-revistas.uc3m.es/index.php/EUNOM/article/view/3651>

gender alone, but must necessarily consider different factors such as race. Thus, Kimberlé Crenshaw introduces this metaphor of the intersection of "cross roads/traffic" to emphasize the existence of several axes of inequality (race, ethnicity, gender, etc.) that, as if they were avenues in a big city, run independently, but with several intersections between them.

Suffice it to illustrate this with the following example: in the case of Afro-Colombian, black, raizal and Palanquero women, they have been exposed to differentiated forms of violence, which are usually closely linked to stereotypes according to which they are hypersexualized women and objects of pleasure, submissive and completely subservient women, and intellectually unskilled people. This violence responds to the intersection between sex-gender and ethnic-racial discrimination and is constitutive of a complex reality that manifests itself in multiple and particular oppressions.

In fact, the Constitutional Court of Colombia has established "The intersectional criterion as a tool for legal hermeneutics"⁴². It points out that the encounter of various factors of discrimination is what gives rise to the concept of intersectionality, which in turn leads to the need to adopt differential measures to address the various population groups. In this regard, in some decisions⁴³, as in order 092, the Court established a wide margin of protection by recognizing that there are populations such as the Afro-Colombian population that is in a special vulnerability due to its recognition as a distinct population group and also that women who are so recognized, suffer a broader victimization by having to face their dual status, because although in the Colombian legal system, there is a broad protection, it is ineffective in this regard.

-Transitional justice in Colombia

For all these reasons, the JEP recognizes all the struggles and resistance of Afro-Colombian, indigenous and Romani women⁴⁴. Due to these efforts, today the JEP has a Gender Commission and an Ethnic Commission, which seek to understand intersectionality, which implies an articulated and coordinated work, where there is awareness that although all women in one way or another suffer gender discrimination, there are other factors such as race and ethnicity, there are other factors such as race and skin color, caste, age, ethnicity, language, ancestry, sexual orientation, religion, socioeconomic class, ability, culture, geographic location and status as a migrant, refugee, displaced person, which combine to determine a person's social position. This also makes it possible to understand that just because they are women does not mean that they should all be treated the same, but that differences should be recognized, which enhances diversity. In other words, to understand that the armed conflict in Colombia did not affect all women in the same way.

From where, from the JEP, the following challenges are posed from the perspective of intersectionality:

⁴² Ruling T- 448 of 2018.

⁴³ Rulings T - 955 of 2003, SU 080 of 2020 and Auto 092 of 2008.

⁴⁴ It should be clarified that by Roma people, the speaker refers to gypsy women; for more details, see: <https://mincultura.gov.co/areas/poblaciones/pueblo-rom/Paginas/default.aspx>.

First: ensure due diligence and especially a thorough documentation of the facts.

- a) Analytical stance: to apply and interweave the differential approaches in the SIVJRN and the JEP.
- b) Intersectional investigation.
- c) Avoid erasure and homogenization.
- d) Adopt differential measures and strategies to tend to the needs of diverse population groups.
- e) Continue to apply prioritization criteria with a gender focus.
- f) Continue articulating with the other components of the SIVJRN, from a gender perspective and intersectionality.
- g) Continue working on cases of sexual violence that fall under the jurisdiction of JEP.
- h) Receive reports on gender-based violence from organizations.
- i) Create restorative measures with a gender perspective.

It should be noted that the Gender Commission and the Ethnic-Racial Commission of JEP recognize the organizational strength and exemplary contributions to peacebuilding of indigenous, black, Afro-Colombian, Raizal, Palenquero, peasant and Romani women. The JEP deeply values the opportunity to learn about their experiences, contributions and challenges, because peace has been built from the territory. From there, multiple organizational processes were developed that for decades demanded peace and reconciliation policies from the State as fundamental guarantees, which sought to address the structural problems of a society permeated by machismo and racism.

The intersectional perspective, as well as the focus on gender, women, family and generation is both a challenge and an obligation of the JEP, given that it constitutes a paradigm of analysis and a tool for racial and gender justice. One that breaks with flat thinking or abstract analysis. It imposes overcoming the rhetorical and formal scenario to move on to more practical, operative and concrete actions that impact the guarantee of women's rights⁴⁵.

To this end, the JEP recently adopted the Protocol of Relationship between the JEP and the Black, Afro-Colombian, Raizal and Palenquero peoples, which has the following main objectives:

- a) To bring closer and communicate to the Black, Afro-Colombian, Raizal and Palenquero people, their victims, communities and organizations affected by the armed conflict with the Justice embodied in the Special Peace Jurisdiction.
- b) Enable and strengthen a space for dialogue with the Afro-Colombian people.
- c) Facilitate compliance with the mandate of the SJP with respect to the principle of centrality of victims, promoting their effective participation and accreditation in the processes of the jurisdiction.
- d) Guarantee the incorporation of the ethnic-racial and territorial approach in all of the JEP's mission processes.

⁴⁵ Concept from the Gender Commission.

In turn, the protocol seeks to guarantee the inclusion of the Transversal Ethnic, Gender, Women, Family and Generation Approach. To this end, the JEP will guarantee truth and justice in cases of gender, sexual, territorial, racial, cultural and symbolic violence, among other serious violations committed against Afro-descendant women in the context of the Colombian armed conflict.

Thus, as a Jurisdiction in all spaces, the importance of strengthening the models of self-justice is recognized with a view to building scenarios that promptly resolve the conflicts they still suffer today in the territory. And it is understood that the strengthening of organizational processes in the right to participation of ethnic authorities also contributes to strengthen their strategies for the protection and defense of rights. This results in guarantees of non-repetition for the black people.

Finally, the JEP recognizes gender-based violence and, specifically, the disproportionate impact suffered by black, Afro-descendant, Raizal and Palenquero women. On the one hand, there is an awareness of the structural racial discrimination that the country has historically faced and, on the other, there is a firm conviction that the justice system can contribute to transforming these realities.

In conclusion, the second day of work highlighted the need to incorporate the gender perspective in armed conflicts, other situations of violence and post-conflict or lasting peace building; while recognizing the growing role of women in the different contexts and situations imposed by the political and social dynamics.

This manual - aimed primarily at members of the Latin American public security forces - seeks to integrate, from a gender perspective, the following scenarios: Non-International Armed Conflict (CANI), Other Situations of Violence (OSV) and Post-Conflict (POC), which range from combat operations, through the maintenance or reestablishment of public order, to peacebuilding. The latter two (OSV and POC) are highly complex, given that they tend to present themselves as a "grey zone" between war and peace and affect vulnerable social groups, especially women.

Thus, based on the Training Manual "Integrating Gender Perspectives in International Operations", published by the IIHL in 2019, the aim is to extend its scope of application and to constitute a practical tool to facilitate the incorporation of the gender perspective in the educational and training processes of the military, police and civilian institutions or agencies of the security sector.