



IHL AND GENDER – SWEDISH EXPERIENCES

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Foreword

Margot Wallström, Minister for Foreign Affairs, Sweden
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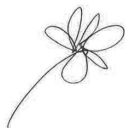
Armed conflict creates chaos in societies and immense humanitarian suffering. The heart of International Humanitarian Law (IHL) is to provide a minimum of humanity during these darkest hours of mankind. We know that men, women, boys and girls are affected by conflict in different ways, and therefore IHL must respond to these divergent needs in order to stay true to its humanitarian endeavor. We need to ensure that IHL and its humanitarian foundation are applied in a non-discriminatory manner in armed conflict. We, the international community must not fail in providing adequate protection for those in most desperate need.

This publication of Swedish experiences working with IHL and gender is aimed at increasing awareness and providing practical guidance on what a gender perspective on IHL can entail for decision-makers and actors with responsibilities under IHL. The inclusion of a gender perspective on IHL will help ensure that it remains adequate and effective in response to current humanitarian challenges.

We also need to better address the root causes of the violence that women and men, and girls and boys face during armed conflict, and how gendered structures and inequalities that already existed in peacetime, exacerbate this violence when conflict erupts. Not least, the situation for survivors of sexual and gender-based violence requires urgent attention and action.

All possible measures must be taken to ensure that all individuals are respected, protected and cared for in a non-discriminatory way.


Margot Wallström



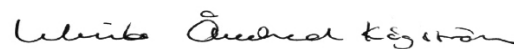

Ulrika Årehed Kågström

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I. INTRODUCTION



CHAPTER I

Introducing the Swedish approach to IHL and gender

Cecilia Tengroth, Senior Legal Advisor, Swedish Red Cross, and Kristina Lindvall, Legal Advisor, Swedish Red Cross

Armed conflict impacts women, girls, boys and men in different ways. Essential to effective action in relation to armed conflicts is therefore the consideration of the distinct and diverse status, needs and capacities as well as the consequences of these in relation to plausible actions. The past few decades have witnessed an increasing recognition of this within the international community and responses through international law. It is through this perspective that the development and application of international humanitarian law (IHL) today also needs to take these facts into consideration. In other words, IHL needs to be approached with a “gender perspective”. All key stakeholders and decision-makers (civilian and military) with responsibilities under IHL must understand how gender factors impact the application of the law, and take responsibility for ensuring that this perspective impacts the planning, conduct and evaluation of military operations and other actions under the law.

Gender refers to the socially constructed differences between persons based on sex, perceived or actual sexual orientation, gender identity or gender expression. International and national definitions of gender vary, but the core is that the socially constructed differences between persons are changeable over time and are different both within and between cultures. Gender – together with factors such as age, ethnicity, disability, and class – determines, notably, the expected attributes, behaviour, roles, power, needs, resources, constraints and opportunities for people in any culture. Individuals, in other words, have different status, needs and capacities due to social, economic, cultural and political structures, and are therefore also affected differently by changes in society as well as by actions meant to be beneficial to the population. The word “gender” in itself does not imply societal or political transformation linked to gender equality, but simply defines the different functions, status, needs and capacities different people have within a society.

With this in mind, a *gender perspective on IHL* means to give due recognition of how gender impacts individuals protection, rights, and obligations under the law. Including a gender perspective in the application of the law requires a gender analysis. Such an analysis examines the underlying differences and inequalities between men, women, girls and boys which determine and shape specific gender status, needs and capacities in a society, and also identifies how gender stereotypes, inequalities and trans- and homophobia could influence the outcome of actions under the law. Having a gender perspective in the application of the law should not be confused with prioritising women over other protected individuals, nor does it imply societal transformation or strive for gender equality. Applying a gender perspective is, rather, an analytical tool that allows us to achieve a better understanding of people's different roles, needs, and capacities. It enhances our efforts to bring focus to vulnerability and the relationships between individuals, and examines their roles, their access to and control over resources, and the constraints they face in accessing assistance with a view to providing a more appropriate response in different situations and settings. A gender perspective on IHL in many ways comes down to ensuring a non-discriminatory and equal application of the law, by ensuring that *all* individuals are granted the protection and rights to which they are entitled under the law.

IHL seeks to limit the effects of armed conflict for humanitarian reasons. It protects people who are not or are no longer participating in hostilities and restricts the means and methods of warfare. It is designed with the objective of saving lives and alleviating suffering in armed conflicts. The provisions of IHL are, except for a few provisions granting additional protection or care to women,¹ intended to be “gender neutral” (for example, protecting civilians, regardless of whether they are men or women) and the conventions also contain a non-discrimination clause. However, one relevant question is to what extent the current legal regime and its application has a “gender neutral” effect. This entails analysing if men and women are treated equally under the law in practice. Another question is whether or not existing legislation properly identifies and addresses differences in status, needs and capacities, and the implications these factors have on men and women during armed conflict. Given the important role IHL plays in armed conflict in providing protection and justice to the victims of armed conflict, a gender perspective on IHL is not merely theoretically interesting, but of practical concern in many of the world's war-torn countries.

Important work has already been undertaken in this field noting the differences in the effects of armed conflict upon individuals – in particular, the significant study by the

¹ Geneva Convention IV Relative to the Protection of Civilian Persons in Time of War (GC IV), Art. 14 provides specific protection to mothers of children under the age of seven, and also to expectant mothers. GC IV, Art. 38(5) provides again specific protection for children under 15 years, pregnant women and mothers of children under 7 years. GC IV, Art. 50 mentions “parents” but in closing only refers to “mothers”. GC IV, Art. 132 provides that an internee shall be released by the Detaining Power as soon as the reasons which necessitated his internment no longer exist, and that pregnant women, mothers with infants and young children are afforded special protection. GC IV, Art. 27 assumes that only women can be raped: “Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault.” GC IV, Art 97: “A woman internee shall not be searched except by a woman.” GC IV, Art. 124: “Women internees undergoing disciplinary punishment shall be confined in separate quarters from male internees and shall be under the immediate supervision of women.” Other articles that regulate the protection of detained women are Additional Protocol (AP) I, Art. 75 and AP II, 5(2)(a).

International Committee of the Red Cross (ICRC) entitled "Women Facing War". However this study and many of the academic writings have focused on the perspective of women. Less has been done to discuss the issue of a genuine gender perspective on IHL.

[F]urther development and understanding of a gender perspective will contribute to the resilience and effectiveness of IHL as a system of law, and will strengthen the protection of those who are victimized and disempowered during times of war.²

A gender perspective on IHL includes looking at the situation of *both women and men*, and how the gendered structural differences could affect men and women respectively in relation to existing IHL and its application.

Swedish engagement

In 2007 the Swedish Ministry for Foreign Affairs together with the Swedish Defence University, the Asia Pacific Centre for Military Law at Melbourne University in Australia and the Folke Bernadotte Academy held an International Expert Meeting on the topic of *Gender Perspectives on International Humanitarian Law*. The Expert Meeting was a first step in encouraging those involved in IHL to consider genuine gender aspects in practical and legal applications. The diverse range of participants at the meeting, including international academic experts (in both international humanitarian law and gender studies), military lawyers, medical expertise as well as personnel from regional organisations, representatives from the International Committee of Red Cross and armed forces demonstrated the broad interest in this dialogue.

The meeting was based on the assumption that the traditional roles of men and women have changed, both in times of peace and in times of war. Not only men participate in armed conflicts. Today, increasing numbers of women are also engaged in hostilities, in regular and irregular forces. The aim of the meeting was to discuss existing international humanitarian law from a gender perspective. A number of central issues were raised including: Is it possible to have a gender perspective on IHL? Does such a perspective already exist? If not, what would a gender perspective entail? What could be gained or lost in terms of the protection of civilians, combatants and understanding of vulnerable groups? Is this reflection desirable and is it achievable?

The central discussion panels and workshops of the meeting were documented in the Report Summary of the meeting.³ It was generally agreed that a gender perspective when drafting military manuals and rules of engagement would be of benefit both to the military operation and to the protection of civilians. Likewise, a gender perspective should be an inherent part of training of military personnel. The report was presented at a side event at the International Red Cross and Red Crescent Conference in 2007. The event was well attended and inspired important and thought-provoking ideas for further work. The event also established good, useful contacts for further work in the field of IHL and gender.

² Durham, Helen & O'Byrne, Katie (2010), p 31.

³ Swedish Ministry for Foreign Affairs (2007).

At the International Conference in 2011, the Swedish Red Cross together with Swedish Ministry for Foreign Affairs, Australian Government and Australian Red Cross organised a workshop, *Protection for victims of armed conflicts – how can a gender perspective on International Humanitarian Law make a difference?*⁴ This workshop was a continuation of the work done in 2007 and related to one of the Pledges supported by Sweden during the Conference. The position of the workshop was that a gender perspective on IHL is necessary to reach all parts of the population and to ensure sustainable response initiatives.

Against the backdrop of these Swedish actions, Sweden and the Swedish Red Cross together with the other Nordic States and national societies, made a pledge at the International Conference in 2011 to continue our efforts in the field of IHL and gender. Pledge 1124 specifically stated that activities pertaining to international humanitarian law undertaken between 2012 and 2015 should include a gender perspective. The signatory States and national societies pledged to promote and encourage work and studies to further develop and understand a gender perspective on international humanitarian law. The Pledge stated that the integration of a gender perspective is a necessity to reach all parts of the population and to ensure sustainable response initiatives, it contributes to the effectiveness of international humanitarian law and strengthens the protection of individuals during times of armed conflicts.

This Pledge complemented two Resolutions adopted at the International Conference, which also raised gender aspects. The *Resolution on Health Inequities* was an effort towards reducing health inequities and recognized that gender is a key deterrent to existing systematic differences in health. This Resolution made firm commitments to gender equality, non-discrimination, to ending violence against women and children, including engaging men and boys in challenging damaging gender stereotypes.

In addition, the *Resolution on 4-Year Action Plan for the Implementation of IHL*, highlighted in Objective 2 that specific protection is owed to certain categories of persons in recognition of factors such as gender, and stressed the need to enhance protection of children and women from serious violations of IHL involving gender-based violence. Objective 2.2 b) also included guidance on how States could contribute to towards achieving this goal.

Sharing Swedish experiences – a publication

Work in Sweden under Pledge 1124 was lead and financed by the Swedish government and the Swedish Red Cross, and involved a number of actors; the Swedish Defence University, the Swedish Armed Forces Headquarters, the Nordic Centre for Gender in Military Operations, Swedish Defence Research Agency, Karolinska Institutet medical university, Department of Neuroscience, Chalmers University of Technology, and the Uganda Red Cross Society.

The broad – practical and theoretical – range of work carried out in relation to the Pledge drew attention to the two above-mentioned questions related to how compliance with existing rules can be enhanced by applying a gender perspective, and if there is a need to strengthen IHL by creating new substantive law.

4 31st International Conference of the Red Cross and Red Crescent (2011).

This publication is an effort to share some of the lessons we have learned, and aims at contributing practical suggestions on how States and the Red Cross and Red Crescent Movement can continue its efforts in the field of IHL and gender. We have approached this task of sharing experiences with great humility and do not claim to have identified solutions to all questions and situations, but simply aim to share our experiences with the hope that it can contribute to increased protection under IHL for the men, women, boys and girls who suffer the consequences of conflict. The publication brings together contributions from a broad field of expertise, and as such the information and views set out in this publication are those of the authors and do not necessarily reflect the official opinions or positions of the Swedish Red Cross or the Swedish government.

We are aware that approaching IHL from a gender perspective has been done for many years, and important contributions to IHL, in particular in relation to sexual violence against women, have been the result of concerted feminist engagement. Furthermore, there has been a healthy gender critique of IHL that has questioned the relevance of IHL itself, the challenges for existing IHL to include a gender perspective in its application, and the practical effects of such intentions. Such critique has, inter alia, challenged the traditional perspective of IHL that view women as powerless victims and men as perpetrators – assumptions that for example obscure the fact that women can be fighters and actors of power, and men can be victims and care takers.⁵

Against this backdrop, and the important contributions already made in this field, there are many issues related to gender and IHL that we do not discuss in this publication. This publication should be seen as a contribution towards addressing a particular set of questions that have been of Swedish concern over the last years.

In the following chapters we share our experiences of what a gender perspective on IHL means in practical terms, and how it can be operationalised into a *check list*, and its impact on *the Revised Commentaries* to the Geneva Conventions. We also explore how IHL can be *strengthened* from a gender perspective. We present findings from field studies in Uganda, Colombia and Lebanon in relation to access to and protection of *health care in armed conflict* and the situation of *internally displaced persons*. Two chapters also examine gender aspects of the legal review of *weapons and their development*. In addition, we share the experiences of the Swedish Armed Forces in the establishment of *Gender Field Advisers* and how increased knowledge about *how gender impacts planning, conduct and evaluation of military operations* can be acquired. The perspectives of the *Swedish Foreign Service* and the *Swedish International Development Cooperation Agency* are also explained. The key findings and suggestions of this publication are summarised as *Recommendations*, and are available in English, French, Arabic and Spanish.

In other words, with the aim of encouraging those involved in IHL to consider genuine gender aspects in practical and legal applications, a diverse range of activities, studies, good practice and tools are presented in this publication.

⁵ Gender perspectives on IHL have for example been addressed and critiqued in the following: Dharmapuri (2011); Dolan (2014); Durham & Gurd, eds (2005); Durham & O'Bryne (2010); Gardam & Jarvis (2001); Prescott (2013).

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We are convinced that an understanding of how gender-related issues impact both the situation of individuals and the protection and rights afforded by IHL brings us closer to a better application of IHL and achieving the intended non-discriminatory fulfilment of the existing obligations under the law. A gender perspective on IHL simply ensures that we have an understanding of people's different roles, needs, and capacities. In the end, it is about staying true to the heart of IHL that strives to limit the humanitarian suffering that armed conflict causes regardless of whether the victim is a man or a woman.

REFERENCE LIST

- 31st International Conference of the Red Cross and Red Crescent (2011). *Workshop Report: Protection for Victims of Armed Conflicts: How Can a Gender Perspective on International Humanitarian Law Make a Difference?* <http://www.icrc.org/eng/assets/files/red-cross-crescent-movement/31st-international-conference/31-int-conference-ws-report-ihl-and-gender-en.pdf> (last accessed 25 September 2015)
- Dharmapuri, Sahana, (2011). "Just Add Women and Stir?", *Parameters Quarterly*. Spring 2011, pp. 56-70.
- Dolan, Chris, (2014). "Letting go of the Gender binary: Charting new pathways for humanitarian interventions on gender-based violence", *International Review of the Red Cross*. Vol. 96, No. 894, pp. 485-501
- Durham, Helen & Gurd, Tracey, eds., (2005). *Listening to the Silences: Women and War*. International Humanitarian Law Series, Book 8. Leiden, Boston: Martinus Nijhoff;
- Durham, Helen & O'Bryne, Katie (2010). "The Dialogue of Difference: Gender Perspectives on International Humanitarian Law", *International Review of the Red Cross*. Vol 92 No 877, pp 31-52.
- Gardham, Judith G. & Jarvis, Michelle J. (2001). *Women, Armed Conflict and International Law*. The Hague: Kluwer Law International
- Prescott, Jody, M. (2013). "Nato Gender Mainstreaming and the feminist Critique of the Law of Armed Conflict", *The Georgetown Journal of Gender and the Law*. Vol. XIV, No. 1, pp. 83-131.
- Swedish Ministry for Foreign Affairs (2007). *Report Summary. International Expert Meeting: Gender Perspectives on International Humanitarian Law*. <https://www.icrc.org/eng/resources/documents/report/ihl-women-report-051008.htm> (last accessed 25 September 2015).

II. ENSURING COMPLIANCE WITH IHL THROUGH A GENDER PERSPECTIVE



CHAPTER 2

Approaching the Geneva Conventions with a gender perspective

Kristina Lindvall, Legal Advisor, Swedish Red Cross

Compliance with the Geneva Conventions in a changing world

Armed conflicts of today pose an increased risk to civilians, health care workers, journalists, and humanitarian actors. Since the formulation of the Geneva Conventions and their Additional Protocols, we have witnessed both changes related to the conflicts themselves such as, for example, in methods of warfare and conflict-types, and overall changes in the national and international social, economic, cultural and political structures. Given these facts, there is a need to find *additional ways* to make the laws which regulate war cope with the present scenarios. In order for international humanitarian law (IHL) to effectively regulate the behaviour of warring parties, there is a need for both adequate rules and actual compliance with those rules. In other words, the reality forces us to find ways *to strengthen the law¹ and/or further compliance with existing law*.

The Geneva Conventions and their Additional Protocols mirror the conflicts, society and values of their time. This is also true of the extensive and valuable Commentaries to the Conventions.² To update the Commentaries and to include developments in the field of IHL, including the growth of customary international humanitarian law and relevant state practice, the International Committee of the Red Cross (ICRC) is currently revising the Commentaries. This work will be carried out over the years 2012–2019, and will work through the Conventions and the Additional Protocols in chronological order.

¹ See chapter 16, “Strengthening IHL with a gender perspective”, in this publication.

² The ICRC Commentaries on the 1949 Geneva Conventions date back to the 1950s, and those on the 1977 Additional Protocols to the 1980s.

Early on, the Swedish Red Cross and the government of Sweden³ identified the revision of the Commentaries as an excellent and unique opportunity to address how IHL is interpreted and applied with an understanding of the different status, needs and capacities of women, men, boys and girls. The ICRC formally invited the Swedish Red Cross in 2014 to be included in the peer review process of the draft Commentaries. In December 2014, the Swedish Red Cross presented its analysis and suggestions to the revised Commentaries to the First Geneva Convention. The reason for sharing our work with the Commentaries in this publication is the fact that our analyses and suggestions highlight some general gender approaches to IHL that could be useful for other actors working with the implementation and application of IHL.

Furthering Compliance with the Conventions and their Additional Protocols through a gender perspective

Before sharing experiences from our work with the Commentaries, something may be said about the general rationale behind our work. It can be noted that IHL in itself is to a large extent “gender neutral”. It affords both men and women equal protection and obligations. At the time of the drafting of the Treaties and their Commentaries, the roles of men and women during armed conflict were based on the assumption that men were soldiers and women and children were in need of protection. This could, for example, be seen in several provisions of the Geneva Conventions and the Additional protocols that specifically ensure extra protection of women as being mothers or caregivers.⁴ In other words, in the few cases where the law does differentiate between men and women, it usually provides additional protection to women due to their biological functions as mothers or being pregnant.

Today, there is an increased awareness that not only an individual’s biological functions, but the gendered structures in society affect the status, needs and capacities of an individual. Dependent upon the social, economic, cultural and political position of an individual, *conflict is experienced and coped with differently*. These factors have, for example, been highlighted in the passing of several UN Security Council Resolutions on women, peace and security (1325, 1820, 1888, 1889, 1960, 2106, 2122 and 2242), through the inclusion of sexual and gender-based violence in the statutes of the International Criminal Court (ICC), in the manner in which the Arms Trade Treaty from 2013 recognises the link between gender-based violence and international arms trade, and by how the Convention on Cluster Munitions from 2008 addresses the need for gender-sensitive

³ During the 31st International Conference of the Red Cross and Red Crescent, Anders Rönquist, the then Director General for Legal Affairs at the Swedish Ministry of Foreign Affairs, stressed the importance of discussing how a gender perspective could be included in the ongoing process to review the Commentaries to the Geneva Conventions. See also the Introduction chapter of this book for the pledges the Swedish Red Cross and the Swedish Government made to address these issues during the Conference

⁴ See the Introduction chapter of this publication, footnote 1.

assistance.⁵ The Red Cross and the Red Crescent Movement has also recognised the different impacts which armed conflict has on women, men, boys and girls, and their experiences during conflict.⁶

Accordingly, *the effects of actions taken under IHL have divergent effects* on men and women respectively due to structural differences, as well as other diversities. As such, there is currently an increased understanding of the specific status, needs and capacities of women and men before, during and after an armed conflict.

Women, girls, men and boys all suffer when exposed to the effects of conflict. Sometimes women and girls have similar experiences in these situations as men and boys. Many times, however, they have different experiences. They may be subjected to different violations because they are women and girls, or they may be subjected to the same type of violations as men and boys, but experience or perceive these harms in a different manner.⁷

The growing acknowledgement that women, men, boys and girls are affected by armed conflict in different ways calls for a response to this phenomenon in the application of the Geneva Conventions and their Additional Protocols. In the effort to fulfil the existing obligations under the IHL, it is crucial to understand the context in which the individuals interact and how women, men, boys and girls are impacted differently by actions under the law.⁸ The gendered structures in society and the resulting gendered impact of armed conflict, as well as possible actions under IHL, must therefore be reflected in the application of IHL in order to be equally beneficial and accessible to all individuals protected by the legal regime. Information on, and analysis of, such information – the inclusion of a gender perspective in other words – in this way decisively contributes to the above-mentioned ongoing work with finding *additional ways to further compliance* with the law and ensure the protection of *all* protected persons.

The basis of a gender perspective on IHL is information on, and a gender analysis of, the contextual situation. Such an analysis examines the underlying differences and inequalities between men, women, girls and boys which determine and shape specific gender status, needs and capacities in a culture, and also identifies how gender norms and inequalities could influence the outcome of actions under the law.

If a gender perspective is not included, the application of the law will, for example, be at risk creating unequal or inadequate protection, respect and care of individuals or, at worst, even risk having clear discriminatory effects which exacerbate inequalities or cause divergent vulnerabilities between men and women in the situational context which could

5 See also, for example, United Nations Security Council (S/2002/1154 (2002)).

6 See, for example, Lindsey (2001); Lindsey-Curtet et al (2004); Durham & Gurd, eds, (2005); ICRC (2015).

7 Oosterveld (2012), p 4.

8 See also the Introduction chapter of this publication.

be avoided with alternative actions under the law. With this in mind, the application of a gender perspective to IHL is not a new obligation, but primarily a matter of ensuring proper compliance with the law.

Sharing experience – discussions on the inclusion of a gender perspective in the revision of the Commentaries to the Geneva Conventions

The basis for our work with the Commentaries was the argument that they should reflect the aforementioned enhanced understanding within the international community, including developments in international law, of the gendered impact of armed conflict. With the intention of giving practical meaning to the concept of “gender perspective” in the application of IHL, our analysis and suggestions are intended to contribute to the protection of individuals in accordance with the existing law.

Although the suggestions we provided to the Commentaries are based on an understanding of how gender and other aspects of diversity impact IHL, we did not give voice to the need for social engineering, social change or to strive for gender equality. However important these issues are, the revised Commentaries are not the correct arena for any such suggestions.

The Commentaries are, however, an excellent arena for providing practical and exemplifying guidance on how to interpret and apply IHL with a gender perspective. Much can be said about this, but we have decided to focus on *two important bases for integrating a gender perspective* in the application of, and thereby contribute to better compliance with, the law; awareness of the differences in how armed conflict affects men and women, and the importance of perspectives and participation of women and men of different ages and backgrounds in relevant assessments and decision making.

Given the vast material forming the new draft Commentaries to the First Convention, we understood at an early stage that a selection of the articles was necessary to be able to share our analysis and suggestions where highly relevant. The obligations of humane treatment, non-discrimination, respect, protection and care are core obligations under IHL, and also areas in which we determined that a gender perspective could decisively contribute to increased protection for individuals covered by the First Geneva Convention.

Awareness of differences in status, needs and capacities among men and women

As mentioned previously, we identified a need to promulgate awareness in the Commentaries to the fact that the social, economic, cultural, and political context form patterns of behaviour and create roles that differ among men, women, boys and girls. We suggested writings of this kind in the revised Commentaries to Articles 3, 12, 15 and 24. The overall aim of these writings is to strengthen compliance and provide non-discriminatory protection under the law for all protected individuals. With that said, it is obvious that our aim is

not to prioritise women over other categories of persons protected during armed conflict.

We wanted to make the point that knowledge and information within this field – specifically focusing on the gendered influence of the armed conflict – could lead to more informed decisions under the law, resulting in *increased protection* of persons addressed under the First Convention. If the Commentaries would draw attention to and illustrate the fact that women and men, for example, face different challenges in seeking protection or help due to the structures mentioned above, and encounter different risks of being subjected to gender-based violence or attacks of other kinds, they could create better possibilities to contribute to the full realisation of the obligations under the Convention.

Such guidance in the Commentaries could also ensure that all victims – as well as all perpetrators – are *treated equally and without discrimination*. For example, could the obligations to respect, protect and care mean different things in relation to the specific needs of wounded or sick women and men protected under the First Convention over and above the specific provision on women included in the law (Article 12.4 of the First Convention)? Could female or male health care personnel, or wounded or sick individuals protected under the First Convention, face indirect discrimination due to their gendered roles in a culture, e.g., due to restrictions on what a woman or man is expected/allowed to do, or in relation to their respective freedoms of movement?

As a compliment to the central struggle to further compliance with IHL, such knowledge and information also injects additional *adequacy and efficiency into the conduct of operations*. The inclusion of these issues in the planning, conduct and evaluation of actions regulated by IHL is necessary in order to avoid acting on the basis of uninformed assumptions or stereotypes regarding the status, needs and capacities of the individuals under the legal regime. For example, is there enough intelligence gathered on the specific actions, movements and needs of women and men respectively? What are the respective health care needs of men and women protected under the Convention, including factors that impact their access to health care? Are the needs assessments processed with an understanding not only of the biological differences but also of, for example, the different social and economic restrictions and risks a society and a conflict could impose on women and men? Could knowledge of social or cultural patterns lead to different decisions on how a party to a conflict provides health care, planning and protection, or disseminates IHL?

The inclusion of perspectives and participation of women and men of different ages and backgrounds

We also found it important to highlight the need for women and men of different ages and backgrounds to be *consulted and actively take part* in the identification and assessment of the different sets of needs and capacities (for example, in planning and offering protection and care pursuant to the Convention).

The inclusion of different perspectives could be a recommended way of facilitating the

understanding of, and finding adequate solutions to, the specific needs of different groups in a society. In addition to this, it is obvious for reasons of efficiency and adequacy that both women and men need to be included in assessments of planning, conduct and evaluating actions in their favour. In order to keep this in mind relative to our commentaries to Articles 3, 12, 15 and 24 (see above), we therefore also suggested writings regarding the importance of including perspectives of men and women of different ages and backgrounds in the identification and assessments pursuant to these Articles.

The inclusion of different perspectives in the application of the law could be approached and implemented in different ways. For example, military, legal or gender advisors could be given training on how to gather, analyse and use this kind of contextual information. Contact could be established with organisations working with, for example, the rights of different groups in a society, etc.⁹ We do not, however, suggest in our commentaries any specific method or process for collecting, analysing and using this kind of information.

The importance of the participation of individuals with different perspectives based on gender in negotiations and agreements before, during and after conflicts is also a shared understanding expressed in UN Security Council Resolution 1325 (2000). This growing recognition, that the participation of both women and men at all decision-making levels in national, regional and international institutions and mechanisms for the prevention, management, and resolution of conflict is necessary, calls for a clear response in the application of IHL. We therefore suggested that this should be highlighted in the articles in the First Convention with specific provisions on negotiations and agreements, such as Articles 6, 11, 23, 28 and 31.

Concluding remarks

Through the work with revising the Commentaries to the First Geneva Convention, we have tried to engender a broad awareness of the importance of a gender perspective among those parties who rely on the Commentaries in their interpretation and application of the law. We are convinced that this contributes to the realisation of the obligations under the Convention, and furthers compliance with it. Attention to the same simple message regarding the necessity of a gender perspective in the application of the vast material of IHL in general – customary law and treaty law – could induce real change for individuals suffering from armed conflict.

⁹ See the chapters on "Military operations with a gender perspective" in this publication.

REFERENCE LIST

ICRC, (2015). *Women and War*. Geneva, ICRC.

Lindsay, Charlotte (2001), *Women Facing War: ICRC study on the impact of armed conflict on women*. Geneva: ICRC.

Lindsey-Curtet, Charlotte, Tercier Holst-Roness, Florence & Anderson, Letitia (2004). *Addressing the Needs of Women Affected by Armed Conflict, An ICRC Guidance Document*. Geneva: ICRC.

Durham, Helen & Gurd, Tracey (eds), (2005). *Listening to the Silences: Women and War*. International Humanitarian Law Series. (Book 8). Leiden, Boston: Martinus Nijhoff.

Oosterveld, Valerie, (2012). "Women and Girls Fleeing Conflict: Gender and the Interpretation and Application of the 1951 Refugee Convention", *Legal and Protection Policy Research Series*. PPLA/2012/06. Geneva: United Nations High Commissioner for Refugees.
Available at <http://www.unhcr.org/504dd7649.html> (last accessed 28 September 2015)

United Nations Security Council, (S/2002/1154 (2002)). *Report of the Secretary-General on women, peace and security*. 16 October 2002.

CHAPTER 3

The development of a gender perspective in Refugee Law

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This article outlines the history and significance of gender in international refugee law over the last 60 years. Central to this development is the fact that refugee law has evolved through a process of interpretation rather than by being amended to incorporate new gender-specific provisions. Despite the advances of this approach in contributing to the recognition of gender-persecution in refugee law, as the Swedish case analysed in this article will illustrate, challenges remain. The Swedish Red Cross has conducted several studies to explore to which extent gender-sensitive interpretations of refugee law have been integrated into case law. The analysis in this article is therefore based on the Swedish Red Cross experiences in the field of advancing a gender perspective on international refugee law in a national context. Hopefully, the work of integrating gender into refugee law can help to inspire parallel approaches in international humanitarian law (IHL).

Gender in refugee law: a historical perspective

International refugee law (IRL) has evolved significantly over the last sixty years since the drafting of the 1950 Statute of the United Nations High Commissioner for Refugees and the 1951 Convention Relating to the Status of Refugee (the 1951 Refugee Convention). These developments have taken place within a broader framework of advancements in other areas of international law, and in particular in international human rights law.¹

¹ The Convention on the Elimination of All Forms of Discrimination Against Women 1979 and its Optional Protocol; the Declaration on the Elimination of Violence Against Women 1993; the Convention on the Rights of the Child 1989 and its Optional Protocols on the Involvement of Children in Armed Conflict; and on the Sale of Children, Child Prostitution and Child Pornography; the Beijing Platform for Action adopted at the Fourth World Conference on Women in 1995 and the follow-up 'Beijing Plus 5' Special Session of the General Assembly.

The 1951 Refugee Convention was drafted in a specific moment in history when experiences of persecution of public actors were considered the prevalent norm. Women's experiences of persecution were therefore not incorporated in mainstream instruments, echoing the inequalities prevailing in society at the time of its drafting. Neither sex nor gender were included on the list of grounds of discrimination relevant to the refugee definition. The inclusion of language referring to sexual equality within the refugee definition was dismissed on the basis that "the equality of the sexes was a matter for national legislation" and doubts were raised whether there would be any cases of persecution on account of sex.² Later regional instruments have not included sex or gender in their refugee definitions either.

Refugee law during the Cold War

In the aftermath of the Second World War and the beginning of the Cold War, the paradigmatic refugee was a male fleeing a repressive regime due to his political oppositional activity. Much of the decision-making during this period omitted how women's actions were often politicised at a personal level. Focusing on the state as persecutor meant that persecution in private settings was originally characterised as beyond Refugee Law's purview.³

It was the feminist critique of the refugee law, formulated in the early 1980s, that brought to the forefront the consequences of this inherent bias in legal formulation, especially its implications for the interpretation of women's experiences of persecution. Scholars argued that the framework for 1951 refugee protection was a much better fit for the "adult male" standard than for women and exposed some of the underlying gendered assumptions in IRL based on an analysis of the public/private dichotomy.⁴ Therefore, some scholars and activists advocated for adding sex (or gender) to the list of Convention grounds as the most effective way to ensure that IRL would extend equal protection to all. However, already by the late 1980s and early 1990s, the advocacy community started to realise the perils of opening the Refugee convention for amendment. The argument, instead, was to advocate for alternations to domestic legislation implementing the Convention in the various countries applying it.⁵

Changes in refugee law post-Cold War – internationally and domestically

The decision in *Matter of Acosta* by the Board of Immigration Appeals in 1985 laid the ground for gender asylum claims in the United States and internationally.⁶

² See Edwards (2010), p. 22; United Nations General Assembly (A/CONF.2/SR.5), p. 9f.

³ See Arbel et al (2014), p. 3 for a range of views published in the decade surrounding the first UNHCR guidelines. See also Foote (1994); Razack (1995); and Kandt (1995).

⁴ See Edwards (2003), p. 47; Arbel, A et al (2014), p. 3, Crawley (2001), p. 17.

⁵ See Arbel et al (2014), p. 3 for a range of views published in the decade surrounding the first UNHCR guidelines. See also Foote (1994); Razack (1995); and Kandt (1995).

⁶ U.S. Department of Justice, Board of Immigration Appeals (19 I & N. Dec. 211 (BIA 1985)). *Matter of Acosta*.

In *Acosta*, a particular social group (PSG) is defined by a “common, immutable characteristic” that “members of the group either cannot change, or should not be required to change because it is fundamental to their individual identities or consciences”.⁷ The same year as the *Acosta* decision, the UNHCR Executive Committee adopted Conclusion No. 39 which recognised that “women asylum seekers who fear harsh or inhumane treatment due to their transgressions of societal mores in their home countries may be considered a particular social group under the convention”.⁸

During the following two decades, both UNHCR and States started developing guidelines on gender-related persecution. The UNHCR guidelines explicitly argued that persecution based on gender, gender identity, and sexual orientation stem from a common core: non-conformity to defined gender roles and gender norms.⁹ Furthermore, States such as Canada, the United States, Australia, United Kingdom, Sweden and the Netherlands also introduced guidelines at various levels of decision-making and with varying degrees of binding influence in order to introduce safeguards and ensure equitable access to asylum determination procedures.¹⁰ These guidelines, with national variations and with varying degrees of success, outlined and brought to the core the concerns of those facing gender-related persecution. Some States, nevertheless, introduced alterations in domestic legislation adding “sex” or “gender” as explicit grounds to refugee status.¹¹

As a consequence of these developments, judicial reasoning starting with *Matter of Acosta* onwards begun to move towards a gender-sensitive and gender-inclusive interpretation and application of refugee law that attempted to give equal importance to the *sometimes* different, although no less serious, forms of persecution feared by women.¹²

Gender in case law post-Cold War

Case law has since then recognised a wide range of valid claims including rape and sexual violence, punishment and discrimination for transgression of social mores, sexual orientation, female genital mutilation, and trafficking.¹³ Judgements of the international tribu

7 *Ibid.* 233.

8 UNHCR (2009), Conclusion No. 39 (XXXVI) (1985), para. k.

9 UNHCR (HCR/GIP/02/01), para. 3

10 Currently the following jurisdictions have some form of gender guideline for refugee decision-makers: Australia, Canada, Costa Rica, European Union, Germany, Ireland, the Netherlands, Sweden, South Africa, Spain, Sweden, Switzerland, United Kingdom, and the United States. See Arbel et al (2014), p. 4.

11 For an overview of the laws of various countries, see Edwards (2003), pp. 46-80.

12 Edwards (2003), p. 52.

13 The decision of *Matter of Acosta* was followed by several others such as, inter alia, Canada Supreme Court (2 S.C.R. 689). *Canada (Attorney General) v. Ward.*; U.S. Department of Justice, Board of Immigration Appeals (24 I&N Dec. 629 (A.G. 2008)). *Matter of R-A., Respondent*; European Court of Human Rights (ECtHR) (Application no. 23505/09). *N. v Sweden*; Court of Justice of the European Union (C-199/12 – C-201/12). *X, Y, Z v Minister voor Immigratie en Asiel.*

nals for the former Yugoslavia and Rwanda, confirming enslavement, rape, and torture as crimes against humanity and genocide, have further clarified the international legal position regarding such acts.¹⁴ In recent years, victims of domestic violence have increasingly been recognised as refugees when the State has been unable or unwilling to intervene to provide protection.¹⁵

These developments in case law, international guidelines and national legislation provide clear examples of how gender-related considerations successfully can be applied on existing and non-developing treaty law.

Incorporating a gender perspective into refugee law: the Swedish case

In Sweden, the Aliens Act introduced in 2005 amended its refugee definition in order to include explicitly gender-related claims. "Gender" and "sexual orientation" were therefore mentioned as examples of what can constitute the basis of a PSG but were not included as additional grounds of persecution. According to the Aliens Act, a "refugee" defined as an alien who

is outside the country of the alien's nationality, because he or she feels a well-founded fear of persecution on grounds of race, nationality, religious or political belief, or *on grounds of gender, sexual orientation or other membership of a particular social group* and is unable, or because of his or her fear is unwilling, to avail himself or herself of the protection of that country¹⁶[italics added]

The Swedish preparatory works preceding the 2005 Aliens Act make clear that "gender" as well as "sexual orientation" can constitute a PSG. Thus, women and LGBTI-persons can be considered examples of social groups under the PSG category.¹⁷ Although "gender" and "sexual orientation" are mentioned as examples of a PSG in the refugee definition, the preparatory works specify that gender-related persecution can be pertinent under all five grounds of persecution.¹⁸ This means that gender-related persecution claims should not solely and automatically be considered under the PSG convention ground but under the resting four others as well.

¹⁴ See International Criminal Tribunal for the Former Yugoslavia (IT-95-17/1-T). *Prosecutor v. Anto Furundzija*; International Criminal Tribunal for Rwanda (ICTR-96-4-T). *Prosecutor v. Jean-Paul Akayesu*.

¹⁵ See House of Lords (Session 1998-1999). *Islam (A.P.) and others v. Secretary of State for the Home Department.*; U.S. Department of Justice, Board of Immigration Appeals (22 I&N Dec. 906 (A.G. 2001; BIA 1999)) *Matter of R-A-, Respondent*.

¹⁶ Utlänningslag (2005:716), Section 4 §1.

¹⁷ Regeringens proposition 2005/06:6, pp. 22, 24. In Sweden, preparatory works are considered important sources of law and as such as binding on Swedish migration courts and Migration Board authority. The Swedish Migration Board has also introduced a set of guidelines on gender-related persecution and on sexual orientation, with a focus on procedural aspect of asylum determination, and are binding for the Migration Board decision-makers.

¹⁸ *Ibid*, p. 27.

Swedish challenges and refugee law

Although there has been substantial progress made in Sweden so far, there are several areas, such as the use of the particular social group ground as well as the interpretation of the concepts of persecution and gender, where challenges remain.

Examples of these challenges can be seen in case law from the Swedish migration courts and the Migration Board. Several studies have shown that the PSG ground is often not properly analysed or identified in Sweden.¹⁹ This is particularly illustrated in cases where decision-makers fail to recognise actions by women as political.²⁰ The "derivative persecution" of female asylum seekers on the basis of their family membership continues to be more readily accepted by decision-makers than that of direct persecution where the claimant has to establish that she has suffered or fears persecution on a particular convention ground.²¹ The Swedish Red Cross has pointed out in several reports that the assessment of asylum claims by women in particular often rests in gender stereotypes of accepted and "believed" gender roles.²² Another area of concern is that rape and sexual violence is frequently viewed in Swedish case-law as a non-political act. The rapist is perceived as acting from personal motivation even when the perpetrator is a government official or a member of an anti-government force.²³ Another area that could need further development is the remaining widespread assumption that gender only refers to women. Decision-makers often fail to recognise and respond appropriately to gender claims involving men who breach social roles and customs attributed to their sex.²⁴

Although it is important that claims are recognised on the PSG ground, a proper application of the refugee definition requires a full and equal utilisation of other convention grounds. However, the above mentioned challenges facing gender claims stem not only from the failure of decisions-makers to incorporate a gender perspective in the interpretation of the existing grounds enumerated in the refugee definition, but also stem from the inability to integrate a gender perspective to legal concepts such as "actors of protection" and "internal flight alternative".

Parallel approaches with IHL

As several scholars point out, many of the most important doctrinal developments in refugee law nowadays are occurring in cases where the claim being examined is one linked to gender or sexuality. Considering that gender misconceptions in any society or area of law

¹⁹ See Zamacona Aguirre (2008); Asylum Aid (2012);

²⁰ See Bexelius (2013).

²¹ Zamacona Aguirre (2008), p. 90; Asylum Aid (2012), p. 72.

²² Zamacona Aguirre (2008), p. 90; Svenska Röda Korset (2014), p 55.

²³ See Asylum Aid (2012), p. 57; Bexelius (2013) p. 29; Zamacona Aguirre (2008) p. 67.

²⁴ For more on this see Edwards (2010), p. 40-41; UNHCR, Policy on Refugee Women, 5-6; Bexelius (2013), p. 29.

stem from the same root of gender inequality and discrimination, positive developments in international refugee law can also help advance gender analysis in other fields of international law, such as IHL. In the area of IHL, scholars have among other things challenged IHL's focus on male combatants and its relegation of women to the status of victims as well as the lack of attention to the issue of sexual violence against men in conflict.²⁵

Developments in integrating a gender perspective into existing IRL have greatly contributed to a growing awareness about the specific protection needs of various vulnerable groups. The result being a broadened and strengthened protection under IRL, with relevance to other individuals besides the paradigmatic male refugee fleeing a repressive regime due to his political oppositional activity.

The interpretation and application of IHL could therefore be inspired by the development within IRL. A more nuanced interpretation of the obligations under IHL could be achieved thru applying a gender perspective on IHL. This will bring increased attention to the often diverging experiences of girls, women, boys and men in conflict situations and help avoid stereotyping individuals.

Even though much has been accomplished in the last decades, the Swedish case considered in this chapter illustrates that the work of integrating a gender perspective into refugee law is incomplete. Portraying women in case law as mainly "vulnerable victims" of political, racial and religious causes of persecution, sustains the de-politisation and de-contextualisation of women's experiences of persecution and agency. We see that the lack of a gender-sensitive interpretation continues to lead to the exclusion of certain persons from the protective scope of the refugee convention.

The text, object and purpose of the 1951 Refugee Convention requires that it shall be interpreted and applied in a non-discriminatory way. International human rights law and international humanitarian law instruments complement the safeguards for refugees enumerated in the 1951 Refugee Convention. Further, these bodies of law reinforce the non-discriminatory basis of international law in general, which has an impact on international refugee law in particular. Therefore, adopting gender-sensitive interpretations of both IRL and IHL will help ensure that their protective scope is applied in a non-discriminatory way to all individuals.

25 See Durham & O'Bryne (2010).

REFERENCE LIST

- Asylum Aid (2012). *Gender-related asylum claims - A comparative analysis of law, policies and practice focusing on women in nine EU Member States*.
- Arbel, Efrat, Dauvergne, Catherine & Millbank, Jenni (2014). "Gender in Refugee Law: From the Margins to the Centre" in Arbel, Efrat, Dauvergne, Catherine & Millbank Jenni (2014). *Gender in Refugee Law: From the Margins to the Centre*. London: Routledge.
- Bexelius, Maria (2013). "The concept of a Political Refugee-Swedish law and practice." In Nordic Asylum Law Seminar, pp. 1-33.
- Canada Supreme Court (2 S.C.R. 689). *Canada (Attorney General) v. Ward*. Decision, 30 June 1993.
- Court of Justice of the European Union (C-199/12 – C-201/12). *X, Y, Z v Minister voor Immigratie en Asiel*. Judgment 7 november 2013.
- Crawley, Heaven (2001). *Refugees and Gender- Law and Process*. Bristol: Jordan Publishing Limited.
- Durham, Helen & O'Bryne, Katie (2010). "The Dialogue of Difference: Gender Perspectives on International Humanitarian Law" in *International Review of the Red Cross*. Vol. 92 No. 877, pp 31-52.
- Edwards, Alice (2003). "Age and gender dimensions in international refugee law " in Feller, Erika, Türk, Volker & Nicholson, Frances, eds (2003). *Refugee Protection in International Law: UNHCR'S Global Consultations on International Protection*. Cambridge: Cambridge University Press.
- Edwards, Alice (2010). "Transitioning Gender: Feminist engagement with International Refugee Law and Policy 1950-2010", *Refugee Survey Quarterly*, Vol 29, Issue 2, pp 21-45.
- European Court of Human Rights (Application no. 23505/09). *N. v Sweden*. Judgment 20 July 2010.
- Foote, Victoria (1994). "Refugee women as a particular social group: A reconsideration", *Refugee*. Vol. 14, No (7), pp 8-14.
- Hennessy, Maria (2014). "Training and strategic litigation: Tools for enhanced protection of gender-related asylum applicants in Europe" Arbel, Efrat, Dauvergne, Catherine & Millbank Jenni (2014). *Gender in Refugee Law: From the Margins to the Centre*. London: Routledge. pp. 175-196.
- International Criminal Tribunal for the Former Yugoslavia (IT-95-17/1-T). *Prosecutor v. Anto Furundzija*. Judgment upheld on appeal 21 July 2000.
- International Tribunal for Rwanda (ICTR-96-4-T). Prosecutor v. Jean-Paul Akayesu. Judgment 2 September 1998.*

- Kandt, Kristin E. (1995). "United States asylum law: Recognizing persecution based on gender using Canada as a comparison", *Georgetown Immigration Law Journal*. Vol. 9, pp 137-80.
- Millbank, Jenni (2013). "Sexual orientation and refugee status determination over the past 20 years: Unsteady progress through standard sequences?" in Spijkerboer, Thomas, ed (2013). *Fleeing Homophobia: Sexual orientation, Gender Identity and Asylum*. Abingdon: Routledge, pp. 32-54.
- Oosterveld, Valerie (2014). "Gender at the Intersection of International Refugee Law and International Criminal Law", *Journal of International Criminal Justice*. Vol 12, Issue 5, pp 953-974.
- Razack, Sherene (1995). "Domestic violence as gender persecution: Policing the borders of nation, race and gender", *Canadian Journal of Women and the Law*. Vol 8, pp 48-88.
- Spijkerboer, T (2015) "European Sexual Nationalism: Refugee Law After the Gender & Sexuality Critiques", *Speech at the Nordic Asylum Seminar, University of Uppsala, 8 May 2015*.
- Regeringens proposition 2005/06:6. Flyktingskap och förföljelse på grund av kön eller sexuell läggning.*
- Svenska Röda Korset (2014). *Tortyrskador i asylprocessen under lupp – hur värderas tortyrskador i den svenska asylprocessen och vad krävs för att få skydd?* Svenska Röda Korset.
- United Nations General Assembly (A/CONF.2/SR.5). Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons. Summary Record of the Fifth Meeting.*
- United Nations High Commissioner for Refugees (UNHCR) (HCR/GIP/02/01). *Guidelines on International Protection No. 1: Gender-related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees. 7 May 2002*
- United Nations High Commissioner for Refugees (2009). *Conclusions Adopted by the Executive Committee on the International Protection of Refugees. 1975 – 2009 (Conclusion No. 1 – 109)*. Office of the United Nations High Commissioner for Refugees.
- U.S. Department of Justice, Board of Immigration Appeals (19 I&N Dec. 211 (BIA 1985)). *Matter of Acosta*. Interim Decision: 2986. 1 March, 1985.
- U.S. Department of Justice, Board of Immigration Appeals ((22 I&N Dec. 906 (A.G. 2001; BIA 1999)). *Matter of R-A-, Respondent*. Interim Decision: 3403. 11 June 1999.
- U.S. Department of Justice, Board of Immigration Appeals (24 I&N Dec. 629 (A.G. 2008)). *Matter of R-A-, Respondent*. Interim Decision: 3624. 25 September, 2008.
- Zamacona Aguirre, Maite (2008). *Riktlinjer för utredning och bedömning av kvinnors skyddsbehov – Ett fungerande verktyg?* Stockholm: Svenska Röda Korset.

CHAPTER 4

The law of occupation and gender

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Historically, the contexts of armed conflict and occupation have provided ample evidence of experiences of different genders under occupation. The impacts on the civilian population, including the experiences of women subjected to forced prostitution and sexual slavery in territories occupied by the Japanese armed force, as well as the impact on men, women and children of minority groups within occupied territories by the Nazi armed forces and the Holocaust, were important drivers in developing the law of occupation in drafting the Fourth Geneva Convention relative to the Protection of Civilian Persons in Times of War (GC IV).¹ In the post-conflict period, the occupation of Germany by the Allies provided further examples of the impact of measures under occupation on different groups within the civilian population, including measures aimed at punishing and humiliating women seen as collaborators with occupying powers.² However, little attention has been given to the impact of gender on the law of occupation. With a greater understanding today on the impact of gender and international humanitarian law (IHL), this is something that should now be revisited.

¹ Arai-Takahashi (2009), p. 379-380.

² Other examples include the widespread rape in Berlin under Soviet occupation, and more generally the role of women in rebuilding post-war Germany. See further Naimark (1997).

The question of whether the law of occupation applies to a given territory is one of fact of whether territory has been made subject to the effective control of another State by its military forces and the other State is in a position to exercise authority over the population in the territory in question without the consent of the sovereign State.³ This relates to both total and partial occupations and there is no need for the occupation to be met by armed resistance.⁴ As the sovereign power is unable to exercise authority in the occupied territory, the law of occupation developed to offer specific protections and imposes obligations on the occupying power to ensure that needs of the local population are addressed. This places the local population in a unique relationship with the occupying power and the application of this area of law has a profound impact on their lives.

In implementing its obligations, it is therefore essential for the occupying power to understand the structures and roles within the civilian population, so as to understand the needs of different groups within that population and not to impact negatively on or at worst augment inequalities or discrimination on any group within that population. These aspects are also relevant to understand in relation to providing humanitarian assistance to civilian populations placed under occupation. The type of assistance that is needed, and how it should be distributed, must be analysed from a gender perspective. The chapter on “Operationalising gender perspectives in humanitarian assistance – a Swedish approach” in this publication further explores these aspects from a practical perspective.

Gendered impacts on implementing the law of occupation

As with many of the provisions of IHL, the majority of the law of occupation does not differentiate between genders or other grounds and as such, these provisions should be interpreted in a neutral manner. In addition, the occupying power is prohibited from making any adverse distinction in the application of IHL.⁵ However, in the implementation of the law different groups within a society may be impacted in different ways. Furthermore, in addressing the specific needs of the civilian population, different groups will have different needs.⁶ Awareness of this is critical to ensuring that these needs are addressed.

One area where this is particularly relevant for the specific situation of occupation is in the implementation of Article 43 of the Hague Regulations of 1907. Under Article 43 the

³ See the Convention (IV) (hereinafter the Hague Regulations 1907), Arts. 42 and 43; The United Nations War Crimes Commission (1949), p. 55; International Criminal Tribunal for the Former Yugoslavia (IT 98 34 T), *Prosecutor v Naletilic & Martinovic*, para. 210-223; Benvenuti, (2012), p. 67.

⁴ GC IV, Art. 2.

⁵ See GC III, Art. 16; GC IV, Art. 13; Protocol Additional to the Geneva Conventions of 12 Aug. 1949, and Relating to the Protection of Victims of International Armed Conflicts (AP I), Articles 9(1), 69(1), 70(1) and 75(1).

⁶ For example, under GC VI, Article 50 the occupying power must not hinder the application of any preferential measures in regard to food, medical care and protection against the effects of war, which may have been adopted prior to the occupation in favour of children under fifteen years, expectant mothers, and mothers of children under seven years.

occupying power is obliged to take all steps in their power to re-establish and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country. The implementation of this obligation is a balancing act in ensuring the status quo, with the occupying power refraining from interfering in the running of daily civil affairs occupied territory, whilst addressing the very real needs of the local population for public order and safety to be secured. As such, certain transformative changes may be necessary to ensure that the infrastructure and economy in the occupied territory do not stagnate and basic services, essential for the survival of the civilian population, continue. However, even these changes must be done in the anticipation of the end of occupation, rather than with a view to entrenching it.⁷

Illustrative examples

Different groups within the civilian population face different safety and security needs, and are impacted differently due to insecurity in the public order. This has been highlighted in the situation of Crimea in relation to the treatment of the Crimean Tatar community.⁸ Immediately following the illegal annexation of Crimea, members of this community, particularly men, were subject to arbitrary searches, detention and other forms of violence, including allegations of torture and humiliating treatment, by members of so called self-defence units.⁹ Women fleeing the situation in Crimea are in a particular vulnerable situation as there have been allegations of sexual and gender-based violence against women in eastern Ukraine.¹⁰ In planning for situations of occupation, armed forces should take the different security needs in society into consideration and the likely effects on public order created by the situation of occupation in advance. In addition to authority provided in Article 43 of the Hague Regulations 1907, Article 27(4) of the Fourth Geneva Convention provides that the parties to the conflict may take such measures of control and security in regard to protected persons as may be necessary as a result of the war.

A criticism of the Iraq 2003-2004 occupation was that the United States and United Kingdom did not sufficiently plan for the public order and safety of the civilian population in the immediate aftermath and short-term following the occupation, including widespread

⁷ Benvinisti (2012), p 87.

⁸ See, for example, Office of the Human Rights Commissioner for Human Rights (OHCHR), (2014a), para. 119.

⁹ Report by unofficial Turkish delegation based on the findings of its visit to Crimea on April 27-30, 2015, 'Crimea Report: The situation of the Crimea Tatars since the annexation of Crimea by the Russia Federation', reported in Atlantic Council, 'Repression of Crimean Tatars Intensifies Under Russia, Says New Turkish Report, 8 July 2015, available online at: <http://www.atlanticcouncil.org/blogs/new-atlanticist/repression-of-crimean-tatars-intensifies-under-russia-says-new-turkish-report>, and copy available with the author, page 9 (hereinafter "Report on Crimea Tatars 2015"). See also OHCHR, (2014c), para. 80.

¹⁰ OHCHR (2014b), paras 142-148; OHCHR (2015a) paragraph 56 noted that in 2015, the International Organisation for Migration (IOM) had already identified 230 victims of trafficking from Ukraine.

¹¹ Zahawi (2007), pp. 2298 and 2318-2319; Hague Regulations 1907, Arts.55 and 56.

looting of public property and culturally protected property which the occupying power is obligated to protect, among others¹¹ The introduction of measures aimed at removing Ba'ath party influences in the political system and demilitarising the state, justified on the basis of Article 43 Hague Regulations 1907, added to the instability, as the majority of civil servants and public officials were removed from post, impacting on the delivery of basic public services, including an effective police force. The lack of public services had a significant impact on public order and safety, as well as the provision of education for children. In failing to sufficiently address the specific security needs of women during the occupation, it has been argued that women faced increased levels of violence and poverty, even impacting after the occupation.¹²

These are important lessons and, in the future, measures taken to implement the requirements of ensuring public order and safety would be better informed by a greater understanding of gender structures within the local population.

Specific protections for women

In addition to a general obligation for respect of protected persons under Article 27 of the Fourth Geneva Convention, specific protections for women are provided under the law of occupation, including relating to the detention and internment, and pregnant women and women with dependent infants.¹³ Recent examples of occupation demonstrate that women and girls remain particularly vulnerable to sexual violence in armed conflict.¹⁴ The context of occupation through control of territory and exercise of authority means that different measures are available to State parties involved to address this. Further understanding of this may also lead to lessons learned and best practices that could be utilised to address gender and sexual-based violence in armed conflict generally beyond the specific context of occupation.

The relation between human rights law obligations and the law of occupation

Under Article 43 of the Hague Regulations 1907, the occupying power is required to comply with the law in force in the occupied territory, unless absolutely prevented from doing so, such as through the application of the law of occupation. This requirement includes complying with legal obligations flowing from human rights law applicable at the time.¹⁵

¹² Boon (2006), pp. 852-855.

¹³ GC IV, Art. 76 (treatment of detainees), Art. 85 (accommodation, hygiene), Art. 97 (valuables and personal effects) and Art. 124 (premises for disciplinary punishments); AP I, Art. 75 (fundamental guarantees) and Art.76 (protection of women).

¹⁴ OHCHR (2014b), paras. 142-148.

¹⁵ United Nations Human Rights Committee, General Comment 26 (61), General Comments under article 40, paragraph 4, of the International Covenant on Civil and Political Rights, Adopted by the Committee at its 1631st meeting.

In addition, the exercise of effective control or authority over land or persons can invoke the human rights law obligations of the occupying powers extraterritorially.¹⁶ Cases following the occupation in Iraq have highlighted the application of human rights law and given insight into the impact of human rights violations on different groups within the society, such as the use of violence, torture, and cruel and inhuman treatment or punishment against men.¹⁷

In the context of Palestine, the impact on economic, social and cultural rights of changes introduced by the Israeli authorities to the planning regime in Area C of the West Bank justified on the grounds of implementing Article 43 of the Hague Regulations 1907 has been extensively documented.¹⁸ The overwhelming significant denial of planning and permit applications has had a substantial impact on the daily lives of people living in this area, which in turn have specific gendered elements in this context. Demolition of homes and businesses has resulted in income security and disruption of livelihood, impacting particularly on agricultural practices traditionally exercised by men within the population. The disruption to livelihood caused by demolition has significant knock on effects to dependent family members, and has resulted in forced displacements. This has been particularly severe in herding communities, such as the Bedouin,¹⁹ and may result in further double impacts on men, women and children due to their minority status.

Further understanding of how the situation of occupation affects the scope of obligations under human rights law and the relation between these obligations and the obligations under the law of occupation warrants further attention. How gender impacts on this in relation to the particular rights of women, men, girls and boys, is an area of considerable interest.

Monitoring and breaches

Incorporating a gender perspective in the monitoring of the law of occupation and in assessing breaches will also be beneficial in ensuring compliance with the legal requirements. The exercise of authority over the local population by the non-sovereign nation in situations of occupation introduces specific vulnerabilities for power to be abused and to potential crimes, including international crimes, such as persecution based on discriminatory grounds or having declaring abolished, suspended or inadmissible in a court of law the rights and actions of the nationals of the hostile party. Historical examples demonstrate how different groups may be more or less vulnerable to being subjected to

¹⁶ See, for example, in the context of occupation European Court of Human Rights, Application No. 15318/89, Judgment of 18 December 1996.

¹⁷ See, for example, European Court of Human Rights cases: Application no. 27021/08, *Al-Jedda v. United Kingdom*, 2011; Application no. 55721/07, *Al-Skeini and Others v. United Kingdom*, 2011; Application no. 29750/09, *Hassan v. United Kingdom*, 2014.

¹⁸ See, for example, Diakonia International Humanitarian Law Resource Centre (Diakonia) (2013), p. 18.

¹⁹ United Nations General Assembly (A/HRC/22/46/Add.1), para. 70.

particular crimes, such as the treatment of persons from minority groups in occupations during WWII including acts of genocide. Gender aspects are therefore a fundamental consideration not only in identifying the commission and culpability for crimes, but also in determining the gravity of the crime²⁰ or as an aggravating factor on the sentence ultimately imposed.

Different groups are also vulnerable to impacts from breaches of the law of occupation not amounting to crimes. For example, restrictions on the use of the Ukrainian language generally and specifically in relation to Tatar minority language has been a considerable note of concern as negatively impact on the rights of children in the occupied area under both the law of occupation and human rights law.²¹ It would be useful to understand further how boys and girls are impacted differently from this to fully grasp the long-term implications. Minority groups are also particularly vulnerable to the exercise of arbitrary power in relation to transfers and other movements and restrictions on populations. Forcible transfers or deportations of individuals or on mass of protected persons within or outside occupied territory is a breach of the law of occupation and may amount to a war crime.²²

As has been noted above, arguments relating to public order and security have been justified in relation to measures involving the transfer of populations. The situation of the Bedouin communities in Palestine and Tatars in Crimea are examples. The current system relating to planning in the occupied Palestinian territory has been highlighted as creating a coercive environment that increases the risk of forcible transfer.²³ Minority women and children may be in need of specific protections relating to this, due to the exercise of double discrimination. In this regard, the occupying power would also be responsible for providing sufficient measures to ensure the safety of different groups from violence by others within the local population or prevent and prosecuting international crimes committed by the members of the local population.²⁴

Conclusion

As Yutaka Arai-Takahashi put it, *"the implementation of IHL must overcome past ambivalent attitudes to gender related issues."*²⁵

It is critical to understand the role that gender plays in society when formulating and implementing laws under normal circumstances. Under the law of occupation where the

20 See, for example, International Criminal Court, *Prosecutor v. Thomas Lubanga Dyilo* paras. 30-41 in which the particular vulnerability of children was noted in the gravity of the crime for the purposes of sentencing.

21 GC IV, Art. 50; OHCHR (2014b), paragraph 67.

22 The war crime of transfer, directly or indirectly, by the Occupying Power is governed by the Rome Statute, Art. 8(2)(b)(viii).

23 Diakonia (2013), p. 23.

24 Benvenisti (2012), p. 53; GC IV, Common Article 1 and Art. 147; API, Articles 1(1) and 85.

25 Arai-Takahashi (2009), p.391.

occupying power exercises authority of obligations normally exercised by the sovereign nation, this is even more critical due to the removed position of the occupying power in relation to the civilian population. It may also contribute to ensuring the balance between providing protection for the local population and ensuring the occupying power does not embark on overly broad measures in its own interests is maintained.

There are many issues addressed in this short paper that can be explored further. Hopefully what has been demonstrated is that a failure to appreciate the impact of measures taken on different groups in the local population in situations of occupation has had detrimental impact on the protections, rights and lives of individuals within that population, particularly women and children. As understandings of gender related issues increases, so must an understanding of how this impacts on the implementation of the legal requirements. Otherwise, the protections afforded by the law risk being provided in a discriminatory manner, or at worst becoming meaningless.

REFERENCE LIST

Arai-Takahashi, Yutaka (2009). *The Law of Occupation: Continuity and Change of International Humanitarian Law, and its Interaction with International Human Rights Law*. Leiden: Martinus Nijhoff Publishers.

Benvinisti, Eyal (2012). *The International Law of Occupation*. 2nd edition. Oxford: Oxford University Press.

Boon, Rebecca E. (2006). "They Killed Her for Going out with Boys: Honor Killings in Turkey in Light of Turkey's Accession to the European Union and Lessons for Iraq", *Hofstra Law Review*. Vol 35, Issue 2, Article 17, pp 815-856.

Diakonia International Humanitarian Law Resource Centre (2013). *Legal Report. Planning to Fail - The Planning Regime in Area C of the West Bank: An International Perspective. September 2013*. www.diakonia.se/ihl

European Court of Human Rights (Application no 15318/89). *Case of Loizidou v Turkey*. Judgment, 18 December 1996.

Geneva Convention Relative to the Treatment of Prisoners of War (GC (III)), 12 August 1949.

Geneva Convention Relative to the Protection of Civilian Persons in Time of War (GC (VI)), 12 August 1949.

International Criminal Court (ICC-01/04-01/06). *Prosecutor v Thomas Lubanga Dyilo*. Situation in the Democratic Republic of the Congo. Decision on Sentence pursuant to Article 76 of the Statute. Trial Chamber 1, 10 July 2012.

International Criminal Tribunal for the Former Yugoslavia (IT 98 34 T). *Prosecutor v. Naletilic & Martinovic*. Trial Chamber Judgement 31 March 2003.

Naimark, Norman M., (1997). *The Russians in Germany: A History of Soviet Occupation, 1945-1949*. Cambridge, MA.: Belknap Press of Harvard University Press.

Office of the Human Rights Commissioner for Human Rights, (2014a). *Report on the human rights situation in Ukraine*. 15 May 2014.

Office of the Human Rights Commissioner for Human Rights (2014b). *Report on the human rights situation in Ukraine*. 8 October 2014.

Office of the Human Rights Commissioner for Human Rights (2014c). *Report on the human rights situation in Ukraine*. 15 December 2014.

Office of the Human Rights Commissioner for Human Rights (2015a). *Report on the human rights situation in Ukraine*. 1 June 2015.

Office of the High Commissioner for Human Rights (2015b). *Report on the human rights situation in Ukraine*. 16 May to 15 August 2015.

Protocol Additional (API) to the Geneva Conventions of 12 Aug. 1949, and Relating to the Protection of Victims of International Armed Conflicts.

Report by unofficial Turkish delegation based on the findings of its visit to Crimea on April 27-30, 2015, 'Crimea Report: The situation of the Crimea Tatars since the annexation of Crimea by the Russia Federation', reported in Atlantic Council, 'Repression of Crimean Tatars Intensifies Under Russia, Says New Turkish Report, 8 July 2015, available online at: <http://www.atlanticcouncil.org/blogs/new-atlanticist/repression-of-crimean-tatars-intensifies-under-russia-says-new-turkish-report>, and copy available with the author.

Zahawi, Hamada (2007), "Redefining the Laws of Occupation in the Wake of Iraqi "Freedom", *California Law Review*. 95, December 2007, pp 2295-2352.

The Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land, the Hague, 18 October 1907 (The Hague Convention (IV)).

The United Nations War Crimes Commission, (1949). "The Hostages trial. Trial of Wilhelm. United States Military Tribunal, Nuremberg. 8th July, 1947, to 19th February, 1948." in The United Nations War Crimes Commission, (1949), *Law Reports of Trials of War Criminals. Selected and prepared by the United Nations War Crimes Commission*. Vol. III. London: The United Nations War Crimes Commission List and others".

United Nations General Assembly (A/HRC/22/46/Add.1). *Human Rights Council: Report of the Special Rapporteur on adequate standard of living, and on the right to non-discrimination on this context, Raquel Rolnik. Addendum. Mission to Israel and the Occupied Palestinian Territory*. 24 December 2012.

CHAPTER 5

How to operationalise a gender perspective – formulating a checklist

Kristina Lindvall, Legal Advisor, Swedish Red Cross

Why a checklist?

A guiding tool

The insight that inclusion of a gender perspective in the application of international humanitarian law (IHL) is one way of furthering the implementation of, and the compliance with, the law¹ raises questions on *how* to do so during military operations. In other words, how could a gender perspective be included in the planning, conduct and evaluation of actions under the law during military operations?

Today, guidance on the practical meaning of a gender perspective on military operations or humanitarian action can be found in several documents that have been developed internationally and by States in relation to, for example, the implementation of UN Security Council Resolution 1325, the work of military gender advisors, or gender aspects on specific military operations.² However, we have found it useful in our work to develop a specific checklist that provides guidance on how to include a gender perspective in the planning, conduct and evaluation of actions regulated by the IHL.

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- 1 See, for example, the Introduction chapter of this publication, or the chapter on “Approaching the Geneva Conventions with a gender perspective.”
- 2 Such as; DPKO/DFS Guidelines: Integrating a gender perspective into the work of the United Nations military in peacekeeping operations, UN DPKO/DFS, 2010; “Gender Checklist for Assessment Missions for Peacekeeping Operations”, UN, 2003; “Gender Checklist for Peace Support Operations”; Inter-agency Taskforce on Women, Peace and Security, 2003; and the “Passport to Mainstreaming a Gender Perspective in Emergency Programmes”, SEAGA. Examples on similar checklist for humanitarian action can also be found within the Red Cross and Red Crescent Movement, such as, “Gender and Diversity: Minimum Standard Commitments in Emergency Programming”, IFRC, 2014; Lindsey-Curtet, Charlotte, Tercier Holst-Roness, Florence & Anderson, Letitia (2004). Addressing the Needs of Women Affected by Armed Conflict, An ICRC Guidance Document. Geneva: ICRC. For further reading see also chapter 9, “Operationalising a gender perspective in humanitarian assistance – Sida’s approach”.

We believe that such a checklist, with a practical orientation – focusing on the collection, analysis and use of information – could *provide information and encourage a mindset* that draws attention to concrete discrepancies in status, needs and capacities and in the effects of actions under the law between women and men respectively. Such a general practical checklist could also form the basis for more operation-specific checklists or detailed handbooks.

Integrating a gender perspective into military operational planning, conduct and evaluation is primarily a leadership issue. An IHL and gender checklist would in this way facilitate and ensure that gender-related information, as well as other contextual information, is included in the assessments and relevant decision-making during military operations. Thereby, a checklist could in a very practical way, help actors to be adequate in actions under the law, reaching those most in need with adequate measures and limit the discriminatory effects of one's actions.

Contextual information is crucial

IHL is a vast body of treaty rules and customary law that protects people who are not or are no longer participating in hostilities, and restricts the means and methods of warfare. It is designed with the objective of saving lives and alleviating suffering during armed conflict. With that perspective, an IHL and gender checklist might appear redundant, distracting from more urgent, lifesaving considerations. One might also ask if it is not enough to “act in accordance with IHL” since the law itself, in general, is meant to have an equal outcome.

We argue that it is difficult to act in accordance with IHL *without having insight into the possible effects of one's actions*. Such insight is not fully reached without considering the situation of the individuals, including the different status, needs and capacities of men and women respectively in a given context. Without knowing if and how a planned measure of protection or means or methods of warfare – that is meant to be in line with IHL – affect men and women differently, it is impossible to act without risking that the action will be either inadequate (i.e., not provide the protection needed) or discriminatory in a way that could be avoided by another similar action.

For example, could the obligation to respect and protect entail different things in relation to the different needs of women, men, boys and girls, over and above the specific provisions on women and children included in the law? Could women or men be at greater risk or have problems accessing or benefiting from help due to their gendered role in a society, e.g., due to restrictions on what a woman or man is expected to do?

One illustrative example of an important rationale for including this kind of information is that substantive inequality in peacetime also creates the basis for gender-based violence in times of war and armed conflict. In other words, if the society itself, for example, silently accepts violence against, and rape of, women, what precautions need to be taken to protect women from a higher rate of these actions in relation to the armed conflict? It is essential

to examine the underlying gendered context, and to explore the day-to-day practice of the community in which the conflict occurs in order to get an understanding of the ways in which individuals are targeted for gender-based violence during conflict and their respective protection needs.

Considering the differences in the status, set of needs and capacities of individuals according to gendered structures, it is therefore crucial to be able to take adequate and effective action in the light of the above-mentioned objective of IHL. Working with a gender perspective will ensure that the military operation takes into account the fact that different groups of individuals in the area will have different threats to their security, different opportunities, rights and resources to access assistance. Also, they will be affected in diverse ways by the armed conflict and by actions taken under the law. This knowledge will not only contribute to the actions taken – be they lifesaving or urgent in some other way – and thereby ensure compliance with the heart of IHL, but it will also be useful to the overall operation and facilitate contact with the population, counterparts, allies, etc.

The issue of a gender perspective is not, as such, an additional obligation, nor is its basis something new to military operations. The collection of relevant information, analysing and using that information in decision-making, conduct and evaluation has always been an inherent part of military operations.

Key questions

The checklist presented in the following chapter is intentionally reduced to a few core questions with examples of issues to consider. The core questions could be divided into three crucial themes:

First, do you know enough about the situation in which you are operating? This theme raises awareness of the different situations confronting individuals and their different experiences of the conflict, and it creates an understanding of additional ways to fulfil the obligations under IHL without discrimination.

Second, do you know enough about the possible different effects that your actions under the law could have on the situation of men and women respectively? Assessment and estimations on how different groups in a given context will be affected by an operation in divergent ways is valuable information to the planning and decision process in order to provide, for example, protection in relation to needs and avoid discriminatory effects of measures taken in accordance with IHL. In other words, this is relevant in relation to the vast material of IHL; decisions regarding obligations (for example, provide protection or care, etc., to people who are not or are no longer participating in hostilities) as well as assessments on means and methods of warfare.

Third, are women and men of different ages and backgrounds included when collecting and assessing the information on the contextual situation, as well as relevant decision-making? Influenced by UN Security Council Resolution 1325, we have included questions regarding

the participation of men and women in the checklist. Conducting a proper analysis of the situation based on facts also gathered from the local community, organisations representing different groups in the society, or other concerned parties, will create a more adequate picture of the status, needs and capacities of women and men respectively in a specific context, and of their experience of the armed conflict. Making contact with NGOs that are reliable, have clear analysis, are accepted by the community, have good networks and contacts directly with the community, and are bearers of community knowledge could be one way to access information. This process could also be seen as participating in the empowerment of women and working towards the common understanding in Sustainable Development Goal 5 on gender equality (2015)³.

Encourage a change in mindset

The suggested checklist does not specifically deal with the separate rules under IHL. Nor does it focus on the rules giving women, children, elderly, and so on, specific protection due to their sex, age, etc. This is intentional in order to ensure that the issue of a gender perspective is fully understood as an issue of enhanced protection of both men and women of different ages and backgrounds, be them civilian, wounded and sick, prisoners of war, etc. The checklist found in the following chapter is, as mentioned, applicable in all situations of considerations under the law, not only the rules of non-discrimination or specific protection of groups in vulnerable situations. However, it is important in situations of considerations in relation to these rules of specific treatment, protection, etc., to use the checklist equally in the application of these rules – not to make decisions building upon gendered stereotypes.

We are all impacted by *gender stereotypes*. Such stereotypes may include viewing women mainly as “good” and vulnerable, caregivers and mothers, and not regarding them as capable of participating in the hostilities, committing war crimes, etc. The assumption that might also be made is that it is always men who participate in hostilities, hence, forgetting their needs as fathers or householders or overlooking the fact that they could be in a vulnerable situation as a consequence of the fact that they are men. For example, we need to ask ourselves if women are weighed differently in the principle of distinction as a consequence of assumptions regarding their roles and patterns of behaviour. Is a presumption of civilian status greater with women than men?⁴ Stereotypes like these might not only lead to rules having inherently discriminatory effects, but they also diminish our humanity and reduce us to gender typecasts. Therefore, such stereotypes must be identified and challenged. Using this checklist might, over and above its other mentioned advantages, encourage a mindset willing to see and deal with reality as it is, not as the law or we assume it to be.

³ See <https://sustainabledevelopment.un.org/topics> (last accessed 12 October 2015).

⁴ For further discussion on ‘gendered’ themes found within IHL see, Durham, Helen & O’Byrne, Katie (2010). “The dialogue of difference: gender perspectives on international humanitarian law”, *International Review of the Red Cross*, Vol. 92, No. 877, pp 31-52.

CHAPTER 6

Checklist – a gender perspective in the application of IHL

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This checklist is a tool which provides guidance, to primarily military staff, on how to comply with the objective of international humanitarian law (IHL) – to save lives and alleviate suffering in armed conflicts – equally without discrimination, by including a gender perspective in the application of the law.

The work with integrating a gender perspective into the application of IHL depends heavily on two factors. Firstly, proper information regarding the situational context for men and women of different ages and backgrounds respectively must be gathered and analysed. Secondly, this information and knowledge must impact the planning, conduct and evaluation of military operations in accordance with the obligations under the applicable IHL.

Depending on the actual situation, the applicable rules will vary. Irrespective of the area of IHL addressed, information on the gendered situation of all individuals in the situational context – whether civilians, military personnel, health care workers, prisoners of war, etc. – will be necessary.

This checklist consists of questions, and the answers will provide you with important information, guide you through relevant analyses, and help you check that you are using the information and analyses in relevant assessments and decision making processes.

Information

Is information regarding the situation of the individuals in the specific context collected, related to differences between men and women, including existing gender norms and inequalities?

- ✓ Is the situation of the individuals reflected in terms of sex- and age-disaggregated data (on the social, economic, cultural and political context, with related security situation, legal rights, etc.)?
- ✓ Does the social, economic, cultural or political situation differ between men and women of different ages and backgrounds respectively?
- ✓ Does the different social, economic, cultural or political situation create differences in status, needs and capacities (this might include different roles, patterns and functions, with differences in power, risks, resources, constraints, expected behaviour activities, responsibilities, opportunities, etc.)?
- ✓ How does gender intersect with other diversity factors such as age, disability, religion or belief, political or other opinion, national, ethnic, or social origin, birth, sex, sexual orientation, language and other status or identities which may give rise to multiple forms of discrimination and inequalities with increased differences in status, needs and capacities?

Is information on how the armed conflict affects women and men of different ages and backgrounds respectively collected?

- ✓ What general and specific changes does the armed conflict entail for women and men of different ages and backgrounds respectively?
- ✓ Does the armed conflict exacerbate existing inequalities in status, needs and capacities in the situational context?
- ✓ Information collected under this question should include changes in social, economic, cultural or political structures due to the armed conflict, including changes in status, needs and capacities due to the armed conflict. Information on risks of, and needs in relation to, gender-based violence should be collected.

To what extent are women and men of different ages and backgrounds consulted and actively taking part in the collection of information on the situational context?

- ✓ To obtain information with the perspective of both women and men the following questions must be asked: Who is talking? Who is listening? Who is included? Who participates? Who is invited? Who is present? Could we better include the perspective of both men and women? How?
- ✓ Is information collected from national or local organisations working with gender-related issues such as preventing gender-based violence, strengthening human rights, etc.?

Analysis

How will a planned operation affect women and men of different ages and backgrounds respectively?

- ✓ In considering the effects of a planned operation, weight must be given to possible differences in the effects arising from the above-identified existing differences in social, economic, cultural and political contexts and the different status, needs and capacities of men and women respectively that result from these structures.
- ✓ Are actions to ensure obligations under the IHL, (e.g. protection, respect or access to health care) equally accessible and beneficial to men and women taking due note of gendered differences in the social, economic, cultural and political context (different status, needs and capacities might, for example, hinder access due to practical or security reasons)?
- ✓ Will a chosen action or omission regulated by the IHL through rules on conduct of hostilities have different effects on men and women respectively? This assessment should include determining if the use of specific means (e.g., choice of weapon or ammunition) or methods (e.g., day or night-time operations, tactics and teams used, objects targeted) of warfare have different effects on men and women respectively (differences in status, needs and capacities might, for example, influence where men and women are located at certain hours, or how they will be directly or indirectly affected by the use of a certain tactics).
- ✓ Do the actions or omissions under the law risk exacerbating inequalities or causing diverge in vulnerabilities between men and women in the operational context, which could be avoided with alternative measures? An equal legal regime might not have an equal outcome in a discriminatory setting.
- ✓ How can an increased representation of women be achieved in relevant analysis and decision-making processes for the prevention, management, and resolution of conflict in accordance with UN Security Council Resolution 1325 (2000)?

Planning, conduct and evaluation

Is the collected information and the analysis of gendered differences included in the assessments made in planning, conduct and evaluation of actions under IHL?

- ✓ Does the contextual assessment include information on gendered differences in social, economic, cultural and political structures in the situational context?
- ✓ Does the contextual assessment reflect conclusions on gendered differences in status, needs and capacities in the situational context (civilians, military personnel, wounded and sick, etc.)?
- ✓ Are conclusions on the specific different effects of the armed conflict upon the situation of men and women of different ages and backgrounds reflected in the assessments?
- ✓ Are the conclusions regarding the possible divergent effects on men and women of a planned action regulated by IHL included in the assessments?
- ✓ Are women and men of different ages and backgrounds consulted and actively taking part in relevant decision making during planning, conduct and evaluation of actions under IHL?

CHECKLIST

III. REALISING A GENDER PERSPECTIVE IN PRACTICE



CHAPTER 7

Combatting sexual and gender-based crimes in connection to armed conflict – perspectives from the Swedish Foreign Service

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A link between pursuing gender equality and combatting violence against women

It is well known that Sweden for decades has been at the forefront of pursuing women's rights and to combat violence against women. The challenges are familiar and include realities that millions of women face, every day: domestic violence, forced marriages, sexual slavery, abductions, honour-related crimes, trafficking etc. We also know that armed conflict tends to exacerbate the broad range of sexual and gender-based violence (SGBV) women face. Sweden has a broad approach in this work and emphasises the importance of tackling the underlying causes, in terms of gender-based violence and gender stereotyping.

While most constitutions globally today clearly affirm equal rights for women and men, far too many legal systems contain provisions which restrict women's rights. This was clearly demonstrated in the report last May to the Human Rights Council on discrimination of women and girls in families.¹ Discriminatory attitudes – which often are no less than violations or abuses of constitutional rights and human rights – continue to be breeding grounds for violence, harassment and marginalisation. All in all, they severely restrict women's rights, liberty and dignity as well as human security at large.

Violence against women and armed conflict

The often already extensive and wide-spread violence perpetrated against women and girls in times of peace escalates during armed conflict. Regrettably, we can also see an increase in violence after an armed conflict when the men return home after the fighting.

¹ United Nations General Assembly, (A/HCR/29/40 (2015)). *Human Rights Council: Report of the Working Group on the issue of discrimination against women in law and practice. 2 April 2015.*

It is no surprise that two countries which rank high in terms of violence against women also have been victims of brutal armed conflicts: the Democratic Republic of the Congo (DRC) and Guatemala.

We need to know more about the links between violence as a means to deal with conflicts within families and violence in societies at large. And not least, we need to increase our knowledge on how measures to combat violence against women could reduce societal violence and promote non-violent resolutions of conflicts. We also see that international humanitarian law (IHL) does not respond to these challenges in a clear manner. Although the last decades have witnessed advances in IHL from a female perspective, for example, through recognising rape as an element of the crime of genocide and crimes against humanity, the violence endured by women during armed conflict is to a large extent viewed as being outside the realm of IHL.

Experience and research tell us that, to achieve sustainable peace and development the entire population – men as well as women – must be involved in all stages of conflict resolution and also in humanitarian work. In order to achieve this, we need to apply a comprehensive approach which encompasses political, legal, diplomatic, development and humanitarian action.

We need to acknowledge the importance of promoting gender equality in order to strategically address issues of human security, sustainable development and human rights. Gender equality is not only a women's issue. It is an approach which enhances protection from violence in a society at large, and ensures a non-discriminatory application of the law. It is a means to shape societies where all people – men, women, boys and girls – are treated with respect.

Three key aspects for achieving gender equality

In the Swedish feminist foreign policy, our foreign minister has high-lighted three aspects for achieving gender equality – Representation, Resources and Rights.

First, women – including women organised in civil society – are important actors and agents of change and must thus be *represented* in decision-making at all levels. There needs to be active involvement and participation of women, along with men, in formal as well as informal processes, in mediation, peace negotiations, humanitarian and peace building efforts. Sustainable development, peace and security can never be achieved if half the population is excluded. The Swedish government takes this commitment seriously and is acting to ensure that women's voices are being heard, and that the needs and realities of women, including those living in conflict and post-conflict countries, do influence our policy-making.

Second, women's *access to resources* must be addressed, both in terms of financing and personnel. Uneven distribution of resources is often at the core of inequality, and is a reflection of, and a cause to, marginalisation in terms of agenda-setting. Thus, we have to do a

thorough analysis of how resources are allocated and to whom.

The third key aspect is *rights*. Human rights of women of all ages are an inalienable, integral and indivisible part of universal human rights. It is the duty of States to promote and protect the full and equal enjoyment of human rights and fundamental freedoms for women of all ages, and never invoke interpretations of religion, culture or traditions to avoid those duties. Sexual and reproductive health and rights are important and integral parts of human rights. This should include women's rights to decide freely and responsibly on matters related to their sexuality, free of coercion, discrimination and violence, as clearly stated in the Platform of Action, adopted at the Fourth World Conference on Women in Beijing 1995.

In order to help gain tangible progress on women's rights and access to justice, Sweden has over the last few years placed a special focus on *combatting impunity for sexual and gender-based crimes in connection to armed conflict*. This chapter exemplifies what the Swedish feminist foreign policy means in relation to concrete commitments

Swedish efforts – the International Criminal Court and gender-based crimes

One important aspect of enhancing respect for IHL is ensuring accountability, and the International Criminal Court (ICC) is a valuable contribution to the fight against impunity for serious crimes of international concern worldwide. Sweden has, together with Botswana, made use of its responsibility for complementarity at the International Criminal Court Assembly of States Parties to address national measures to specifically combat impunity for sexual and gender-based crimes in relation to armed conflict. Sweden has in this work cooperated with the Office of the Prosecutor of the Court and its Chief Prosecutor Mme Fatou Bensouda, whose commitment to this work is clearly demonstrated in the Office's cutting edge policy paper on sexual and gender-based crimes, released in 2014².

The Statute of the ICC is the first international instrument expressly to include various forms of sexual and gender-based crimes — including rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation, and other forms of sexual violence — as underlying acts of both crimes against humanity and war crimes committed in international and non-international armed conflicts. The Statute also criminalises persecution based on gender as a crime against humanity. Sexual and gender-based crimes may also fall under the Court's jurisdiction if they constitute acts of genocide or other acts of crimes against humanity or war crimes. Recognising the challenges of, and obstacles to, the effective investigation and prosecution of sexual and gender-based crimes, the Office elevated this issue to one of its key strategic goals in its Strategic Plan 2012–2015. The Office has committed to integrating a gender perspective and analysis into all of its

² Office of the Prosecutor, International Criminal Court, (2014). *Policy Paper on Sexual and Gender-Based Crime*. June 2014.

work, being innovative in the investigation and prosecution of these crimes, providing adequate training for staff, adopting a victim-responsive approach in its work, and paying special attention to staff interaction with victims and witnesses, and their families and communities. The policy paper describes how this work is to be conducted.

The policy contains a number of excellent recommendations. Sweden particularly supports the following:

- ✓ integrating a gender perspective and expertise in the development of case hypotheses and investigation and prosecution strategies, in the analysis of crime patterns and command structures, in the screening, selection, interview and testimony of witnesses, during sentencing and reparation stages, in submissions on appeal and witness protection, including after the conclusion of the trial.
- ✓ adequately train staff, including on how to interact with victims and witnesses.
- ✓ applying a gender analysis to all crimes, examining the differences between women and men and the power dynamics which shape gender roles in a specific context, and how these differences may have played a role in the crimes and their consequences.
- ✓ considering specific means to address the challenges involved in prosecuting sexual and gender-based crimes, such collection of different types of evidence, including forensic and documentary evidence.
- ✓ taking various measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses.
- ✓ actively highlight the gender aspects of other crimes, including, e.g., the recruitment of child soldiers, and enslavement.
- ✓ enhancing institutional capacity to investigate and prosecute sexual and gender-based crimes more effectively.

Workshops and other activities

In support of the policy, Sweden organised a workshop in Stockholm in May 2014, which brought together some 30 policy makers, criminal justice experts and civil-society representatives. Examples were given from a wide range of States, such as Uganda, DRC, the Sudan, Bosnia and Colombia. A prominent feature in Stockholm was the need to address *underlying causes to the crimes*, in terms of attitudes and norms of female inferiority that give men the perceived right to violate and abuse women. It was also stressed that poor, uneducated women, and in particular those belonging to ethnically marginalised groups tend to be at particular risk.

Furthermore, during the ICC Assembly of States Parties in New York 2014, Sweden

organised in cooperation with the Office of the ICC Prosecutor, United Kingdom and Women's Initiative for Gender Justice a panel on complementarity, with focus on SGBV in times of armed conflict. The purpose was, *inter alia*, to highlight the importance at all levels to address sexual and gender-based crimes, to point at the root causes to the crimes in terms of gender-based discrimination and address the fact that also men and boys can be victims.

In March 2015, a panel was organised in The Hague, initiated by Sweden, with the purpose of providing experiences on how bilateral development cooperation in the legal sector can contribute to progress in addressing sexual and gender-based crimes (SGBC) in connection to armed conflict.

Throughout 2015 Sweden has intensified its activities in the capacity as co-focal point for complementarity at the ICC Assembly of States Parties together with Botswana to facilitate exchange of experiences and practices in investigating and prosecuting sexual and gender-based crimes as Rome Statute crimes at national level. It should be recalled that the ICC was not intended to replace national prosecutions and the establishment of the Court does not absolve States of their primary responsibility to address such crimes in their own systems. In line with this principle of the Court as a complementary institution and with the cooperation of other States and stakeholders, Sweden has highlighted *national* undertakings to address impunity for sexual and gender-based crimes as atrocity crimes in relation to armed conflict. The process in which we have engaged has two tracks: to support national activities and actors in pursuit of justice and also to bring forward such activities at the global level, primarily to the ICC Assembly of States Parties. These tracks are indeed interdependent and mutually reinforcing and the process explores relations between the international, regional, national and local levels to enhance measures to strengthen capacity and will to investigate and prosecute sexual and gender-based atrocity crimes.

Sweden has often underlined the importance of – and also bilaterally supported – action at the national level and for States to reinforce national policy commitments, and craft policies and plans to address sexual and gender-based violence in their national justice systems more strategically.

Indeed, the activities in 2015 are a part of a longer process where Swedish prosecutors and other officials have served in a number of post-conflict areas and assisted in strengthening national prosecutors and judiciaries in addressing crimes that fall under the Rome Statute. Experiences show that there tend to be a special “shadow” which hides the extent and magnitude of sexual and gender-based crimes. This means that sexual and gender-based crimes tend to be overlooked and not adequately addressed by the criminal justice system. A main reason is, regrettably, that victims often feel unable to speak about the crimes they have been victims of. Basically, this is a result of prevalent power structures and the stigma and shame which rest on them – instead of on the perpetrators.

Exchange of experiences and recommendations for further action – cooperation with Guatemala and Uganda

During 2015 Sweden has cooperated with key actors in two countries in two different continents to facilitate the exchange of experiences and practices on how to improve domestic investigations and prosecutions of sexual and gender-based violence as atrocity crimes. One of those countries is Guatemala in Central America, where the more than 30 years of conflict, often rooted in disputes concerning land and economic assets, generated horrendous crimes. Another focus is on an African country, Uganda, also suffering from decades of internal conflict.

Guatemala

The Guatemala workshop brought together a wide range of concerned actors and helped demonstrate the many layers involved in shaping justice, often with references to standards set out in international conventions and UN Security Council Resolutions such as Resolution 1325. Key actors were a handful of victims of grave sexual violence, many of them having survived years of sexual slavery. All of them were poor Maya Indians, who were illiterate and did not speak the official language. However, in their search and quest for justice they had gained “legal literacy”, and understood that in spite of their illiteracy and poverty they too do have the right to justice. The courage of these women was clearly demonstrated and so was the dignity with which they were treated at the workshop. They had faced stigma and contempt, including by their own family. Still, decades after the crimes occurred, they waited with patience for justice to be done. In Guatemala, the courage of the victims who had chosen to tell their stories, were supported by women’s rights activists, human rights defenders, members of the police, lawyers and prosecutors, as well as the Attorney General. The Attorney General Thelma Aldana stressed that the sexual and gender-based violence that women face today in Guatemala – in times of peace – is rooted in the same structures and values of male superiority that were behind the crimes during the armed conflict. Thus, as stated in the Office of the Prosecutor’s policy paper on sexual and gender-based crimes, there is a need to analyse and address the crime patterns and their roots in gender-based discrimination, in addition to investigating each individual case.

The knowledge-based, dedicated and persistent work of all these actors – and their cooperation and respect for one another – was indeed impressive. Of particular interest to the international community is the fact that there are two major legal processes in relation to Guatemala which deals with sexual crimes, including prolonged sexual slavery. The cases are known as Sepur Zarco and Lote Ocho. This may imply the possibility to have verdicts primarily dealing with sexual and gender-based crimes – and not involving murder, abduction, molestation, burning of villages etc., that often occurs parallel to SGBV.

By so doing they can inform other countries all over the globe how to legally address and punish such abhorrent crimes.

The two-day meeting of the workshop in Guatemala permitted for group discussions and concluded with recommendations on further action. These included the need for independent judiciaries, the need to fight corruption and nepotism which may have negative effects on legal proceedings, avoid re-victimisation of survivors of SGBV by addressing stigma, protect and support victims of SGBV and treat them with respect and encourage international contacts.

Uganda

The Kampala workshop demonstrated experiences of domesticating the Rome Statute and deliberations regarding if and how to balance provisions for Amnesty in relation to the obligations to prosecute perpetrators of SGBV which may amount to Rome Statute crimes. It also addressed the need of focused efforts to address the huge backlog of cases on SGBV in the court system. Furthermore, the workshop addressed the need for coordinated measures to overcome obstacles to justice e.g. fees on claims and for medical certificates which would strengthen charges of rape. Such obstacles were often particularly difficult for rural poor women. Several actors stressed that the legal framework, including international and regional conventions, were at a high level in Uganda. However, it was noted that the overarching challenge was the lack of implementation of such framework.

In preparation for the workshop in Uganda, draft recommendations for further action had been developed by Ugandan prosecutors and judges, with the assistance of the International Development Law Organization (IDLO) and in consultation with Sweden. Following comments and suggestions during the workshop, the recommendations were amended and adopted with concrete indications of implementing responsibilities.

The recommendations contains excellent suggestions on how to increase access to justice for victims such as simplified procedures for lodging complaints, amendments of the penal code to broaden the definition of rape when the ICC Act was not applicable, development of protocols for police officers and prosecutors, counselling and legal aid etc. They furthermore indicated the need for enhanced focus on cooperation and coordination between actors in the justice sector, with the special mechanism “Justice Law and Order Sector” (JLOS) having a key role. If commitments were implemented, Uganda would strengthen its role as a model for other States struggling with impunity for sexual and gender-based crimes in relation to armed conflict.

Lessons learned

A major lesson learned from both workshops is the strength that can be gained by building networks within and between legal structures and civil society. This particularly in-

volves women's rights-based organisations but also human rights groups which can help address root causes to sexual and gender-based violence and crimes. These are crimes, to which both women and girls, men and boys, may be victims, at a tremendously high cost for individuals and for societies at large. By understanding and exposing the root causes, civil society can help prevent further abuse and violations. There are also Swedish women's rights based organisations who have helped in training and awareness-raising of prosecutors and judges, and who have provided guidelines with the aim of increasing the understanding of gender-based discrimination based on prevalent power-structures which puts women at great risk. Examples can be given from both the Balkans as well as in several parts of Africa, including Liberia and DRC.

All in all, the two workshops demonstrated the extensive legal competence within civil society which is helpful in protecting and helping victims of crimes – or “survivors” as they were called in Guatemala – in their pursuits to present their cases to courts. Civil society can also (as was the case in Guatemala) be key partners in hosting national or regional seminars on sexual and gender-based crimes. They can also raise awareness on the root causes to sexual and gender-based crimes and use advocacy to influence decision-makers.

Both workshops underlined that well-functioning justice institutions and independent judges are the basis for rule of law and access to justice. Victims and the population at large should be able to gain confidence in the respect for human rights and commitments to combat impunity, even in conflict-ridden States. Justice in post-conflict situations is indeed of great importance in order for a society to develop peacefully and to regain the characteristics of a rule of law based society.

In concluding there may be six areas needing special attention in our undertakings to address sexual and gender-based violence as atrocity crimes:

Firstly, legal and other measures are necessary to *move the stigma from the victims* to the perpetrators and counter prevailing narratives of “masculinity” as one of the root causes to the violence. A mind-shift is needed to help shape justice. Families of the victims deserve to be *proud* of female relatives who have the courage to speak out and demand justice for the cruelties they have survived. Removing the stigma is also imperative for the urgent need to prevent and prosecute the often systematic SGBV, which may many times be torture-like and cruel and may amount to sexual slavery.

Secondly, there is a need for handling the considerable *backlogs of cases* in a strategic and systematic manner and to *exchange experiences and practices between countries* in this regard.

Thirdly, any national measures to strengthen investigation and prosecution of SGBV as atrocity crimes should be based on the fact that States bear the primary responsibility in this regard. There is a need to *address legal gaps and deficiencies hindering access to*

justice for victims through *cooperation and coordination* between government, judiciary, prosecutors and law enforcement agencies and, when appropriate, with the assistance of international organisations and other States.

Fourthly, *justice should not be a matter only for those who can afford it*. It should be acknowledged that even smaller fees may provide a deterrent of victims lodging claims. States should intensify measures to enable *all* victims to access justice, irrespective of the resources of the victim. Measures to this end should be taken in the legal, medical, psycho-social and other relevant areas.

Fifthly, there is a need for “*smart*” *complementarity*, tailor-made to be suitable to each individual country, to strengthen legal structures at national level. Such “*smart*” complementarity would allow for a State to obtain assistance and support from various international and regional actors depending on the context of each State.

Finally, though the realities of SGBV often are alarming, we should be encouraged by the fact that there are millions of women and men globally – with many in countries such as Guatemala and Uganda – who are committed to justice. It is crucial that all these forces gain strength from one another and create partnerships. Each one can contribute with their respective skills and abilities. Jointly, and by sharing experiences like Guatemala and Uganda have done, we can make a real change and increase the possibilities of justice for victims and thereby also create preconditions for prevention of further atrocities and victimisation.

CHAPTER 8

Examining violence against health care from a gender perspective

Jessica Cadesky, Former Project Manager, Health Care in Danger and Gender, Swedish Red Cross

A study on health care and gender

Attacks and other types of violence against health care has emerged as a major humanitarian challenge, with wide-reaching consequences for sick and wounded men, women, girls and boys who are entitled to health care under international humanitarian law (IHL). There has been much progress made in understanding the problematic of violence against health care and working towards solutions, notably through the Health Care in Danger campaign, initiated by the International Committee of the Red Cross (ICRC). Despite this momentum, however, a gender lens has not been consistently applied to examine how violence against health care in the context of armed conflict and other emergencies affects male and female health workers differently, as well as how these threats and attacks differently affect the extent to which men, women, girls and boys are able to access health care.

In 2014, Swedish Red Cross conceived a study on access to health care during armed conflict and other emergencies from a gender perspective as a first step towards filling the knowledge gap of the interplay between gender and access to health care within contexts of violence against health care. This chapter is an overview of the key findings emerging from this study¹, whose central objective is to contribute to a more nuanced understanding of the issues with an aim to inform more practical, applicable, and appropriate measures on the ground. Ultimately, the study seeks to strengthen current and future work by all stakeholders involved in ensuring safe access to health care by all.

¹ Swedish Red Cross Report (2015), *Examining Violence against Health Care from a Gender Perspective, Study on Access to Health Care during Armed Conflict and other Emergencies*. March 2015. Stockholm: Swedish Red Cross.

Research questions and methodology

The study was guided by the following research questions:

1. What are the main obstacles and challenges to safe access to and provision of health care in conflict for women, girls, boys and men?
2. Are the diverse needs, strengths and vulnerabilities of women, girls, boys and men properly identified and assessed in order to facilitate access to and provision of health care?
3. What are the consequences and effects arising from the identified gendered differences to access to and provision of health care?
4. Given the important role IHL plays in providing protection and justice to the victims of armed conflict, how can the knowledge about the different ways men, women, girls and boys are affected by violence against health care impact the application of IHL?

The study was marked by three research phases: desk research (July 2014–January 2015); field visits to Lebanon and Colombia (12–23 November 2014, and 30 November–8 December 2014, respectively); and finally a stakeholder’s workshop held in Stockholm, Sweden to discuss the study’s findings (27 January 2015). Secondary sources were used, such as published documents, journal articles, blog posts and news reports, as well as primary sources, including focus group discussions and key informant interviews conducted before, during, and after field visits to the two case contexts of Lebanon and Colombia. Four respondent groups were identified to participate in the field research phase: State actors; non-governmental organisations (NGOs) and Red Cross Red Crescent movement actors; health care providers; and community members. Various challenges meant that the methodology was not applied uniformly in both contexts, and therefore it is not possible to provide direct comparisons between the two countries. It is hoped that the remaining gaps and unanswered questions that this study reveals will motivate other actors to continue exploring the role that gender plays in different groups’ access to and provision of health care, and what implications this poses for our approach to mitigate the impacts of violence against health care.

Key findings**The challenges of SADD: assumptions and practice**

Despite the repeated call for agencies and actors involved in the provision of health care to begin collecting and analysing sex- and age-disaggregated data (SADD), there remains a dearth of this data related to violence against health care. This prevents proper risk

analyses, which would inform appropriate and effective mitigation strategies. In addition to logistical challenges, attitudes and a lack of understanding of the relevance of SADD to health care delivery may impede its collection on the ground. Analyses resulting from reliable SADD would help to inform the policies and practices of all stakeholders involved in safeguarding effective and indiscriminate health care.

Gendered division of labour in health care and links to violence

Respondents in Lebanon anecdotally reported that nurses, the majority of whom are female, are subject to higher risks of violent incidents, usually related to the higher numbers of nurses working in the emergency room and other settings of violence. These are usually incidents of verbal and/or emotional violence such as insults, however some respondents reported that cases of physical violence against nurses have known to take place. In Colombia, female vaccinators reported that in rural communities, resistance to vaccinations had sometimes led to verbal and/or emotional violence and even incidents of physical violence committed against them. In other contexts, the confluence of gender and the nature of services health care personnel provide may render some groups particularly at risk of experiencing violence and even death. In Iraq in 2007, male gynaecologists were specifically threatened or killed by extremists who considered them to be violating women's privacy. The deaths of these doctors, compounded by the fact that several doctors were forced to cease their practice amidst violence, further undermined an already paltry existence of gynaecological services for women in Iraq.²

Examining the distribution of males and females in health care may point to a possible gendered exposure to violence. In some contexts, some roles are disproportionately male (e.g., ambulance drivers) or female (e.g., health outreach workers), however it is unclear from this study whether and to what extent the risks associated with these positions are exacerbated or mitigated by one's gender. Again, without a robust set of sex-disaggregated data, it is difficult to identify any hard trends on sex-specific risks facing male and female health care personnel. More research and data on the intersection between job function, gender, and violent incidents are required in order to better understand which groups may be vulnerable to different types of threats and attacks related to their function in the health care system.

Settings and types of risks of violence

Certain settings and factors related to those settings seem to contribute to the risks of violence experienced by both health care workers and health care seekers. For the former, certain locations within a health facility may expose health care personnel to different

² IRIN (2007). *Iraq: Male gynecologists attacked in Iraq. 13 November 2007.*
<http://www.irinnews.org/report/75275/iraq-male-gynaecologists-attacked-by-extremists>. (last accessed 15 September 2014)

risks, e.g., the ER. The time of day may also be a factor in health care personnel's level of risk, with some health care personnel in both contexts reporting that evening shifts generally carry higher risks of violent incidents than day shifts. Treating survivors of sexual violence may also expose health care personnel to risks of threats and/or violence, which may deter some health care personnel from providing these services, the majority of patients of which are likely to be women and girls.

Other factors influencing the extent of access to health care, as seen in Colombia, include that official or *de facto* control over certain neighbourhoods or areas may pose physical barriers to access to health care, which in some cases may be lessened by one's gender. For example, women may be able to cross 'invisible borders' due to the perception that women are less likely to be associated with any side of the conflict and therefore do not carry the same threat as males in the same scenario. Cultural factors related to gender may also pose challenges for men and women seeking health care e.g. women requiring a male family member to accompany her to a health facility. Conversely, men may face unrecognised barriers to health care if threats of recruitment or other violence exist *en route* to a health facility.

Other factors affecting access to health care

There are several factors of diversity that work to shape and influence an individual's experience during armed conflict and other emergencies. Gender has been chosen as the central focus of this study since gender, along with age, is arguably the most universal of such factors. For this study, the importance of understanding how one's gender may interact with other elements of one's identity (as perceived both by oneself and by external actors) became apparent in order to understand individuals' experience providing and/or accessing health care. Depending on the context, other factors that also act as determinants to health care access may include religious sect/ethnicity; social connections; and (perceived and/or actual) association with a given side of a conflict.

Practices and policies of health care providers related to gender and risk

The study found that many health care delivery practices are already shaped by perceived and/or actual gender dynamics found in communities where services are offered. Some examples found were: the deployment of all-female community outreach teams to increase likelihood of acceptability and access; assigning a male interlocutor to negotiate ambulance access at checkpoints; deploying all-male first response teams based on perceptions of female inadequacies under stress.

Gender and the obligation to provide health care

Identifying and addressing the effects that armed conflict has on individuals, together with the different status, needs and capacities of individuals before, during and after armed

conflict, is critical to understand in order to ensure that those who benefit from the protection of IHL are granted this protection without discrimination, including based on sex or gender. The inclusion of a gender perspective when applying IHL enhances the operational outcomes and works to safeguard against the protection of, respect for, and care of the persons entitled to health care being discriminatory. Looking at the research questions of this study, a revision of the fourth question to focus more on how information on gendered dimensions of access to health care may impact the application of IHL would be a useful topic to explore in future research (see Suggested further research topics).

Recommendations

A full set of recommendations specific to five concerned stakeholder groups (armed actors; state actors; health care providers; NGO and Red Cross Red Crescent movement; and community members) can be found in the full report.

The main recommendations are:

- ✓ Systematically collect and analyse sex- and age-disaggregated data and adapt operations and policies accordingly.
- ✓ Base operational and security decisions on analysis of gender and diversity dynamics specific to the operational context.
- ✓ Ensure the inclusion of a gender and diversity perspective – assessing the different status, needs, and capacities of men, women, girls and boys – in the implementation and fulfilment of obligations to provide health care under relevant IHL, International Human Rights law, and domestic laws in order to give effect to the principle of non-discrimination.
- ✓ Design facilities and outreach activities in a manner that reduces and mitigates risks of violence towards both health care providers and health care seekers.
- ✓ Conduct regular check-ins with male and female staff, volunteers and health care seekers to identify new or changing risks associated with health care delivery.
- ✓ Conduct further research to deepen stakeholders' understanding of the challenges and capacities of different groups in providing and accessing health care (see “Suggested further research topics” below).

Suggested further research topics

Generally, it is recommended that more in-depth, multi-country comparison studies are conducted to probe into whether and to what extent gender influences safe provision of and access to health care, including case studies from high-income countries and those outside the context of armed conflict or emergencies.

Some questions that emerged during this study, but had to be left unanswered due to

the temporal and material scope, may inspire further research. For example, do male and female health care personnel face different risks of violence while delivering health care? How do these risks relate to their specific job function?

Other questions that remain concern the safety of the health care seekers, specifically the younger seekers. For instance, what are the specific challenges and capacities of young and adolescent girls and boys in accessing safe health care during armed conflict and other emergencies?

Finally, given the important role IHL plays in providing protection and justice to the victims of armed conflict, how can the knowledge about the different ways men, women, girls and boys are affected by violence against health care impact the application of IHL?

Concluding remarks

It has been well documented that men, women, boys and girls are impacted differently by armed conflict. For IHL – and its interpretation and application – to stay true to its humanitarian quest, it is important to identify and respond to the specific needs, risks and vulnerabilities of men, women, girls and boys, and to recognise how power relations affect access to services, including health care.

This study points to a significant lack of consistent and adequate gender and diversity analysis. This represents a missed opportunity when examining violence against health care workers and seekers since it ignores a wider holistic analysis of complex systems based on the context, roles and responsibilities, access to and control over resources, specific needs, capacities and rights. A proper gender analysis that takes other factors of diversity into account could identify, prevent and mitigate potential negative effects; reveal barriers facing different groups; and identify more effective solutions to ensuring access to health care for all men, women, girls and boys. The planning, delivery and evaluation of adequate health care with no adverse distinction in accordance with IHL, international human rights law and domestic law must include information on the different needs and capacities of men, women boys and girls respectively in the specific context. If this is done well, greater organisational efficiency and effectiveness will result.

There are several stakeholders involved in ensuring that men, women, girls and boys are able to access safe and impartial health care in times of armed conflict and other emergencies. Each has a special role to play, and incorporating a gender and diversity perspective into each of these roles will work towards improving the efficiency and effectiveness of health care delivery. It is hoped that other actors involved in the safe provision of health care will take up the reins and advance our collective understanding of the issues from a gender and diversity perspective, and that ultimately, access to health care for men, women, girls and boys will be improved, even in times of armed conflict and other emergencies.

CHAPTER 9

Operationalising a gender perspective in humanitarian assistance – Sida’s approach

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Experience shows that women, men, boys and girls are affected by armed conflicts and disasters in different ways. Information gaps and lack of analysis regarding how men, women, boys and girls are facing crises limit the effectiveness of humanitarian assistance¹ in all phases of a crisis. The integration of a gender perspective is, therefore, a necessity to reach all parts of the population. This ensures an efficient humanitarian response and strengthens protection of individuals during times of armed conflict and natural disasters, in accordance with international law, including international humanitarian law (IHL)².

International humanitarian law and the humanitarian principles – humanity, impartiality, neutrality and independence – form the basis of humanitarian assistance. Respect for and compliance with these is a prerequisite for effective humanitarian assistance. The principle of impartiality asserts that humanitarian assistance must be carried out on the basis of needs alone and without discrimination, giving priority to the most urgent cases of distress. The position taken by the Swedish International Development Cooperation Agency (Sida)³ on this issue is clear; a gender perspective is essential to ensure effective and impartial humanitarian assistance.

1 Humanitarian assistance comprises both material assistance and protection.

2 IHL is a set of rules that seeks to limit the effects of armed conflict on civilians and those who do not take part in hostilities. IHL also includes the right to receive humanitarian assistance and the obligation of parties to the conflict to facilitate the same and to protect medical and humanitarian workers. Main treaties are the four Geneva Conventions of 1949 and their additional protocols of 1977 and 2005.

3 Swedish International Development Cooperation Agency (Sida) is a government agency working on behalf of the Swedish government. Sida works to reduce poverty in the world and distributes humanitarian aid to people in need of assistance.

Sida's entry point is therefore that a needs-based humanitarian assistance must be designed and implemented to ensure that different needs, capacities and opportunities of women, men, girls and boys are taken into account. Failure to do so may result in interventions that are off target, less effective or may even unintentionally cause harm. Sida also regards mainstreaming a gender perspective throughout humanitarian assistance as key for ensuring the prevention of, protection and response to gender-based violence (GBV)⁴.

This chapter summarises the current practice of how Sida integrates a gender perspective in humanitarian assistance based on humanitarian principles and international law including IHL. Humanitarian assistance is viewed as one way to operationalise IHL, and effective humanitarian assistance contributes to ensuring the rights and protection afforded by IHL. Against this backdrop, this article also describes how Sida addresses prevention and response to GBV in emergencies, both in armed conflicts and natural disasters.

RECOMMENDATIONS TO HUMANITARIAN ACTORS

The following are Sida's recommendations to humanitarian actors, such as partners and donor agencies, in order to operationalise a gender perspective in humanitarian assistance:

1. Ensure that needs assessments and programme design take the different needs and opportunities of women, girls, men and boys into account, and that GBV prevention and response is integrated;
2. Ensure that sex- and age-disaggregated data (SADD) is collected and analysed systematically, and used to inform humanitarian response as well as policies;
3. Base strategic operational and security decisions on a gender analysis and diversity dynamics specific to the operational context;
4. Use available common tools, standards and guidelines that are relevant for humanitarian agencies to systematically strengthen gender equality, to prevent and respond to GBV and enhance accountability, such as the Inter-Agency Standing Committee (IASC) Gender Marker and the revised IASC GBV Guidelines;
5. Recognise that prevention and response to GBV are lifesaving activities and a key protection concern from the onset of an emergency;
6. Ensure efficient implementation and monitoring by inclusion of specific gender and GBV related results and indicators;
7. Allocate sufficient resources to gender related activities and invest in strengthening implementation capacity on gender mainstreaming and GBV.

⁴ Gender-based violence (GBV) is an umbrella term for any harmful act that is perpetrated against a person's will and that is based on socially ascribed (i.e. gender) differences between males and females. It includes acts that inflict physical, sexual or mental harm or suffering, threats of such acts, coercion, and other deprivations of liberty. These acts can occur in public or in private. (IASC definition)

Different needs and opportunities require a targeted response

Armed conflicts and natural disasters impact women, girls, men and boys differently. As social relations are destabilised by conflicts, a gender equality perspective is crucial to the understanding of differentiated needs, including power disparities and shifting gender roles. While women and girls often are exposed to a greater degree of gender-based violence in the context of crisis and conflict, men and boys are more frequently exposed to forced recruitment into armed forces and armed groups, and they make up the majority of casualties caused by small arms and light weapons. As a consequence, an increasing number of women are left behind to head households. Generally, women and children make up the majority of any given refugee population. Due to a combination of different factors, including gender-based discrimination in access to resources, education and employment, poor reproductive health care and exclusion from decision-making processes, refugee and internally displaced women constitute one of the most vulnerable groups in the world.

Moreover, experiences from natural disasters have shown that mortality rates are often higher for women than for men. This can be linked to differences in the vulnerability of women and men as a result of socially constructed gender roles. During the 2004 Asian tsunami for instance, there were three to four female deaths for each male death. More women than men died both due to the fact that women were on the beach or close to the beach and in charge of children and elderly while men were further away working on the fields or in the cities. Another explanation was that women were not expected to, and had therefore never learned how to, swim or climb trees.

It is important to note that crisis situations may affect gender roles, and in addition, humanitarian assistance may affect gender roles positively or negatively. It is therefore essential to recognise women as actors and active agents of change also in times of conflict and disaster.

GBV is the most extreme form of gender inequality and occurs in peaceful as well as conflict affected societies. In conflicts, natural disasters and other emergencies, humanitarian stakeholders should assume that GBV is occurring and undertake relevant action regardless of the absence of concrete “evidence”. The risk of GBV is exacerbated in conflicts and natural disasters due to increased levels of violence and stress as well as a breakdown of social structures.

Gender as a priority in Swedish policies and instructions

Gender equality has been a priority within Swedish development cooperation for several years and this has been even more pronounced on a policy level since the government introduced a Swedish feminist foreign policy in the autumn of 2014. Sida has worked systematically with gender equality in development cooperation since 1983, and is currently instructed by the Government to ensure that all interventions are gender mainstreamed.

According to the Swedish Aid Policy Framework⁵ and related strategies, Sweden will

work to ensure that the Swedish, as well as international, humanitarian aid is designed to meet the humanitarian needs of women, men, children and young people in need, in each specific situation and context, in a flexible, rapid and effective and efficient manner, taking into account particularly vulnerable groups and their special needs.

Sida's approach: integrated gender analysis and prevention of GBV in humanitarian assistance

Sida aims to apply a comprehensive approach to ensure that humanitarian assistance reflects the different needs and opportunities of women and men, boys and girls and that it prevents and responds to GBV.

Sida promotes integrated gender analysis in needs assessments, works through funding of integrated gender and GBV activities as well as targeted interventions, and supports capacity-building and the strengthening of the humanitarian system as well as partners.

Needs assessments and planning processes with integrated gender analysis are essential. Sida views gender integration as fundamental to ensure that the needs assessments identify the right target group. By using SADD when planning a humanitarian response the most efficient actions can be addressed. To ensure efficient implementation and monitoring, we recommend that gender perspectives are reflected in the results and indicators set up and, when relevant, that specific activities that enhance gender equality are included and budgeted for.

In its annual *allocation process*, Sida includes SADD whenever possible and includes a gender analysis in Sida's Humanitarian Crises Analysis (HCAs)⁶. Sida also requests partners to clearly reflect in their project documents and reports how gender issues are integrated in programmes and projects. Sida reviews funding proposals systematically by applying the IASC Gender Marker and/or Sida's Gender Assessment tool (see examples of questions below). In Sida's quality assurance of decisions for funding, gender concerns are systematically reviewed by using a checklist. Partners' capacities in gender mainstreaming and GBV prevention and response are reviewed as part of the decision-making process. Specific goals on gender and GBV are documented in the contribution management system and can thereby be monitored. Gender issues are generally included as a topic for dialogue with Sida's humanitarian partners.

Sida has found that *concrete tools* are useful to ensure that gender aspects are integrated in needs assessment, project design, implementation, monitoring and evaluation. The IASC Gender Marker has been valuable in setting a common standard and for clarifying that gender analysis is not optional. For its continued relevance the Gender Marker must

⁵ Swedish Ministry for Foreign Affairs (2013/14:131). *Aid policy framework – the direction of Swedish Aid*. 13 March 2014. Available at <http://www.regeringen.se/contentassets/6eef64a9a36e48ff9a95e4d6ad97ce84/aid-policy-framework> (last accessed 12 October 2015).

⁶ The HCAs summarise the humanitarian context, humanitarian priorities, synergies with development and Sida's choice of humanitarian organisations.

be applied to the whole programme cycle and not just to the project design.

Sida prioritises support to interventions that *strengthen the humanitarian system* at large. GenCap⁷, who deploys gender advisers to Humanitarian Country Teams (HCT) on their request, is one example. Sida is also supporting capacity-building of humanitarian actors and local communities enabling them to provide a gender sensitive humanitarian response, including prevention and response to GBV.

Example of questions for assessment of gender perspective in humanitarian projects:

1. Does the needs-assessment reflect the different needs, opportunities and capacities of women, men, boys and girls?
2. Are gender issues reflected in terms of sex- and age disaggregated data in the background information?
3. Is the differentiated needs assessment reflected in the programme design of the project?
4. Are the different needs and opportunities (of women, men, girls and boys) reflected in the (specific) objectives as defined in the results framework?
5. Are the different needs and opportunities (of women, men, girls and boys) reflected in the activities planned for?
6. Are there specific budget lines linked to gender/gender mainstreaming/ gender-based violence/ sexual and reproductive health?
7. Has gender been taken into account when defining specific indicators for follow-up?
8. Are gender issues reflected in terms of sex-disaggregated data in the indicators for follow up?
9. Identify possible entry-points for strengthened gender perspective in the continued implementation of this project.
10. Propose strategic actions or entry points to enhance the gender perspective in future programming of new or other projects.
11. Who are the strategic allies that can contribute to an enhancement of the gender perspective within the project?
12. Has the project implementation staff gone through any kind of gender awareness training? What level of implementation capacity and organisational capacity on gender is available?

⁷ The Gender Standby Capacity Project (GenCap) - an IASC initiative created in 2007 - seeks to facilitate and strengthen capacity and leadership of humanitarians to undertake and promote gender equality programming to ensure the distinct needs of women, girls, boys and men of all ages, are taken into account in humanitarian action at global, regional, and country levels. Gender Capacity Advisers are deployed to support the Humanitarian Coordinator, Humanitarian Country Teams, UN agencies, cluster leads, NGOs and governments. GenCap Advisers can be deployed in the initial stages of sudden-onset emergencies as well as in protracted or recurring humanitarian situations.

According to Sida, *preventing and responding to gender-based violence* must be recognised as lifesaving activities from the onset of an emergency and as a key protection concern. The link between gender equality and GBV prevention is central to Sida's approach when addressing GBV in emergencies. Sida realises the need to focus more on the root causes of GBV, which are found in gender-based power inequalities and gender-based discrimination.

Sida promotes a systematic and comprehensive approach to addressing GBV in emergencies. This includes both responsive actions, mainstreaming of GBV in all sectors, immediate preventive actions aimed at reducing risks, and it contributes to longer term strategies to promote gender equality. In addition, Sida funds capacity-building activities as well as GBV specific interventions, and by doing so actively encourages its humanitarian partners to build capacity for GBV response and mitigation in emergency programming.

Responsive interventions may focus on provision of services to GBV survivors, including sexual and reproductive health services and psycho-social support. When *responding to GBV* interventions must be context-specific to enhance outcomes and "do no harm". It is crucial to not expose survivors of GBV to further risk. Hence, services must be provided in a way that does not result in stigmatisation, trauma or violence.

In 2015 the IASC updated the Guidelines for Integrating Gender-based Violence Interventions in Humanitarian Action. This is a practical field tested tool for crisis affected communities and humanitarian actors, and it provides guidance on essential actions to *mainstream GBV* across all humanitarian sectors in order to reduce and mitigate GBV risks.

Prevention of GBV includes immediate preventive actions such as sufficient lighting in refugee camps, separate toilets, and gender-training of security personnel, as well as more long-term prevention strategies promoting gender equality, such as focusing on women's economic empowerment, and engaging men and boys. Engaging men and boys directly in the work on gender equality is crucial in order to prevent GBV.

- **Practical case: Preventing gender-based violence in a refugee settlement** •
-
- The Church of Sweden, in partnership with Sida, is strengthening local •
- capacity to prevent and respond to GBV, and increases the access to pro- •
- tection services for Congolese women, girls and boys who are refugees in •
- the Rwamwanja Refugee Settlement (RSS) in Uganda. The programme fo- •
- cuses on facilitating processes for empowering GBV-survivors to achieve •
- economic independence and sustainable livelihoods, as well as strength- •
- ening the capacity of RSS duty bearers to prevent GBV and provide psy- •
- chosocial support to survivors. •
-

Synergies between short-term humanitarian assistance and long-term development

Sida believes that gender equality serves as a strategic link between the humanitarian response and long term development. Humanitarian assistance can lay the foundation for gender equality, mitigate risk and build resilience in contexts of recurrent and protracted crises by actively mainstreaming gender perspectives. Similarly, humanitarian responses can be designed and delivered in a way that supports resilient recovery and development by actively supporting women's and girls' participation and leadership. Evidence shows that an increased number of women in the labour market in conflict-affected areas tend to increase overall household and community-level welfare, including investments in the education of girls and boys. Therefore, investing in women's livelihoods can be relevant as a protective measure but also as a long term strategy for reducing vulnerability and building resilience.

- **Practical case: West Bank and Gaza Strip**
- **– investing in the collective power of women**

- By supporting around 80 women's associations in the West Bank and Gaza Strip, Food and Agriculture Organization of the United Nations (FAO) is helping Palestinian women to achieve greater social and economic empowerment. The projects provide livelihood assets to groups of women, and entrepreneurial skills to produce, process, and package and market a wide range of quality food items. This led many women to realise economic success as well as civic participation and influence in a place where 35 per cent of women work in the informal agriculture sector as unpaid family labour.

Links between IHL, protection principles and UN Security Council Resolution 1325

It is Sida's understanding that gender equality and women's participation constitute a prerequisite for sustainable peace and security. It is therefore crucial to strengthen links between UN Security Council Resolution 1325, IHL and protection principles, that is, to ensure that gender concerns are addressed consistently across humanitarian and peace building efforts. This is critical in contexts that experience complex and protracted conflicts and crises situations where peace building, military action and humanitarian response run in parallel. In this area there is a potential to focus more on the forth pillar of 1325 which refers to relief and humanitarian response.

- **Practical case: Democratic Republic of the Congo (DRC)**
- Sweden supports the justice sector reform in DRC. These efforts are not only undertaken to ensure access to justice for women and girls (primarily as victim of GBV), but also to feminise the sector, for example through more female legal practitioners. Many legal cases in DRC are settled through “arrangements à l’amiable”, i.e., outside the legal system, which are often unfavourable to the victims. As a result of the Swedish support the training for OPJs (Officier de Policier Judiciaire) is gender sensitised and includes sessions on GBV and children’s rights.

To conclude

By applying a systematic approach to integration of gender and GBV issues in humanitarian assistance, Sida expects not only improved efficiency in operations but also that humanitarian interventions, in the long term perspective, can contribute to increased gender equality.

Today, Sida actively encourages its humanitarian partners to build capacity for an integrated gender perspective and GBV prevention and response, and to address GBV response and mitigation in emergency programming by funding capacity-building activities and GBV specific interventions. This has, for instance, led to an increase from 25 per cent in 2013 to 39 per cent in 2014 of Sida funded humanitarian contributions with activities related to GBV prevention and response.

In spite of the progress made much remains to be done to address gender concerns and GBV protection and response in humanitarian assistance. There are insufficient mechanisms in place at policy, funding and implementation levels to ensure that gender and GBV are comprehensively addressed and prioritised. There is a need to focus more on mechanisms for accountability and results.

While noting that gender and GBV issues are currently more present on the international agendas, Sida also notes that there are several areas where further development can be made in terms of operationalising gender in humanitarian assistance:

- ✓ to use synergies between short-term humanitarian assistance and long-term development;
- ✓ to strengthen links between UN Security Council Resolution 1325, IHL and protection principles in order to ensure that gender concerns are addressed consistently across humanitarian and peace building efforts.

Further reading

The IASC Gender Handbook in Humanitarian Action (2006). *Women, Girls, Boys and Men – Different Needs, Equal Opportunities* is a comprehensive handbook which outlines some key principles and methods on how to apply a gender perspective in humanitarian work. IASC has an e-learning course on gender in humanitarian settings. http://www.globalprotectioncluster.org/_assets/files/tools_and_guidance/IASC_Gender_Handbook_EN.pdf (last accessed 12 October 2015)

Guidelines for Gender-based Violence Interventions in Humanitarian Settings: The IASC GBV Guidelines is a key tool on how to set up multi-sector GBV programmes and coordinate effectively on the ground. <http://www.fao.org/emergencies/resources/documents/resources-detail/en/c/198364/> (last accessed 12 October 2015)

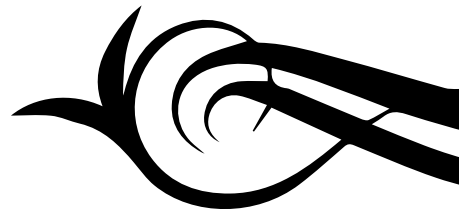
IFRC Strategic Framework on gender and Diversity Issues 2013-2020
<https://www.ifrc.org/Global/Documents/Secretariat/201412/IFRC%20Strategic%20Framework%20on%20Gender%20and%20Diversity%20Issues-English.pdf>
(last accessed 12 October 2015)

For information on specialised programming guidance GBV AoR (Area of Responsibility) – www.gbvaor.net
(last accessed 12 October 2015)

IASC Gender Marker Fact Sheet
<http://interagencystandingcommittee.org/geneva-iasc-events/documents/iasc-gender-marker-fact-sheet> (last accessed 12 October 2015)

A GENDER PERSPECTIVE IN HUMANITARIAN ASSISTANCE

IV. MILITARY OPERATIONS WITH A GENDER PERSPECTIVE



CHAPTER 10

The Swedish Armed Forces and gender in military operations

Cecilia Tengroth, Senior Legal Advisor, Swedish Red Cross

Framework recognising the importance of a gender perspective

The landmark *UN Security Council Resolution 1325* on women, peace and security from 2000 was an important impetus towards understanding the importance of including a gender perspective in military operations. The Resolution (and its follow-up resolutions) reaffirms the important role of women in the prevention and resolution of conflicts, peace negotiations, peace-building, peacekeeping, humanitarian response and in post-conflict reconstruction and stresses the importance of their equal participation and full involvement in all efforts for the maintenance and promotion of peace and security. Resolution 1325 urges all actors to increase the participation of women and incorporate gender perspectives in all United Nations peace and security efforts. Furthermore, the resolution calls for respect for international humanitarian law and calls on all parties to conflict to take special measures to protect women and girls from gender-based violence, particularly rape and other forms of sexual abuse, in situations of armed conflict.

The issue of gender equality has long been fundamental to Swedish foreign policy, and Sweden was among the first countries to adopt a *national action plan* to implement Resolution 1325. The action plan was developed in cooperation with various stakeholders including NGOs, research institutions, international organisations and other states. The action plan establishes that Sweden will contribute to the implementation of the Resolution on a

national level, as well as on a regional and a global level. The main focus of the Swedish action plan is to enable the active participation of women in peace processes, and also on ensuring that the special protection needs of women and girls are fulfilled.

In the national action plan, the Swedish Armed Forces were recognised as a key actor. In the Swedish Ordinance with instructions for the Swedish Armed Forces (Swedish Code of Statutes 2007:1266) it is stated that the Armed Forces are required to operate in accordance with UN Security Council Resolutions 1325 and 1820 (concerning sexual violence in conflicts) in their work. In addition, these Resolutions should be considered in the context of education as well as the planning, conduct and evaluation of operations.

The Swedish Armed Forces have developed a solid framework to support the implementation of Resolution 1325 at all levels in the organisation. This is reflected in the publication *Steering document for gender equality and equality 2012-2014*.¹ In this document, the Swedish Armed Forces state that a gender perspective is needed on all levels in the organisation, and that all operations should be planned, implemented and followed up in accordance with Resolution 1325.

Integration in practice

The starting point for the integration by the Swedish Armed Forces of a gender perspective in military operations was the national EU-funded Genderforce project that ran from 2003 to 2007. Through this project the concept of gender advisors in military operations was identified and, in 2007 the Swedish Armed Forces established the formal position of Gender Advisor at the headquarters. Subsequently, the Swedish Armed Forces introduced *Gender Field Advisor (GFA) at tactical levels and Gender Advisors (GA) at operational and strategic levels* in international operations. This is seen as one way to operationalise the objectives in the national action plan for the implementation of UN Security Council Resolution 1325.

Since the introduction of the GA and GFA positions, a number of advisors have participated in international operations. The first GA was appointed at the strategic level in 2006 during the operation in the Democratic Republic of the Congo led by the EU with the purpose of supporting the UN during the Congolese election the same year. Thereafter, the Swedish Armed Forces contributed with two GAs to the EU-operation in Tchad 2008–2009. During the same period, the first GFA on a tactical level was appointed to the Swedish-led Provincial Reconstruction Team in Mazar-e Sharif in Afghanistan. The Swedish Armed Forces have also contributed with a GA to the operational level in Afghanistan, i.e., Regional Command North (2010-2011). Experiences from the International Security Assistance Force mission in Afghanistan have developed the GFA-positions further in both the Swedish Armed Forces and NATO. Moreover, there was a GFA-position in the

¹ In Swedish: Försvarsmaktens Styrdokument för jämställhet och jämlikhet 2012-2014, Försvarsmakten Högkvarteret (2012).

Nordic Battle Group 2008 and 2012 and, since 2012, the Swedish Armed Forces has supported the NATO Military Commander with a senior Gender Advisor at the Allied Command Operations in Belgium. In addition, the Swedish Armed Forces have supported the EU training missions in Somalia with three gender instructors. The instructors provide training on the subjects of gender, human rights and protection of children in armed conflict. The integration of UN Security Council Resolution 1325, and the presence of GAs and GFAs, in military capacity building missions have also been analysed by the Swedish Defence and Research Agency.²

Together with its Nordic neighbours, the Swedish Armed Forces took another important step in the work with gender through the establishment of a Nordic gender centre, the *Nordic Centre for Gender in Military Operations (NCGM)* which opened in January 2012. The NCGM is located within the International Centre of the Swedish Armed Forces and is functioning as a centre for education, knowledge and expertise in the field. The Centre consists of two sections with the purpose of developing methods and concepts in the field of gender. Part of the work is to manage education and training in gender issues on both a national and international basis. For example, the NCGM is providing education for GFA positions. The activity focuses on the security forces of NATO, the EU, the African Union (AU) and the UN. In 2013, NATO also decided to adopt the NCGM as its main training centre for gender issues.

Referring to the above, it is safe to say that incorporating a gender perspective in the military activities has become a priority for the Swedish Armed Forces and UN Security Council Resolution 1325 is an important fundament in these processes, and is today a genuine and permanent feature of Swedish contributions to international operations.³ Sweden views the integration of gender perspectives into military structures and operations as a crucial step towards contributing to peace and security.

² Lackenbauer & Langlais (2013); Lackenbauer & Jonsson (2014)

³ Egnell et al (2012).

REFERENCE LIST

Swedish government (2009). *The Swedish Government's action plan for 2009–2012 to implement Security Council Resolution 1325 (2000) on women, peace and security*. 10 February 2009. http://www.un.org/womenwatch/ianwge/taskforces/wps/nap/HP1325_202009-2012_fina_engelsk_version.pdf. (last accessed 5 October 2015)

Egnell, Robert, Hojem, Petter & Berts, Hannes (2012). *Implementing a Gender Perspective in Military Organisations and Operations: The Swedish Armed Forces Model*, Uppsala: Uppsala University.

Försvarsmakten Högkvarteret (2012). *Försvarsmaktens Styrdokument för jämställdhet och jämlikhet. 2012-2014. Bilaga 1*. http://www.forsvarsmakten.se/siteassets/4-om-myndigheten/vara-varderingar/hkv-2012-03-16_16-100--54891-styrdokument-for-jamstalldhet-och-jamlikhet.pdf (last accessed 7 October 2015)

Lackenbauer, Helené & Jonsson, Michael (2014). *Implementing UNSCR 1325 in Capacity Building Missions, September 2014*, Swedish Defence and Research Agency. September 2014. Stockholm: Swedish Defence Research Agency (FOI).

Lackenbauer, Helené & Langlais, Richard, eds (2013). *Review of the Practical Implications of UNSCR 1325 for the Conduct of NATO-led Operations and Missions*. Stockholm: Swedish Defence Research Agency (FOI).

CHAPTER II

Whose security? Practical examples of gender perspectives in military operations

Li Hammar, Liaison Officer & Annika Berg, Analyst, Nordic Centre for Gender in Military Operations, Swedish Armed Forces, SWEDINT

Nordic Centre for Gender in Military Operations¹

Peace support operations have always been challenging, and always will be. In order to establish sustainable peace and build a secure and democratic state, modern conflict resolution requires a comprehensive approach to ensure that the entire population – women, men, girls and boys – is involved, considered and addressed.

Today we know that the implementation of gender perspective is vital for increasing the operational effect of missions. If we do not succeed in handling the dimension of gender in societies, we will not achieve the political nor the military operational objectives, or the end-state of our mission. A gender perspective in operations also contributes to a correct and non-discriminatory application of relevant legal obligations under international humanitarian law and human rights.

The need for a hub of knowledge, a common platform for training and education, information sharing and a comprehensive approach including gender perspectives in operations led to the establishment of the Nordic Centre for Gender in Military Operations (NCGM).

¹ To stay updated on NCGM's events and courses visit www.mil.se/swedint
You can also contact NCGM directly by emailing swedint-gender-centre-lg@mil.se

Today NCGM provides several courses for different levels, as well as expert support on gender and development of manuals, guidelines and handbooks on gender in military operations. NCGM also organizes seminars, expert meetings and conferences. Courses can also be conducted through Mobile Education and Training Teams.

In February 2013, NCGM was appointed NATO Department Head concerning gender. NCGM works closely with NATO, its member nations, and partners' nations, as well as the UN and other Education and Training Centres aiming at implementing a gender perspective in all relevant aspects of military operations by focusing on education and training.

As the leading international centre on gender in military operations, NCGM strives to enable actors to apply a gender perspective to every situation in order to increase operational effectiveness in providing security to women, men, girls and boys.

As the Commander of the Nordic Centre for Gender in Military Operations, I invite you to be inspired by these examples and join us in developing and sharing good examples of using a gender perspective in military operations.²

Jan Dunmurray
Commander

² This chapter is based on the full report; Editors: Hammar, Li, Berg, Annika, "Whose security? Practical examples of gender perspectives in military operations" Nordic Centre for Gender in Military Operations, Swedish Armed Forces, February 2015. <http://www.forsvarsmakten.se/siteassets/english/swedint/engelska/swedint/nordic-centre-for-gender-in-military-operations/whose-security-2015-low-resolution.pdf> (last accessed 6 October 2015)

“If injustice or disproportional harm is directed towards one group based on their gender the GFA needs to step in and suggest alternative ways of action.”

The different impact on men and women factored into planning of logistics

Afghanistan, ISAF, 2011, Cdr Urban Rådestad

As a Gender Field Advisor (GFA) you need to have the ability to analyse how and in what situations men, women, boys and girls are affected or treated differently due to their gender, for example in an operation. If injustice or disproportional harm is directed towards one group based on their gender the GFA needs to step in and suggest alternative ways of action.

This is how Commander Urban Rådestad explained his role as a GFA. In 2011 Cdr Rådestad was deployed to Afghanistan as a GFA to the Commander for the Provincial Reconstruction Team (PRT) in Mazar-E-Sharif. As GFA he prepared background materials and gave advice for the commander’s consideration when planning the future direction of the mission. As a GFA, you might have to advise on the gender perspective of some unexpected planning considerations, such as the choice of vehicles.

The PRT unit that Cdr Rådestad advised was planning an operation for late autumn. They planned for a large-scale operation with heavy vehicles and maximum force protection. As a GFA, Cdr Rådestad advised on planning considerations such as the choice of vehicles. Rain and snow were likely to appear during the time period in which the operation was scheduled to take place. This meant a likelihood that heavy vehicles in combination with the weather would damage the roads. Cdr Rådestad considered what consequences this could have on the local population, meaning men, women, boys and

girls, in the remote villages in the mountains.

The unit analysed the composition of the population in the villages and observed that there were mostly women and children in the area since the men were working elsewhere. The women and children used the roads every day. For example, the children had a long way to travel to school and were dependent on buses to get there. Women also had to go by bus to reach midwives when giving birth. By using a more traditional means of transport, for example riding a donkey, the distance would take approximately eight hours to a neighbouring village where the nearest midwife worked. This meant that the women and children were dependent on the roads in their everyday lives. Without functioning roads, their freedom of movement would possibly be limited. Through a proper gender analysis of the living conditions of both men and women, the everyday necessity of the roads, especially for women and children, became clear.

Cdr Rådestad was able to foresee these dire consequences resulting from the operation and advised the commander to try finding different solutions for the transportation if continuing with the operation. His contribution to the planning process was to emphasize how women and children were dependent on the roads in their everyday lives for basic services such as education and health care. This was valuable input to the planning process where different security concerns and factors were considered. Alternative systems for reconnaissance of the area in advance of the operation were used and enabled the unit to ultimately decide on performing the operation with lighter vehicles as well as excluding certain areas. The roads could therefore be kept in better condition and the impact on the everyday lives of the population would be limited. In Cdr Rådestad's example, a gender analysis revealed the necessity of the roads, especially for women and children, which served as one of the factors informing the choice of vehicles and the area in which to operate.

Key message: It is important to involve a gender perspective and the support of the GFA in all planning considerations. Most operations will affect men, women, boys and girls differently and knowing how operations affect these groups is valuable information for the planning process.

“Target the ones who
have little or nothing to
win by having weapons
in their homes”

Using gender roles to collect illegal weapons more efficiently

Bosnia and Herzegovina, EUFOR, 2005-2006, Ms. Nikolina Marceta

Ms. Marceta used to work for the NATO-led Stabilization Forces (SFOR; 2000-2005) as an assistant to the legal and political advisor and then later European Union Force (EUFOR) Althea operation (2005-present) in Bosnia and Herzegovina as one of the legal assistants and Gender Advisor to Commander HQ EUFOR Althea (since 2009). One of the main tasks of the SFOR and later EUFOR operation was to carry out Harvest Operations, which collected illegal weapons. One aim of the Harvest Operations media campaign was to raise the awareness in the local population of the dangers of illegal weapons and to collect illegal weapons in the area. The local authorities had issued amnesty laws under which locals could hand in illegal weapons without legal consequences. To inform and encourage handing in weapons, the SFOR and later on EUFOR mission supported extensive media campaigns all over the country. The campaigns were mostly directed towards men, especially during the SFOR operation times. Traditionally, males in the family were more likely to see themselves as the security providers for the family in Bosnia and Herzegovina. The male population was considered to be more likely to possess weapons and therefore be the primary target group for the Harvest Operations media campaign.

Nevertheless, many still kept their weapons, despite the media campaigns and the amnesty laws. Large numbers of illegal weapons still circulated on the streets and in homes. It

became evident that the work of the media campaigns in support of Harvest Operations was not yet finished and so the mission continued to convince the population of the advantages of handing in illegal weapons, further improving the media campaigns after 2005 in order to target a wider audience, including women.

SFOR had never had a Gender Advisor and EUFOR established this structure in 2007. A strategy to target women as well as men with the media campaigns was developed, drawing for the most part on the specific security concerns of women. For example, the EUFOR mission received reports of accidents involving children playing with weapons. “In addition to targeting the men, who claimed that they needed to keep their weapons in order to protect their family, the campaign should have also targeted the mothers who are afraid to lose their kids in any of the accidents involving weapons. Target the ones who have little or nothing to win by having weapons in their homes” says Ms. Marceta. The concept of security for the children is not necessarily the same for mothers and fathers, although they are both driven by the same amount of love and a desire to protect their children.

The idea of targeting women with the message of handing in illegal weapons was put to the test in 2006 and in 2007. Speaking from the perspective of the Multinational Task Force North West as part of the EUFOR mission, located in Banja Luka, Ms. Marceta recalls that a number of commanding officers of the troops on the ground conducting Harvest Operations recognized and utilized the power of female populations in their areas of responsibility. They started talking to the local women about the illegal weapons, informing them about the risks associated with having illegal weapons in the home, especially for children. For example, they could present the numbers of children injured and killed due to illegal weapons being kept in the home.

The increased rate of illegal weapons collected and destroyed after approaching women directly and informing them about the security risks connected with weapons shows how the Harvest Operations could have benefited earlier from planning with an integrated gender perspective.

“If we had targeted the women earlier – both in the media campaigns but also using gender analysis when establishing the strategy for house searches – we might have been able to collect more weapons,” says Ms. Marceta. She stressed that this was the experience of the Multinational Task Force North-West as part of the EUFOR Althea operation in Bosnia and Herzegovina led by the British forces. She could not comment on the results achieved by any of the remaining two task forces within the EUFOR structure at the time in relation to Harvest Operations.

Key Message: A gender analysis of the target audience might present new solutions and courses of action for the operation.

“The fact that someone had requested to meet with local women specifically had given them the chance to gather in a network.”

Receiving new information by discovering informal female networks

Chad, EUFOR Chad/RCA, 2008-2009, Lt Col Monica Larsson

Lieutenant Colonel Monica Larsson worked as the Gender Advisor to European Union Force Chad and Central African Republic (RCA) between July 2008 and April 2009. The EUFOR Chad was a bridging mission that would handover to a United Nations Mission in the Central African Republic and Chad (MINURCAT) in 2009. At the beginning of the mission Lt Col Larsson and her predecessor visited the Northern part of the mission area of operations where a EUFOR battalion was operating. The battalion reported that in the first meetings with the local key leadership they had urged the mission's personnel to be culturally sensitive and to not contact the local women. The battalion followed this appeal and expressed to Lt Col Larsson that they would not engage with local women.

A couple of months later, Lt Col Larsson returned to the same area along with some female staff colleagues and a female interpreter. She had the expectation that this team would be successful in liaising with some local women. She advised the Liaison and Observation teams to communicate in advance to the local women, through their male connections, that a female team from EUFOR Chad/RCA would visit the area. At the meeting with the local women, Lt Col Larsson met a well-educated woman who had started a network of local women. The area of operations was quite large and rivalry existed between the villages, and between the villages and the refugee camps, because they shared the same resources. Despite these obstacles, the woman had managed to gather representa-

tives from the different villages and areas in the network. The woman explained to Lt Col Larsson that the network had been created with the purpose of meeting the female team from EUFOR Chad/RCA. The fact that someone had requested to meet with local women specifically had given them the chance to gather in a network. This was the first time that women from the different villages and areas had come together.

During the meeting between the female team from EUFOR Chad/RCA and the network, everyday problems such as the shortage of water were debated among the women. The women also discussed their physical security and security threats in the area. Women had stopped collecting firewood from certain areas because of the presence of armed men. They could inform the team from EUFOR Chad/RCA about these areas which, of course, was valuable information for the mission. The female team from EUFOR Chad/RCA also understood that the mission had a bad reputation among the local population. The female network could explain that this was because of their cooperation with the local police included in the Security Sector Reform (SSR). On several occasions, the local police had repeatedly harassed and stolen from the population and was considered a prominent security threat. The female team from EUFOR Chad/RCA could then inform the network that they trained the police to not violate human rights and that the mission firmly condemned these activities.

The meeting and newly created network showed the will of the local women to communicate and liaise with the mission, despite what the male leadership had claimed in the initial meetings with the battalion. After the meeting, the network continued to exist with the purpose of working against opposition and rivalry between the villages and the refugee camps in this area. The network was also able to discuss and organize steps concerning humanitarian assistance that was a part of the EUFOR Chad/RCA mission's mandate. When the EUFOR Chad/RCA mission ended, contact with the network was handed over to the MINURCAT mission. By listening and engaging with local women directly, instead of relying on second-hand information, Lt Col Larsson managed to establish useful contact with the women. The meetings with EUFOR Chad/RCA also presented a networking opportunity to the local women.

Key Message: Be aware of the gender relations in the culture and make sure you are getting the advice from accurate sources. Women are also actors of peace and often have a strong influence in their societies.

“...the return of the child soldiers to their home villages could threaten their security, making them a vulnerable group”

Facts on gender relations instead of gender stereotypes when planning DDR projects

Liberia, UNMIL, 2004-2005, Maj Per Nilsson

Between 2004 and 2005 Major Per Nilsson was deployed to United Nations Mission in Liberia (UNMIL) as Company Commander in the Mechanised Infantry Company at Swedish-Irish Quick Reaction Battalion and was located near the headquarters in Monrovia. During this deployment, his team took part in a patrol quite far south of Monrovia. One of the aims of the patrol was to report back on the situation of ex-combatants: where they were, if they had returned to their villages, and the security situation in the area. This information would feed into the Disarmament, Demobilisation and Reintegration (DDR) projects planned by UNMIL. Some DDR projects focused in particular on the large number of children used as soldiers left behind after the war. The projects were planned for the children to return to their villages where their families, and especially their mothers, would wait for them and be able to take care of them. This plan relied heavily on the mothers' ability to take their children back, regardless of what had happened during the war.

The patrolling team were able to ask the villagers they passed for their reflections and input to the DDR projects. They especially sought to communicate with the women, since their role was essential to the success of the return of the child soldiers. First they had challenges to reach out to the women. Instead of giving up they took their time to first communicate with the children approaching them, then to men and lastly the women who then opened up.

Their efforts to reach out to the women paid off when they realized that the return of

child soldiers to their home villages would be difficult. The women they talked to were clear in their message: the child ex-combatants were not welcome to return. The atrocities committed by the combatants, both old and young, had caused them too much pain and they were not welcome back, not at this point. The men of the villages reaffirmed this view. This was very valuable information for the team who could report back to the DDR unit that child soldiers could meet resistance when returning home. Potentially, the return of the child soldiers to their home villages could threaten their security, making them a vulnerable group. With the new information, the DDR projects could be revised and ensure a more secure reintegration for the child ex-combatants.

The information gained by communicating with the women showed that the gender stereotype of a mother taking their child back no matter what turned out not to be true. The example shows the dangers of relying on gender stereotypes in the planning process instead of actual facts gathered from local men and women.

Key message: When applying a gender perspective, do not rely on your preconceived gender stereotypes. Conduct a proper analysis of the situation based on facts gathered from the local community.

CHAPTER 12

Getting perspective¹

Sally Alexandra Longworth, Lecturer in International Law, Swedish Defence University, and Dr Ola Engdahl, Associate Professor in International Law, Swedish Defence University

Integrating a gender perspective in military operations contributes to addressing the needs of all parts of the population and the full implementation of international humanitarian law (IHL) and human rights law.² This was part of the philosophy behind the introduction of the requirement to incorporate a gender perspective in United Nations (UN) peacekeeping operations by UN Security Council Resolution 1325 (2000). Since the adoption of UN Security Council Resolution 1325 (2000), considerable development has taken place in the national, regional and international fields relating to the incorporation of a gender perspective in military operations. Several models have emerged within these arenas for how to incorporate a gender perspective. For example, the preferred model for UN peace operations is the incorporation of a gender component in the mission, whereas the preferred model for European Union (EU) and Swedish operations is the use of Gender Field Advisors (GFAs). The Swedish Armed Forces have been described as forerunners in implementing a gender perspective in its organisation and operations.

The Swedish model

The work of GFAs has the potential to broaden the understanding within the mission of the experiences, needs and roles of women, men, girls and boys in the society in which

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- ¹ This is a short version of Longworth & Engdahl (2014), *Getting perspective: Incorporating a gender perspective and the impact on international humanitarian law*. The full report is available online at: <http://www.diva-portal.se/smash/get/diva2:754813/FULLTEXT01.pdf> (last accessed 1 June 2015).
 - ² For a definition of integrating a gender perspective see United Nations, *Beijing Platform Declaration and Platform for Action*, adopted at the Fourth World Conference on Women, 27 October 1995, A/CONF.177/20 (1995) and A/CONF.177/20/Add.1 para. 38, available at: <http://www.un.org/womenwatch/daw/beijing/pdf/BDPfA%20E.pdf> (last accessed 26 June 2015).

they operate and the impacts of the mission on them. Applying a gender perspective on the collection and analysis of data contributes to a more detailed picture of the whereabouts of the local population and the situation at hand. The ability to feed in disaggregated information on the basis of gender into the planning processes provides a more detailed picture for the decision makers that could have significant impacts on mitigating the damage and loss to civilian property and lives. In addition, it is crucial to base a decision to attack during dynamic targeting on the best available information,³ in which applying a gender perspective may impact on the actual execution of that attack. It may also impact on how the principles of distinction⁴ and proportionality⁵ are implemented in a particular targeting decision, for example identifying individuals in the local population who are vulnerable or are directly participating.⁶ As such, incorporating a gender perspective can strengthen compliance with the law.

GFAs have been operational in the Swedish Armed Forces troop contributions to international missions since 2007, first deployed as part of the EU mission in Chad, authorised by UN Security Council Resolution 1778. At the time this research was undertaken twenty GFAs had been involved in international missions conducted by the Swedish Armed Forces, including the International Security Assistance Force (ISAF) in Afghanistan.⁷ Importantly for the purposes of the study, the Swedish Armed Forces largely operated within an IHL framework in the Afghanistan operation from summer 2010. Since that time until December 2013 six GFAs had been deployed with the Swedish Armed Forces' contingent in intervals of six months. The experience of these particular six GFAs provided an opportunity to measure and analyse the possible impact of incorporating a gender perspective on the implementation of IHL.

Analysing the impact of GFAs on processes implementing IHL

In 2014 the International Law Centre of the Swedish Defence University published a report analysing the work of GFAs in operational processes to identify any early conclusions on this possible impact. Although the GFAs' role is clearly not focused on the implementation of IHL, nor are they the only component responsible for incorporating a gender perspective, their work could potentially impact on this area and, as such, is of interest. Seeing how the GFAs' engagement in processes involving the implementation of IHL requirements gives an indication of the impact of their work on incorporating the legal standards and to ascertain

³ See ICRC database of Customary International Humanitarian Law (ICRC Customary Rules database), Rule 15 with commentary.

⁴ ICRC Customary Rules database, Rules 1, 5 and 9.

⁵ ICRC Customary Rules database, Rule 14.

⁶ ICRC Customary Rules database, Rule 6.

⁷ At the time of writing the original study, thirteen GFAs had been deployed in the contingent attached to the ISAF operation, three in the Nordic Battalion Group, two to the Swedish contribution to the EU training mission in Uganda, one to the Democratic Republic of the Congo and one to NATO (SHAPE).

if their advice/involvement was having any impact on these processes. From this, we hypothesised that some early conclusions should be able to be drawn on the impact of this work in incorporating a gender perspective has on the implementation of IHL.

The report's findings are based on the final reports of GFAs sent to the Swedish Armed Forces headquarters at the end of their deployment in Afghanistan, made available to the authors to enable the study to be undertaken, and a subsequent questionnaire sent to GFAs. A questionnaire was designed in an effort to illicit further information on specific aspects relevant for the implementation of IHL.⁸ The questions focused on the involvement of the GFAs in processes within the operation that included the implementation of IHL. The final data covered the experience of GFAs from the period of December 2010 to December 2011 and May 2012 to May 2013.⁹

Findings

The data collected revealed a mixed picture on the way GFAs have impacted on areas within the operations of the Swedish contingent in Afghanistan where IHL standards were implemented. However, it was evident that where the work of GFAs did impact on these areas and that this had a positive effect on compliance with the legal requirements.

A key finding of the study is that the advice given by GFAs has impacted on the protection of the civilian population and in reducing the effects of the conduct of hostilities on them. One of the fundamental philosophies behind IHL is to reduce the impact of hostilities on those who do not participate. As such, civilians, civilian objects and the civilian population are protected under IHL.¹⁰ States have positive obligations to reduce impacts on civilians not only in conducting of attacks, but also in relation to protecting civilians from the conduct of hostilities.¹¹ Whilst the study did not distinguish between missions within the operation that were governed by IHL and those that were not, the responses to the questionnaires do indicate that there were some discernible effects as a result of the GFAs' advice.

Significantly, the data gathered provides some examples of where adherence to the required standards has been influenced by advice on and the incorporation of a gender perspective in the conduct of the operation. One questionnaire result gives the example of advice given concerning integration of Afghan female police officers in search operations to ensure they were performed in a more culturally correct way, and supporting a "softer

⁸ See Longworth & Engdahl (2014), Annex A. The Swedish Armed Forces headquarters also provided copies of a number of operational documents relating to the work of GFAs and incorporating a gender perspective within mission. For a full list see further section 1.1 of the original report.

⁹ There are a number of limitations in this study, including time and the number of participants.

¹⁰ ICRC Customary Rules database, Rules 1, 5 and 9.

¹¹ ICRC Customary Rules database, Rules 14-22.

approach” towards population. Advice was also given on the structure of populations in villages, their life and needs, and estimated negative consequences for men, women and children of suggested operational design (such as the use of heavy vehicles in sensitive areas related to time of year, state of road and transport need, i.e., schooling routines for girls/boys and women’s access to medical treatment/maternal care). Although these are only a few examples, it does indicate the potential of GFAs’ advice on strengthening the implementation and adherence to IHL within a mission.

Effects on the civilian population and conduct of the operation

As a general conclusion from the data gathered, GFAs advice does appear to have had more impact on information gathering, which has follow effects of leading to better implementation of the IHL standards. One example of this given was very good cooperation that was established with local school personnel in a village located in an area of notorious unrest, apparently resulting from advice from the GFA. Such cooperation could have an indirect impact on the protection of the civilian population generally and particularly in relation to children.

The targeting processes

Related to this, the questionnaires reveal that GFAs have had a greater impact in incorporating a gender perspective in the targeting process for psychological operations and information operations than other types of operations. This included advice on outreach to the whole population, which contributed to a greater situational awareness and may then have had subsequent impacts on the implementation of IHL in the wider operation and other missions. When it comes to dynamic targeting, the GFAs appear to have had limited to no impact. Targeting processes is a key area where IHL is incorporated in the mission and thus an area where GFAs could also impact on how these standards are implemented. There is a significant potential for important considerations relating to the legal requirements that are potentially missed in this process if a gender perspective is not included.

Planning processes

Another area where the work of GFAs has impacted processes implementing IHL standards is in planning. Incorporating a gender perspective in the planning processes may impact on how these standards are implemented within a particular planned mission and thus further adherence to IHL.

The questionnaire responses indicated that GFAs were having an impact in the planning processes, although this experience was somewhat varied. The answers, however, indicate that GFAs were involved to a more limited extent within tactical planning compared with the higher operational level. This subsequently restricted their impact within the process.

However, one answer highlighted work with the rifle company in a provisional office in a more informal setting that had significant impacts on the understanding of gender and implementation of these standards in the field.

The reports and questionnaires all point to a lack of appreciation by others within the mission of the benefits of incorporating a gender perspective in their work and how and where this could be done. This working culture could have impacted on the GFAs' advice being sought during planning processes, as well as in other areas where IHL is implemented in the mission. However, where the GFA was involved, it does appear from the reports and questionnaires to have had positive results.

One response indicated that their advice in planning was only able to influence composition of personnel on missions. Gender equality and gender mainstreaming are differentiated from incorporating a gender perspective in the Swedish model of military operations.¹² This and other answers given to the questionnaires indicates, however, that gender balance of personnel in the operation can contribute to ensuring that a gender perspective is incorporated in the mission, for example, relating to gathering further information to contribute to the knowledge of the local environment. It was also highlighted that the use of female soldiers in operations resulted in different information being given by members of the local population they encountered, and even suggested that it was easier for female soldiers to talk to both men and women compared with their male counterparts. This has follow on effects for the better implementation of IHL requirements through increased awareness.¹³ However, it remains crucial that all those participating in the mission understand what is meant by "incorporating a gender perspective" and what the aim of doing so is, so as not to confuse this with other related, but different concepts.

Means and methods

GFAs had considerably less impact on the means and methods adopted in the operation. The right of parties to an armed conflict to choose methods or means is not unlimited.¹⁴ The impact of a particular means or method may have different implications for men or women in a given society, which impacts on the lawfulness of its use. GFAs' main influence in this area has been to influence composition of forces in missions, so as to include more female personnel and/or female interpreters. However, although there were some indications that there had been situations in which some of the GFAs may have influenced the choice of

12 For definitions, see Longworth & Engdahl (2014), pp 10-12.

13 A number of reports received from the Swedish Armed Forces highlight that calls on local actors to take into consideration gender aspects were undermined by the fact that the unit advocating this approach was not itself representative of gender equal numbers in personnel.

14 Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Armed Conflicts (AP I), Art. 35(1).

means and methods, beyond this GFAs do not appear to have had a significant influence on the means and methods used in the operations. The incorporation of female personnel and interpreters following advice from the GFAs does, however, appear to have impacted on situational awareness and, in some cases, this impacted on the conduct of such missions as a result of this information. This may have indirect effects on the implementation of IHL requirements.¹⁵

Analysis of mission

Similarly, results were mixed as to the extent gender perspective contributed to analysis of the mission. An understanding of gender dynamics and their impact on society before and during a conflict, will affect the overall operation of the mission and the solutions implemented in order to resolve the conflict.¹⁶ Whilst one questionnaire indicated that next to no analysis of the mission was done relating to a gender perspective, another indicated that a gender analysis was integrated in every step of the planning process and led to a distinct change in approach towards the local population. This is an area in which the role of gender can have a clear impact on understanding the context in which the conflict is taking place and the root causes of the conflict.

Conclusions

It is difficult to measure the impact of incorporating a gender perspective on the implementation of IHL. There may be indirect impacts of this work that cannot be traced here; for example, furthering the mandate, general awareness raising and understanding within the mission, legitimacy of the mission and follow-on effects to the relations with the local population, which may also impact on human rights. Nonetheless, it is clear that the work of GFAs had an impact on the Swedish conduct of the operation in Afghanistan. GFAs were involved in processes that involved the application of IHL and in doing so will have contributed to the implementation of IHL. However, the results are mixed as to the extent of this impact. Further evidence over a longer period of time would be necessary to assert this more concretely. It can be said that the potential of GFAs in these areas appears not to have been fully realised. Whilst the data gathered is limited, the examples included do highlight the potential added value of integrating a gender perspective regarding compliance with IHL, and areas have been identified where this could be increased.

¹⁵ It is critical in this, however, to ensure that such personnel are not themselves exposed to greater risk of harm by being involved in the mission. Two of the four questionnaire results indicated that female interpreters were harassed by local male individuals and even Afghan National Security Force members.

¹⁶ Lackenbauer, & Langlais (2013), p. 48-50. For more on this in the Afghanistan context, see pp. 31-34. Available online at: http://www.nato.int/nato_static/assets/pdf/pdf_2013_10/20131021_131023-UNSCR1325-review-final.pdf (last accessed 26 June 2015).

The potential role of GFAs in contributing to the implementation of IHL within the mission

The advice of a GFA may be of considerable importance in the application of IHL. In particular, the assistance of individuals with specific training and understanding in the structures, roles and values of the population in operational processes could particularly impact on the protection of those not participating in the hostilities. Applying a gender perspective in the strategic and tactical planning of operations, analysis of the mission, targeting processes, and in the choice of means and methods of warfare may contribute to a better understanding of the situation and thus assist in deciding when and how military objectives should be attacked. It may result in additional information and knowledge of vulnerable groups in the area of an armed conflict, thus contributing to increased compliance, such as through the reporting of war crimes.

It is important to understand the context in which GFAs operate, so as not to overstate the potential role of GFAs in contributing to implementing IHL requirements. A GFA's role is clearly not primarily nor wholly concerned with the application of IHL – unlike, for example, the legal adviser – and as the GFA's role is new, it is important that the expectations of the role are realistic. In addition, most of the impacts of the GFA's role on the implementation of IHL are likely to be more indirect and thereby very difficult to measure. However, incorporating a gender perspective in operational processes may lead to a better understanding of the context in which to apply IHL standards or even how to apply those standards in a given situation, and as the gender expert on the mission the GFA should be best placed to advise on such matters. This demonstrates the way in which the two specific roles of legal adviser and gender adviser can support each other in the mission, whilst also highlighting the specific and different roles of each.

Understanding “a gender perspective” throughout the operation

In UN Security Council Resolution 2106 (2013) operative paragraph 8 “[r]ecognizes the distinct role of Gender Advisors in ensuring that gender perspectives are mainstreamed in policies, planning and implementation by all mission elements.” This is reflected in Swedish Armed Forces’ description of the role as “directly supporting the commander in the planning of operations, by implementing a Gender Perspective in the operational work.”¹⁷ Operations are a broad concept including a variety of actions. However, the data shows that the work of GFAs in key areas where IHL regulates the conduct of the operation has been limited and will thereby have influenced the extent to which a gender perspective impacts on the implementation of IHL. Other research has also indicated that the role of GFAs in operational processes could be improved.¹⁸ Further elements outlined below may also

¹⁷ See Egnell et al (2012) p. 47, available online at: http://media.wix.com/ugd/012b60_0f44d6fb686dca7db5637212f5d87380.pdf (last accessed 26 June 2015).

¹⁸ Egnell et al (2012); Lackenbauer & Langlais (2013).

contribute to why the role of GFAs in operational processes has been limited. However, it seems reasonable to suggest that the impact on the implementation of IHL that is evident from this involvement will increase with the greater involvement of GFAs in operational processes.

It is evident from the responses that there is a general lack of understanding from all within the mission of how gender should be incorporated and how others within the mission should work with / receive support from the GFA and the benefits of this, which has significantly impacted on the GFAs' ability to carry out their role. This hinders the GFAs' work and any further impact on the implementation of IHL. Based on the data gathered and the conclusions of previous research, it is apparent that this is perceived to be the responsibility of the GFAs only.¹⁹ As with many other elements within a mission, all involved bear a responsibility to a great or lesser extent. For example, all military personnel are required to have training in IHL and must take legal requirements into consideration when conducting their work.²⁰ The commander of the mission is responsible for the general conduct of the mission, whilst individuals in the missions are also accountable for their individual acts or omissions. When it comes to impacting on the implementation of IHL, it is clearly critical that those whose roles involve the implementation and application of IHL have a clear appreciation of the role of GFAs and how GFAs can support their work. It is furthermore critical that those with responsibility for the mission as a whole appreciate and understand their responsibility of ensuring that a gender perspective is properly incorporated within that mission.

Realising the potential - training GFAs in IHL

It is also clear from the responses received that GFAs themselves have not yet a full appreciation of how their work could impact the implementation of IHL.²¹ This may be because the majority of operations involving GFAs have not involved the application of IHL. Whilst it is only in exceptional situations that military forces involved in peace operations become involved in an armed conflict, and the application of IHL is thus the exception rather than the rule, ISAF's operations were such an exception. To ensure GFAs have a full understanding on the potential impact of their work on IHL, further training and education of GFAs in IHL matters would assist. This is the paramount conclusion that can be drawn from the data.

¹⁹ Egnell et al (2012), p. 89.

²⁰ Geneva Convention (GC) I, Art. 47; GC II, Art. 48; GC III, Art. 127; GC IV, Art. 144; AP I, Art. 83; Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts, Art. 19; ICRC Customary Rules database, Rule 142.

²¹ One report stated that the task of the GFA was to integrate gender mainstreaming in all operational and tactical activities. Other questionnaire responses implied that GFAs had not got involved in some areas as they related purely to security situations.

Such training would enable GFAs to see how their work relates to and can contribute to the implementation of IHL, such as the choice of means and methods. These choices may not be necessarily motivated by a gender perspective, but motivated more by requirements of IHL. However, a particular choice made could have impacts on men, women, boys and girls in a given context that should also be taken into account. Specific knowledge about the basic principles of IHL, such as the principles of distinction, proportionality and precaution, is necessary to enable the GFA to become an effective component in the operational planning. Training and education on IHL would also be needed in relation to the specific protection of women, such as in situations of detention, as well as understanding how such situations affect men. A greater understanding of the requirements of preventing and reporting war crimes combined with a greater understanding of the vulnerability of certain categories of civilians during armed conflict would also require specific education in IHL questions. This is not a suggestion that the role of the GFA should be changed. It is rather a recommendation to help GFAs fulfil their current role in advising on incorporating a gender perspective in the operational processes.

REFERENCE LIST

Egnell, Robert, Hojem, Petter & Berts, Hannes (2012). *Implementing a Gender Perspective in Military Organisations and Operations: The Swedish Armed Forces Model*, Uppsala: Uppsala University.

Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949, 75 UNTS 31 (GC I)

Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of 12 August 1949, 75 UNTS 85 (GC II)

Geneva Convention Relative to the Treatment of Prisoners of War of 12 August 1949, 75 UNTS 135 (GC III)

Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 12 August 1949, 75 UNTS 287 (GC IV)

Lackenbauer, Helene & Langlais, Richard, eds (2013). *Review of the Practical Implications of UNSCR 1325 for the Conduct of NATO-led Operations and Missions*. Stockholm: Swedish Defence Research Agency (FOI).

Longworth, Sally Alexandra & Engdahl, Ola (2014). *Getting perspective: Incorporating a gender perspective and the impact on international humanitarian law*. ILC Report no 2 2014. Stockholm: FRC Folkrättscentrum.

Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Armed Conflicts, 1125 UNTS 3. (AP I)

Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts, 1125 UNTS 609. (AP II)

CHAPTER 13

The Swedish Gender Coach Programme¹

Cpt Anna Björsson, Gender Advisor in the Swedish Armed Forces

One contribution to Sweden's larger commitment to increasing knowledge about gender perspectives within on key actors and authorities is the Swedish Gender Coach Programme. This programme is an innovative approach to improving the gender-responsiveness of security and humanitarian agencies, through improving skills and fostering commitment among the senior leadership in these agencies. The programme is often cited as an example of best practice, given its success in increasing the visibility and weight accorded to gender equality considerations in the Swedish Armed Forces. Its renown has been bolstered by the fact that its first iteration involved the Supreme Commander and the Head of the Swedish Armed Forces Headquarters. Notably, however, the programme has had an impact on the institutions as a whole, not only the top leadership.

Institutional background

The Swedish Gender Coach Programme was run for the first time in 2007 within the framework of a project called Gender Force Sweden – a cooperative initiative between security sector institutions and non-governmental organisations active in the field of international relief operations and post conflict peacekeeping missions. Gender Force was active between 2004 and 2007, and involved the Civil Contingencies Agency, the Swedish Armed Forces, the Association of Military Officers in Sweden, the Swedish police, the Women's Voluntary Defence Organisation, and the Kvinna till Kvinna Foundation.

¹ This text is adapted from Annex E of Security Sector Reform Working Group and Education Development Working Group of the Partnership for Peace Consortium of Defense Academies and Security Studies Institutes "Gender-Responsive Evaluation in Military Education: Fourth Workshop on Teaching Gender to the Military", Workshop Report (Geneva: DCAF, 21-24 July 2014). It is based on the Key Note Speech delivered at the event by Cpt Anna Björsson, Gender Advisor in the Swedish Armed Forces. Available at: <http://www.dcaf.ch/Event/Gender-Responsive-Evaluation-in-Military-Education-4th-Workshop-on-Teaching-Gender-to-the-Military> (last accessed 6 October 2015)

After 2007, the project has evolved into a cooperation between the Swedish Armed Forces, Civil Contingencies Agency, Folke Bernadotte Academy, the Swedish police, and the Swedish International Development Agency (Sida). Kvinna till Kvinna plays an advising role in the cooperation. The purpose of the cooperation is to promote and strengthen the agencies' work on gender equality and implementation of UN Security Council Resolution 1325 and related resolutions. The agencies have run the Gender Coach Programme again in 2013 and 2014.

Aims of the programme

The overarching aim of the Gender Coach Programme is for leaders within security and humanitarian agencies to increase their competence and ability to integrate a gender perspective in their organisation in all national and international activities.

More specifically, the aim for the leaders is to increase their capacity to implement gender equality laws and policies, and a gender perspective in their daily work. The programme equips the leaders to meet their organisation's obligations set out in the National Action Plan to implement UN Security Council Resolution 1325. This can help to improve their ability to deal with organisational obstacles to gender mainstreaming and implementation of UN Security Council Resolution 1325. The participants of the programme will develop individual action plans on gender mainstreaming and for the implementation of UN Security Council Resolution 1325 within the areas of responsibility of the individual leader. Finally, the personal action plans developed should be implemented.

Mechanics and approach

The Gender Coach Programme offers the senior leadership within security and humanitarian agencies an exclusive opportunity to develop their competence on gender mainstreaming and implementation of the Security Council resolutions on Women, Peace and Security (WPS). The programme aims to develop knowledge and skills on gender mainstreaming. It further aims to create a network of peers around the topic of gender for both individual support and to facilitate inter-agency cooperation. Targeting leaders for coaching is expected to result in tangible outcomes as regards to gender equality and implementing the WPS resolutions within their fields of responsibility.

Leaders are assigned personal coaches chosen from collaborating agencies, including from the civil society, for their expertise in the field of gender mainstreaming. The leaders hold regular one-on-one meetings with their coaches, but they also attend, as a group, four gender seminars with both gender coaches and institutional gender advisors present. In the framework of coaching meetings and seminars, the leaders develop individual gender mainstreaming action plans, which are followed up on the following year. The action plans must be specific to the functions and areas of responsibilities of the individual in

question and their organisation.

The approach of the gender coaching programme is seen as an educational process seeking to achieve transformative learning, targeting both cognitive and affective domains. In other words, the programme aims to both transform mindsets and equip participants with the capacity to make a difference. The approach involves a transactional model of learning, in which those being coached are encouraged to examine how their own personal frames of reference influence their thinking, beliefs and actions. The role of the dialogue with the coach is crucially important to this transactional model of creating knowledge, skills and attitudes for integrating gender equality. This process is facilitated by the fact that the coaches have a similar level of seniority to the leaders they work with – the coaches are senior professionals from different organisations – and are thus able to work with senior leadership on an equal footing.

Best practices

The Gender Coach Programme has been successful due to a variety of factors. Some of the best practices that contributed to the success are:

- ✓ Involving high leadership and those on an upward career track lends additional status and demand to the gender coaching programme.
- ✓ Good match-making to pair leaders with coaches that they have a good rapport with.
- ✓ Using established networks of coaches and subject matter experts to ensure coaches have a high level of seniority and expertise.
- ✓ Involving leaders at the same level from different organisations to share experiences and ideas.
- ✓ Bringing the leaders out of their usual environment by scheduling meetings and seminars outside their usual workplace.
- ✓ Using a mix of coaching, education and seminars.
- ✓ Involving permanent subject matter experts from the leader's organisation in the process.
- ✓ Ensuring that the programme is continuously evaluated and that the participants are held accountable for implementing what they have learned.

Lessons learned

The multiple iterations of the Gender Coach Programme have also pointed to some lessons learned of which a few are presented below.

It has shown that it is essential that the planning and scheduling of the programme start well ahead of time to ensure the availability of senior leadership. Full time administrative support is required for the activities, and the programme should follow the activity or business year. The programme coordinators must monitor the progress between the coach and the leader continuously.

As for ensuring a good rapport between the coach and the coached, some initial directions must be given. For example, the meetings should be structured, and the expectations should be clear from the outset in relation to the topics to be covered. However, the coach and the coached should keep the freedom to choose how to structure the process.

The individual action plans must be accepted and grounded and also be realistic in the work environment of the coached. We have also found that a parallel educational programme for the personnel at the institution of the coached helps to institutionalise changes.

Finally, during the seminars, critiques should be general, and blaming one organisation should be avoided.

V. WHAT CAN A GENDER PERSPECTIVE ENTAIL IN RELATION TO WEAPONS?

CHAPTER 14

Mice and (wo)men with head trauma

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Weapons and trauma related research

Knowledge of the impact that the different means and methods of warfare have on both directly targeted individuals and those impacted as “collateral damage” is important information in the planning, implementation and evaluation of military operation. As argued in other articles in this publication, such impact might be gendered. The diverging impact of a weapon or ammunition on men and women respectively might e.g. be a result of what protection device is at hand or where men and women are situated in relation to a detonation, due to expected roles, and patterns of behaviour. Recent research from Karolinska Institutet in Sweden has showed that differences in impact can also be due to biological differences between men and women. This article presents novel Swedish research on traumatic brain injury with bearing on penetrating injuries in armed conflict. This research is financed by the Swedish Armed Forces and is part of an effort to prevent injuries, develop better methods for diagnosis and to identify suitable options for treatment of injuries from weapons. The research group also provides data for the Swedish legal review of new weapons means and methods of warfare¹ according to Article 36 of Protocol Additional to the Geneva Conventions of 12 August 1949 (AP I).

¹ The Swedish Delegation for International Law Monitoring of Arms Projects

Physical trauma is often referred to as a dominating cause of death and disability in people below the age of 40. Actual numbers are calculated yearly by different organisations. The numbers vary, probably as a result of different methods for calculation. As estimated by World Health Organization (WHO) about 5.8 million people die each year as a result of injuries. This accounts for 10 per cent of the world's deaths, 32 per cent more than the number of fatalities that result from malaria, tuberculosis, and HIV/AIDS combined². The three leading causes of injury and violence-related deaths globally as estimated by The Centers for Disease Control and Prevention in USA (CDC) are road traffic incidents were estimated to be around (1.3 million), suicides (844,000), and homicides (600,000)³. The number of deaths from trauma in relation to armed conflicts is likely to vary from year to year. The WHO reported 155,000 deaths in war among men and 17,000 in women in 2002. Thus, it is obvious that physical trauma is a large global health problem and a major cause of deaths.

Traumatic brain injury

Traumatic brain injury (TBI) accounts for a large part of the trauma induced deaths. Approximately 53,000 persons died in the USA from TBI-related injuries annually during 1997–2007. The rate of TBI deaths was around three times higher among males (28.8 per 100,000 population) than among females (9.1)⁴. CDC reported has reported that the total combined rates for traumatic brain injury-related emergency department visits, hospitalisations and deaths have increased over the past decade from 521.0 per 100,000 in to a rate of 823.7 per 100,000⁵. The Department of Defense in US has reported 327,299 incidents of TBI between January 1, 2000 and May 15, 2015⁶. The number of reported injuries started to increase in 2007 due to a more systematic screening for mild TBI. It can be assumed that the incidence of mild TBI has been underestimated in many data sets.

TBI is usually classified as mild, moderate or severe. TBI can also be focal or diffuse. One way to classify TBI is to distinguish between closed and penetrating injuries. Penetrating injuries are often the result of bullets from firearms or fragments from explosions. The incidence of penetrating injuries is higher in armed conflicts, but there is also a high incidence of civilian penetrating injuries, due to criminal activity in certain areas. Closed injuries vary from mild to severe. The effect to the primary TBI can be worsened by secondary injuries, that can be caused by bleeding, swelling of the brain, inflammation etc. There are still few effective pharmacological drugs for treatment of such secondary insults.

2 WHO (2010), *Injuries and Violence. The facts*. http://whqlibdoc.who.int/publications/2010/9789241599375_eng.pdf?ua=1 (last accessed 6 October 2015)

3 <http://www.cdc.gov/nchs/fastats/default.htm> (last accessed 6 October 2015)

4 <http://www.cdc.gov/mmwr/preview/mmwrhtml/ss6005a1.htm> (last accessed 6 October 2015)

5 <http://www.cdc.gov/traumaticbraininjury/data/rates.html> (last accessed 6 October 2015)

6 <http://webcache.googleusercontent.com/search?q=cache:TFeTaUxMx6YJ:https://www.fas.org/sgp/crs/natsec/RS22452.pdf+&cd=7&hl=sv&ct=clnk&gl=se> (last accessed 6 October 2015)

Mild TBI, or concussion, is the dominating type of TBI. It is usually caused by acceleration deceleration movements during rotation of the head and brain, e.g., due to a fall injury. Such injuries can also result in more severe types of TBI with so called diffuse axonal injuries (DAI), in other words, injuries to the nerve fibre tracts in the brain. TBI is usually classified as mild if loss of consciousness and/or confusion and disorientation is shorter than 30 minutes. However, the definition for mild TBI has shifted during recent years. It is expected that computed tomography (CT-scan) of the brain is normal and that the symptoms are the result of a transient dysfunction of the brain. However, recent studies imply that there may be small structural lesions in the brain even after mild TBI. Most patients recover completely from a concussion, but there is also a large number of cases with chronic symptoms such as mood changes, sleep problems, concentration problems, vertigo and headache. One concern with mild TBI is the consequences of repeated mild TBI. Data from athletes in American Football and professional ice hockey indicate that repeated concussions can lead to degenerative disorders⁷ such as the Chronic Traumatic Encephalopathy (CTE) which is a progressive degenerative disease of the brain.

TBI, blast injuries and armed conflicts

TBI in armed conflicts has changed during recent years. The proportion of injured military personnel that survive TBI after exposure to weapons has increased. Improvements in body protection and treatment are important factors. Modern helmets can provide better ballistic protection. Recent conflicts in Iraq and Afghanistan have had a higher proportion of attacks with improvised explosive devices than before. Thus, so-called blast injuries have been identified as signature injuries for these conflicts rather than bullet penetration injuries that were important in sniper attacks during the 90-ties.

Blast injuries are the combined result of several mechanisms with very high energy transfer, compared to civilian injuries. There are three types of blast injuries: primary blasts, secondary blasts, and tertiary blasts. They usually occur at the same time, but each of these three mechanisms may require a separate type of protection to prevent from injury. The supersonic blast wave with a rapid and highly transient increase in pressure is often referred to as primary blast. This pressure wave can induce bleedings in internal organs, in particular those that contain air such as the lungs and the gastrointestinal tract. The effect in the brain is still debated. One important mechanism for the primary blast wave is probably systemic inflammatory reaction that may affect the brain directly or indirectly.⁸ The interaction between this pressure wave and modern body protection is still poorly understood. Secondary blast injuries are caused by fragmentation and other objects propelled by the explosion. Modern helmets, body armour and protected military

⁷ Turner et al (2012); Smith et al (2013)

⁸ Cernak (2010)

vehicles provide improved protection against such penetrating injuries. In the case of civilians exposed to blast injuries, such as victims of IED in buses or victims from attacks of suicide bombers, the situation is clearly worse and penetrating injuries can be a dominating cause of death in such situations. Acceleration injuries are referred to as tertiary blast. Rotational acceleration of the head relative to the body can result in DAI lesions to the nerve fibre tracts in the white matter of the brain.⁹ Other injury mechanisms in blast, such as heat and gas emission are called quaternary blast.

Blast injury is not a new problem. The large battles in Flanders during First World War resulted in enormous numbers of victims from blast. Apart from traumatic amputations, fragment penetration etc. also psychiatric symptoms were identified. Such reactions were often called the Shell shock syndrome, a term to describe the reaction of fighting and bombardment that produced a symptoms as panic, inability to reason, sleep, walk or talk. In later conflicts such as Second World War the terms Combat stress reaction and Combat fatigue seem to have been used to describe similar reactions. There is a significant overlap between combat stress and post-traumatic stress disorder (PTSD), although it is often claimed that combat stress should be used for more acute reactions. There was a debate already during First World War whether the shell shock syndrome was an organic injury or primary a psychiatric illness. It is obvious today that there is an overlap in symptoms between PTSD and mild TBI. Recent studies in rodents show that primary blast can induce changes in the same signal systems of the brain as in stress disorders.¹⁰

Sex or gender differences

It is difficult to extract enough detailed information about mechanisms for TBI from clinical populations, although they occur in high numbers. Patients vary in age, sex, genetic background and health aspects such as other deceases. Also the physical forces during the trauma are difficult to compare from one incident to another. Reliable exposure data are generally lacking. For that reason animal studies are important. Age and sex can be defined. Genetic variation is often much smaller than in human populations. The scientist can use models that are well known from previous studies and they can have a very good control of physical properties (speed, acceleration etc.) during the trauma event.¹¹ Thus, the experimental setup can in many cases reduce the impact of unknown factors and individual variation. This gives

⁹ Risling et al (2011); Davenport et al (2015).

¹⁰ Kawa et al (2015).

¹¹ Risling & Davisson (2012)

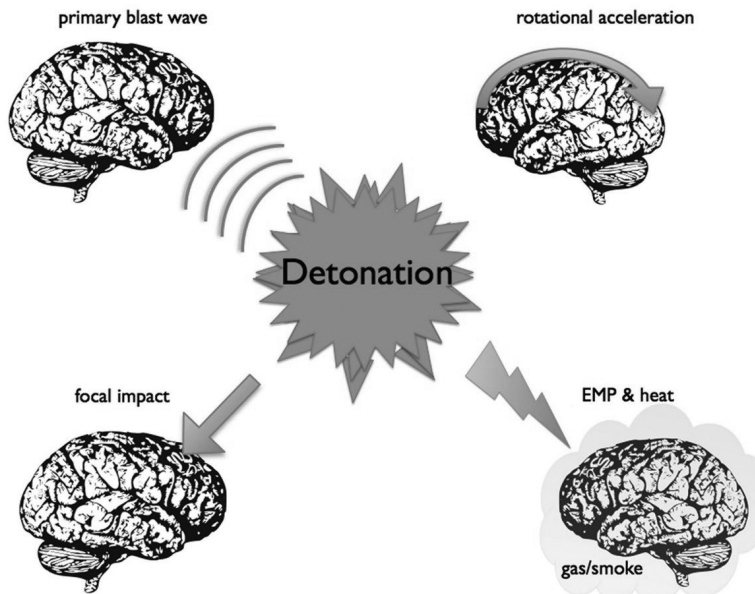


FIGURE 1 | A schematic representation of some of different mechanisms for blast-induced TBI.¹²

the researcher the possibility to make conclusions from a smaller population. However, it is difficult to translate between animal experiments and real life clinical cases. The experimental animals (usually mice or rats) are smaller and have a less complex brain. The estrus cycle in rodents is very different from the situation in human females.

Are there sex or gender differences after TBI? For this context we assume that sex differences in humans generally refer to differences that are sexually dimorphic represent actual biological variances between the sexes. For the purpose of this paper, the term gender differences refers to average differences between males and females that are due to differential socialisation. The differences in number of victims of TBI between males and females can then be assumed to be a gender difference in terms of behaviour. Males are assumed to show a higher degree of risk taking which may have consequences in road traffic or interest for contact sport such as ice hockey. Such differences could have a biological substrate in terms of sexual dimorphism of the brain.¹³ In this context though we focus on biological differences in terms of the reactions of the brain tissue to TBI. A number of clinical studies have suggested a better outcome after TBI in female patients.¹⁴ It has also

¹² From Risling & Davidsson (2012).

¹³ Im et al (2006); Abel et al (2011)

¹⁴ Groswasser et al (1998)

been reported that postmenopausal females have a worse outcome from TBI than younger females.¹⁵ There are also studies that indicate that males have a better outcome after TBI¹⁶ or that there are no significant differences between males and females¹⁷. A number of animal experiments also suggest differences between the sexes after TBI.¹⁸ In a recent study on penetrating TBI in rats we have observed higher incidence of cell death in male rats. We also observed that the levels an enzyme, COX2, that regulates prostaglandin synthesis and thereby inflammation are higher in the brain of the male rats after this injury.¹⁹

Thus, taken together such findings seem to imply that there are sex-specific differences in the reactions and outcome after TBI. It then seems important to reveal if there are differences between males and females that would make it for example more difficult to detect TBI in females than in men. Many argue that it is more difficult to detect myocardial infarction in females than in males. Could there be similar differences with regard to TBI? It seems also possible that methods for protection, like combat helmets are more suitable designed for males than for females. It has been extensively discussed that the reported better outcome in females after TBI is directly a function of the higher levels of hormones like progesterone in females and that progesterone could be employed as a therapeutic drug after TBI.²⁰ However, clinical tests for progesterone treatment after TBI have failed so far.²¹

Research on differences in TBI on individuals of different sex is yet a piece in the puzzle of understanding how and why armed conflict impact women and men, boys and girls differently. The fact that males are affected by TBI in higher numbers than females can be cultural gender differences, rather than a biological difference between males and females. However, the fact that many studies indicate that the outcome of TBI is better in females than in males can be related to differences in hormone levels or other biological differences. Understanding the impact of the use of weapon with both set of facts will hopefully give guidance enhancing protection for both men and women.

15 Ottochian et al (2009)

16 Kirkness et al (2004)

17 Yeung et al (2011)

18 Xiong et al (2007)

19 Gunther et al (2015)

20 Vandromme et al (2008); Stein (2011)

21 Wright et al (2014)

REFERENCE LIST

- Abel JM, Witt DM, Rissman EF (2011). "Sex differences in the cerebellum and frontal cortex: roles of estrogen receptor alpha and sex chromosome genes", *Neuroendocrinology* 93:230-240 doi: 10.1159/000324402
- Cernak I (2010). "The importance of systemic response in the pathobiology of blast-induced neurotrauma", *Front Neurol* 1:151 doi: 10.3389/fneur.2010.00151
- Davenport ND, Lim KO, Sponheim SR (2015). "White matter abnormalities associated with military PTSD in the context of blast TBI", *Hum Brain Mapp* 36:1053-1064 doi: 10.1002/hbm.22685
- Groswasser Z, Cohen M, Keren O (1998). "Female TBI patients recover better than males." *Brain Inj* 12:805-808
- Gunther M, Plantman S, Davidsson J, Angeria M, Mathiesen T, Risling M (2015). "COX-2 regulation and TUNEL-positive cell death differ between genders in the secondary inflammatory response following experimental penetrating focal brain injury in rats", *Acta Neurochir (Wien)* 157:649-659 doi: 10.1007/s00701-014-2331-2
- Im K, Lee JM, Lee J, Shin YW, Kim IY, Kwon JS, Kim SI (2006). "Gender difference analysis of cortical thickness in healthy young adults with surface-based methods", *Neuroimage* 31:31-38 doi: 10.1016/j.neuroimage.2005.11.042
- Kawa L, Arborelius UP, Yoshitake T, Kehr J, Hokfelt T, Risling M, Agoston D (2015). "Neurotransmitter Systems in a Mild Blast Traumatic Brain Injury Model: Catecholamines and Serotonin", *J Neurotrauma* (in press) doi: 10.1089/neu.2014.3669
- Kirkness CJ, Burr RL, Mitchell PH, Newell DW (2004). "Is there a sex difference in the course following traumatic brain injury?", *Biol Res Nurs* 5:299-310 doi: 10.1177/1099800404263050
- Ottochian M, Salim A, Berry C, Chan LS, Wilson MT, Margulies DR (2009). "Severe traumatic brain injury: is there a gender difference in mortality?", *Am J Surg* 197:155-158 doi: 10.1016/j.amjsurg.2008.09.008
- Risling M, Davidsson J (2012). "Experimental animal models for studies on the mechanisms of blast-induced neurotrauma", *Front Neurol* 3:30 doi: 10.3389/fneur.2012.00030
- Risling M, Plantman S, Angeria M, Rostami E, Bellander BM, Kirkegaard M, Arborelius U, Davidsson J (2011). "Mechanisms of blast induced brain injuries, experimental studies in rats", *Neuroimage* 54 Suppl 1:S89-97 doi: 10.1016/j.neuroimage.2010.05.031
- Smith DH, Johnson VE, Stewart W (2013). "Chronic neuropathologies of single and repetitive TBI: substrates of dementia?", *Nat Rev Neurol* 9:211-221 doi: 10.1038/nrneurol.2013.29
- Stein DG (2011). "Is progesterone a worthy candidate as a novel therapy for traumatic brain injury?", *Dialogues Clin Neurosci* 13:352-359
- Turner RC, Lucke-Wold BP, Robson MJ, Omalu BI, Petraglia AL, Bailes JE (2012). "Repetitive traumatic brain injury and development of chronic traumatic encephalopathy: a potential role for biomarkers in diagnosis, prognosis, and treatment?", *Front Neurol* 3:186 doi: 10.3389/fneur.2012.00186

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Vandromme M, Melton SM, Kerby JD (2008). "Progesterone in traumatic brain injury: time to move on to phase III trials", *Crit Care* 12:153 doi: 10.1186/cc6899

Wright DW, Yeatts SD, Silbergleit R, et al. (2014). "Very early administration of progesterone for acute traumatic brain injury", *N Engl J Med* 371:2457-2466 doi: 10.1056/NEJMoa1404304

Xiong Y, Mahmood A, Lu D, Qu C, Goussev A, Schallert T, Chopp M (2007). "Role of gender in outcome after traumatic brain injury and therapeutic effect of erythropoietin in mice", *Brain Res* 1185:301-312 doi: 10.1016/j.brainres.2007.09.052

Yeung JH, Mikocka-Walus AA, Cameron PA, Poon WS, Ho HF, Chang A, Graham CA, Rainer TH (2011). "Protection from traumatic brain injury in hormonally active women vs men of a similar age: a retrospective international study", *Arch Surg* 146:436-442 doi: 10.1001/archsurg.2011.46

CHAPTER 15

Should gender considerations impact the legal review of new weapons?

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International humanitarian law (IHL) aims at providing a minimum standard of humanity during armed conflict. Parties to an armed conflict are therefore limited in their choice of weapons, and in the means and methods of warfare they use. Limitations on the use of weapons have a long-standing history. These limitations include prohibitions on weapons that cause superfluous injury or unnecessary suffering or that are incapable of distinguishing between civilians or civilian objects and military targets. In addition, IHL prohibits or restricts the use of specific weapons such as biological and chemical weapons, anti-personnel mines and blinding laser weapons.

As a complement to, and reinforcement of, these limitations there also exists a requirement within IHL for a State to conduct a legal review of new weapons, means and methods of warfare that they are in the process of developing or acquiring. Article 36 of the 1977 Additional Protocol I to the Geneva Conventions of 1949 states:

In the study, development, acquisition or adoption of a new weapon, means or method of warfare, a High Contracting Party is under an obligation to determine whether its employment would, in some or all circumstances, be prohibited by this Protocol or by any other rule of international law applicable to the High Contracting Party.

In 1974, Sweden established a formal delegation - the Swedish Delegation for International Law Monitoring of Arms Projects - to conduct this legal review in accordance with Article 36.

Given the increased understanding of the different ways armed conflict and weapons affect men and women, it is important to understand how the legal review process could be impacted by a gender analysis. It may be argued, though, that the rationale for a gender perspective in the legal review process is of more a theoretical interest than of a practical concern. Modern weapons and ammunition contain a large amount of over-kill power, i.e., leading to differences between body mass and composition between men and women eradicated by the sheer amount of kinetic effect impacting the body. Bluntly speaking, a 45 kilogram barefoot, female fighter, and a 125 kilogram, Kevlar-vest protected, male soldier would both be killed by a direct hit by most lethal weapons and ammunitions today. Perhaps issues concerning the effects of weapons from a gender perspective simply become irrelevant?

The example above provides one aspect of the question before hand, however, the broad humanitarian scope of IHL is not covered by such rudimentary analysis. The example fails to address how the different roles, patterns and functions of men and women respectively during armed conflict lead to weapons affecting men and women differently. Nor does it grasp how gender stereotypes impact the effects of weapons in reality, or the diverging indirect and long-term effects of weapons and ammunition have on men and women respectively.

With this in mind, the Swedish Red Cross explored possible ways to further compliance with IHL from a gender perspective in the Swedish legal review of new weapons, means and methods of warfare. We specifically looked at how the Swedish review mechanism has been, or can be, impacted by a gender perspective. This chapter takes a look at the work of the Swedish Delegation for International Law Monitoring of Arms Projects between the years 2003–2013, and examines if gender analyses have been made. This article also explores how a gender analysis under Article 36 could contribute to furthering compliance with IHL.

The Swedish Delegation for International Law Monitoring of Arms Projects

Article 36 of Additional Protocol I does not specify *how* each State Party should determine the legality of the use of new weapons, means and methods of warfare that it studies, develops, acquires or adopts. It is up to each State to set up its own review mechanism. However, the obligation implies that there should be a permanent procedure that is mandatory for all arms development or procurement. Today, States differ in whether they have specific national review mechanisms, and how such are mandated and composed.

The Swedish Delegation for International Law Monitoring of Arms Projects is currently regulated through the Swedish Ordinance on International Law Review of Arms Projects (Swedish Code of Statutes 2007:936). The Ordinance stipulates that weapon projects should be examined from an international law perspective in accordance with Article 36

of Additional Protocol I. According to the Ordinance, the Swedish Armed Forces, the Swedish Defence Material Administration, the Swedish Defence Research Agency and other agencies are obliged to report all weapon projects to the Delegation.

The members of the Delegation are elected by the Swedish government and it consists of experts in international law, national law, military and medical experts and experts in arms technology. The Delegation is an independent body with a status equivalent to a government authority and it is not part of the government.

If the weapon projects assessed by the Delegation do not meet requirements within international law (i.e., not only IHL but also human rights law and disarmament law), the Delegation shall encourage or urge the authority that submitted the matter for examination to take appropriate measures (alterations to construction, limitation in the use of the weapon/ammunition, or suggest alternative weapons/ammunition) to bring the weapon in line with the requirements of international law. The Delegation does not issue legally binding decisions. It can only advise the authority that had submitted the matter for examination, or the government, on how to proceed in accordance with international law.

The Delegation's records for 2003-2013

Under the Swedish principle of public access to official documents the Swedish Red Cross requested to access the Delegation's records for the years 2003–2013.

Between the years 2003–2013, the Swedish Delegation for International Law Monitoring of Arms Projects assessed approximately 2–3 weapons projects annually. In the non-classified background material that the Swedish Red Cross had access to, there was only one case in which a gender aspect was highlighted. This related to a non-lethal radiation weapon that a US manufacturing company had identified as impacting overweight men in a specific manner. Other than this example, the Swedish Red Cross found no other background documents, assessments or decisions where possible diverging effects of weapons on individuals due to their gender or sex had been analysed in the review. It should also be noted that the format of the decisions is generally brief, and they do not reflect discussions that might have taken place within the Delegation.

Formal requirements on the review process under IHL

The Commentaries¹ to Article 36 highlight the fact that the basis for the Article was the need to establish a link between the basic rules of IHL and the introduction of a new weapon by States. The Article is intended to require States to analyse whether the employment of a weapon for its normal or expected use would be prohibited under some or all circumstances.

¹ International Committee of the Red Cross. (1987), Commentary on the Additional Protocols.

The basic order for conducting weapon reviews includes a two-step process.² First, a State must consider the international instruments to which it is a party and relevant customary international law that prohibit the use of specific weapons and means of warfare, or that impose limitations on the way in which specific weapons may be used. Second, if there is no specific prohibition or restriction to apply, the weapon or means of warfare under review and the normal or expected methods by which it is to be used must be assessed in light of the general prohibitions or restrictions provided by treaties and by customary international law applicable to all weapons, means and methods of warfare.

Such general prohibitions are primarily context-dependent, that is, their application is typically determined case-by-case at field level by military commanders taking into consideration the conflict environment in which they are operating at the time and the weapons, means and methods of warfare at their disposal. But these rules are also relevant to the assessment of the legality of a new weapon before it is used on the battlefield, insofar as the characteristics, expected use and foreseeable effects of the weapon enable the reviewing authority to determine whether or not the weapon allows for lawful use in certain foreseeable situations and under certain conditions.

The general prohibitions in treaty law include, but are not limited to;

1. Prohibition on employing weapons, projectiles and material and methods of warfare the nature of which is to cause superfluous injury or unnecessary suffering (AP I Art. 35(2)).
2. Prohibition on employing methods or means of warfare which are intended or may be expected to cause widespread, long-term and severe damage to the natural environment (AP I Articles 35(3) and 55).
3. Prohibition on employing a method or means of warfare which cannot be directed at a specific military objective and, consequently, the nature of which is to strike military objectives and civilians or civilian objects without distinction (AP I Art. 51(4)(b)).
4. Prohibition on employing a method or means of warfare the effects of which cannot be limited as required by Additional Protocol I and, consequently, the nature of which is to strike military objectives and civilians or civilian objects without distinction (AP I Art. 51(4)(c)).

² International Committee of the Red Cross. (2006), pp. 10-17.

5. Prohibition on attacks by bombardment by any method or means which treat as a single military objective a number of clearly separated and distinct military objectives located in a city, town, village or other area containing a similar concentration of civilians or civilian objects (AP I Art. 51(5)(a)).
6. Prohibition on attacks which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof which would be excessive in relation to the concrete and direct military advantage anticipated (the “proportionality rule”) (AP I Art. 51(5)(b)).
7. Prohibitions or restrictions based on the principles of humanity and the dictates of public conscience (the “Martens clause”).

In reviewing the legality of a particular weapon the reviewing authority must therefore examine not only the weapon’s design and characteristics (the “means” of warfare), but also how it is to be used (the “method” of warfare), bearing in mind that the weapon’s effects will derive from a combination of its design and the manner it is used. In this analysis, the reviewing authority will have to consider a wide range of military, technical, health and environmental factors. This is the rationale for the involvement of experts from various disciplines in the review process. As a result, a weapon used in one manner may “pass” the Article 36 “test”, but may fail it when used in another manner. This is why Article 36 requires a State to determine whether its employment would, both in some or all circumstances, be prohibited by international law. This may also lead to the reviewing authority attaching conditions or comments to the approval, that should be integrated into the rules of engagement or operating procedures associated with the weapon.

Arguments for the inclusion of a gender perspective

The wording of Article 36 and the Commentaries do not state that the legal review process should include a gender perspective. Nor does the ICRC’s “A Guide to the Legal Review of New Weapons, Means and Methods of Warfare, Measures to Implement Article 36 of Additional Protocol I of 1977” from 2006 suggest any such measures. The European Union Code of Conduct on Arms Export from 1998, the European Council Common Position on arms export controls (2008/944/CFSP) and the Swedish Ordinance on International Law Review of Arms Projects also do not explicitly mention the importance of a gender perspective. Despite the lack of explicit prohibitions on the use of specific weapons and means of warfare that have unequal gendered effects, there are compelling arguments that a gender analysis of a weapon’s effect should be conducted in the legal review process.

Compliance with IHL in general

The general principles and prohibitions found in IHL seek to limit the effects of armed conflict in order to protect people who are not or are no longer participating in hostilities. It also restricts the means and methods of warfare. How armed conflict is fought and its effects on protected persons is an ever changing process that is shaped by the means and methods used. Today, we know that men and women are impacted differently by armed conflict. Accordingly, for IHL - and its interpretation and application - to stay true to its humanitarian quest, it is important to identify and respond to the specific needs, risks and vulnerabilities brought on by conflict today for men and women respectively. This is true for IHL in general, but also of specific interest in the legal review of new weapons.

The effect of weapons is gendered

Weapons and weapons policies are inherently gendered: their use, production, marketing, and stockpiling relies upon and reinforces gender as a set of social ideas, and they differentially affect men, women, girls and boys.³ In light of this, the effects of weapons especially on civilians need to be better understood and addressed from a gender perspective. The different roles, rights, opportunities and functions of men and women in different societies impact the level and type of risk civilians face in conflict (from both immediate attacks, and the indirect and long-term effects of weapons). In addition, men's and women's respective possibilities to access both emergency medical care and long-term rehabilitation, and how they are treated by society after an injury, are similarly shaped by these structures.

The previous chapter, "Mice and (wo)men with head trauma", highlighted gendered findings in relation to research on traumatic brain injury caused by weapons, and called for increased understanding of how the immediate impact of weapons and ammunition affect men and women differently. Certain weapons also have long-term gendered impacts that needs to be identified. For example, a life span study of survivors from the 1945 nuclear weapon attacks on Hiroshima and Nagasaki in Japan found that the risk of developing and dying from solid cancer due to ionising radiation exposure was nearly twice as high for women as for men.⁴ There are both sex-specific health impacts pertaining to the biological effects of radiation, as well as gender-specific impacts due to different cultural and social roles or stereotypes based on gender.⁵ Identifying to what extent a weapon, ammunition or method or warfare has sex-specific and/or gender-specific impacts needs to be part of a gender analysis in the legal review process.

3 Article 36. (2014)

4 Ozasa, K. et al. (2012)

5 Guro Dimmen, Anne. (2014)

Another aspect is also how the legislation itself may have a gendered impact. For example, it is interesting to note that the list of things prohibited from being booby-trapped in CCW Protocol II on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices⁶ in its Article 7 include kitchen utilities and children's toys, but not agricultural equipment. In addition to leading to discriminatory protection, it also has the effect of playing into and reinforcing gender stereotypes. In the absence of a keen awareness of these aspects, we risk unequal protection of men and women, even in the cases where the law itself is gender "neutral". In addition, gender "neutral" legislation in an inherently discriminatory setting will not have a non-discriminatory effect in practise.

Increased understanding of the gendered effects of weapon

The international community's growing understanding of the diverging effects of weapons on men and women, and effort to address this, can be seen, for example, in the Arms Trade Treaty from 2013. This is the first treaty ever to recognise the link between gender-based violence and the international arms trade. The treaty also states that that civilians, particularly women and children, account for the vast majority of those adversely affected by armed conflict and violence. Similar understanding is also found in the Convention on Cluster Munitions from 2008. This convention addresses the humanitarian consequences and unacceptable harm to civilians caused by cluster munitions through a categorical prohibition and a framework for action. Article 5 of the Convention on Cluster Munitions identifies the obligations of State parties with regard to victims of cluster munitions:

Each State party with respect to cluster munition victims in areas under its jurisdiction or control shall, in accordance with applicable international humanitarian and human rights law, adequately provide age- and gender-sensitive assistance, including medical care, rehabilitation and psychological support, as well as provide for their social and economic inclusion.

The Article further outlines how State parties are to fulfil these obligations in insisting on the principle of non-discrimination and inclusion of victims in the decision-making process.

In accordance with Security Council Resolution 1325

The inclusion of a gender analysis in the legal review of new weapons, means and methods is also step towards fulfilling UN Security Council Resolution 1325 which directs all actors to incorporate gender perspectives in peace and security efforts, and the subsequent General Assembly Resolution A/RES/69/61 on Women, disarmament, non-proliferation and arms

⁶ Protocol II on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices (as amended on 3 May 1996) to the 1980 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects.

control. The General Assembly Resolution recognises that the role of women in disarmament, non-proliferation and arms control should be further developed, and in particular the need to facilitate the participation and representation of women in policymaking, planning and implementation processes related to disarmament, non-proliferation and arms control. Needless to say, ensuring participation of both men and women in the review process is in itself a step towards fulfilling UN Security Council Resolution 1325, but equal participation may also lead to an enhanced and broadened perspective of the impact of gender in the legal review process.

Practical guidance on the inclusion of a gender perspective in the review process

The mandate for the legal review process is to ensure compliance with existing rules and prohibitions in IHL and other relevant areas of international law. Clearly, not many explicit prohibitions related to gender exist today. However, in order to stay relevant to the effort to limit the humanitarian consequences of armed conflict, IHL must be understood and analysed in a broader sense. A gender perspective in the legal review of new weapons, means and methods of warfare means taking into account the different status, needs and capacities displayed by men and women, and how ideas of femininity and masculinity impact all aspects of weapons use, policy, development, and acquisition processes. The production and use of weapons implicate and impact men, women, girls and boys differently – but not always in stereotypically assumed ways.

The fundamental prohibitions in IHL that guide the legal review process have gender implications, and these must be addressed and analysed. In practical terms, a gender perspective in the legal review process may have its central relevance in identifying where the reviewing authority needs to attach conditions to the use of the weapon, and how these are integrated into the rules of engagement or operating procedures associated with the weapon. Keeping in mind that the review process aims to determine the legality of a new weapon, means or method of warfare based on the law as it currently stands, such analysis of *lex lata* would therefore benefit from the inclusion of aspects such as:

- ✓ how gendered differences in status and function in society create different vulnerabilities to specific types of weapons in conflict zones (including how men and women are located in relation to power and resources);
- ✓ how gendered differences in, for example, freedom of movement and access to resources and services create different vulnerabilities from specific types of weapons in conflict zones;
- ✓ how/if biological differences lead to men and women being impacted differently by the direct and indirect effects from weapons;

- ✓ what constitutes superfluous injury or unnecessary suffering for men and women respectively given their status and function in society, including their access to key services;
- ✓ how specifically non-lethal weapons/crowd-control measures impact men and women differently;
- ✓ how the consequences of the use of a weapon, in what is referred to as “a changing legal environment” such as “mixed type operations”, are impacted from a gender perspective;
- ✓ ensuring that data (including sex- and age-disaggregated data) is collected and analysed in ways that do not reinforce gender assumptions (for example, female deaths should not automatically be reported as “civilian”); and
- ✓ that the majority of weapons-bearers are men, but civilian men are also at the greatest risk of armed violence given a stereotypical perception of men as fighters.

It is also relevant in the analysis to understand how using stereotypical language can reinforce gendered ideas, such as the idea that women are inherently peaceful, that women are always civilians, or that men are not caretakers of children. Such stereotypical ideas obscure the complexity of gender roles in armed conflict and contribute to gendered outcomes to the detriment of their protection.

Summary

The legal review that is to be conducted under Article 36 is one component of States’ larger efforts and obligations to limit the humanitarian consequences of armed conflict. It is a contribution to ensure effectiveness to the provisions of IHL that afford protection to civilians and combatants. Today we know that armed conflict and the use of weapons impact women, girls, men and boys in different ways. Understanding and addressing their respective status, needs, and capabilities is key to ensuring that IHL is applied in an equal and non-discriminatory manner. This calls for an understanding of how gender, together with factors such as age, ethnicity, and class, influence, among other things, the expected behaviour, roles, power, needs, capacities, resources, constraints and opportunities for people in any culture.

Therefore, in order to gain an accurate picture of the impact of weapons and to ensure a correct assessment of the legality of weapons under Article 36, a gender perspective and gender analysis is needed. A gender perspective in the weapon review process is simply about ensuring that decisions are relevant and safeguarding adherence to the purpose and heart of IHL in an ever changing and increasingly complex conflict setting.

REFERENCE LIST

Article 36 (2014). "Gender and disarmament", *Article 36*. <http://www.article36.org/processes-and-policy/gender-and-disarmament/gender-and-disarmament/>(last accessed 25 September 2015)

Guro Dimmen, Anne (2014). "Gendered Impacts – The Humanitarian Impacts of Nuclear Weapons from a Gender Perspective", *ILPI-UNIDIR Vienna Conference Series*, Paper No. 5.

International Committee of the Red Cross (1987). *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*. Dordrecht: Martinus Nijhoff Publishers.

International Committee of the Red Cross (2006). *A Guide to the Legal Review of New Weapons, Means and Methods of Warfare – Measures to Implement Article 26 of Additional Protocol I of 1977*, pp. 10-17.

Ozasa, Kotaro, Shimizu, Yukiko, Suyama, Akihiko, Kasagi, Fumiyoshi, Soda, Midori, Grant, Eric J., Sakata, Ritsu, Sugiyama, Hiromi & Kazunori Kodama (2012). 'Studies of the mortality of atomic bomb survivors: Report 14, 1950–2003—an overview of cancer and non-cancer diseases', *Radiation Research*, p. 232. Vol. 177, No. 3, pp. 229–243.



VI. STRENGTHENING IHL WITH A GENDER PERSPECTIVE

CHAPTER 16

Strengthening IHL with a gender perspective

Cecilia Tengroth, Senior Legal Advisor, Swedish Red Cross

What happens to women is either too particular to be universal or too universal to be particular, meaning either too human to be female or too female to be human.

Catherine A MacKinnon¹

Could the divergent humanitarian concerns men and women face during armed conflict be mitigated if the primarily “gender neutral” and non-discriminatory international humanitarian law (IHL) was perfectly respected? Or, is it the case that the massive impact deep-rooted gender stereotypes and structural inequalities in societies have on the protection of men and women cannot be overcome by a “gender neutral” legislation? Do there exist material gaps in the law that lead to an inability to successfully address the specific gendered needs of individuals during armed conflict?

The prevailing position today is that the law does not need to be strengthened but, rather, it requires better compliance. This is certainly the case in relation to many of the humanitarian concerns caused by armed conflict. However, with regards to some of the challenges facing women during armed conflict, existing “gender neutral” legislation does not appear to be able to overcome structural inequalities or their negative impact, or address gendered needs and vulnerabilities – even if it is perfectly respected. This article highlights some areas of concern in relation to the limitations of existing IHL to respond to the divergent needs of men and women during armed conflict.

¹ MacKinnon (2007), p. 142.

Perfect law, imperfect world?

Generally speaking, IHL is “gender neutral” in the sense that men and women are afforded protection on equal legal terms as, for example, “civilians” or “combatants”. Only in rare cases does the law afford different protections to men and women respectively.² Where IHL does differentiate between men and women, it views women as more “protectable” primarily based on their reproductive functions or their risk of being exposed to sexual violence. As discussed in the chapter “Approaching the Geneva Conventions with a gender perspective” in this publication, this is a narrow approach in addressing the specific needs, risks and vulnerabilities faced by men and women respectively during armed conflict. In addition, such an approach does not recognise how gender and structural inequalities impact the type of violence endured by men and women respectively. The view of women as more “protectable” also raises questions in relation to the rationale behind, and relevance of, some of their exclusive provisions. For example, why should the prohibition in Article 6(4) of the 1977 Additional Protocol II regarding the death penalty for “mothers of young children” not also apply to fathers?

In States or communities where the respective rights, expected attributes, behaviours, roles, power, needs, resources, constraints and opportunities of men and women are very unequally allocated, there is a risk that even “gender neutral” provisions will have discriminatory effects. The application of “gender neutral” provisions also requires acute awareness of existing gender stereotypes and prevailing assumptions regarding the expected behaviour of men and women. If such awareness is lacking, there is a risk that the application of the provisions will, for example, overlook the many and complex ways women can engage in armed conflict (including as perpetrators of crimes and combatants). It will also impact men and boys in negative ways, for instance, by failing to take into account their roles as care takers and victims.³ With these aspects in mind, there exist situations in which it is not enough to rely on the “perfect application” of existing IHL.

Another aspect that gives rise to questions regarding whether additional provisions are needed is the basic limitation of IHL in addressing the humanitarian effects of armed conflict. As a consequence of the traditional, narrow scope of what these direct “effects” are (i.e., injuries and damage caused by a party to the conflict), some of the most common humanitarian challenges facing women during armed conflict are regarded as outside the protective scope of IHL and perceived to be situations regulated by human rights and national legislation. This is true, for example, in relation to domestic violence and several other forms of gender-based violence despite the fact that there is a clear correlation between an increase in domestic violence and the presence of armed conflict. This artificial legal separation does not reflect the reality of the lives of many women during armed conflict.

² See footnote 1 in the Introduction chapter of this publication.

³ For example, male victims of sexual violence are marginalised in international instruments and in practical humanitarian and legal assistance, and furthermore, men of weapon-bearing age risk being viewed as inherently legitimate military targets.

Ongoing advances in IHL

Case law from the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) has contributed to the expansion of the understanding of how women are impacted by armed conflict and how their experiences relate to existing IHL. For example, in 1998 the ICTR reached the landmark decision that the rapes committed during the Rwanda genocide constituted an element of the crime of genocide. Rape was not included in the Genocide Convention, but the ICTR stated that “sexual assault formed an integral part of the process of destroying the Tutsi ethnic group and that the rape was systematic and had been perpetrated against Tutsi women only, manifesting the specific intent required for those acts to constitute genocide.”⁴ In addition, the Rome Statute of the International Criminal Court (ICC) is the first international instrument that expressly includes various forms of sexual and gender-based crimes — including rape, sexual slavery, forced prostitution, forced pregnancy, forced sterilisation, and other forms of sexual violence — as underlying acts of both crimes against humanity and war crimes committed in international and non-international armed conflicts. The Rome Statute also criminalises persecution based on gender as a crime against humanity. Sexual and gender-based crimes may also fall under the ICC’s jurisdiction if they constitute acts of genocide or other acts of crimes against humanity or war crimes.

A gap

Despite these advances in IHL, there are areas where the law itself could be strengthened in order ensure non-discriminatory protection, to better address the specific needs of women during armed conflict, and to counter the detrimental effects of structural inequalities in society. The failure to recognise gender inequalities in the crimes that are addressed by IHL has resulted in a gap between crimes that are gender-based in fact and those that are gender-based in law.

Areas of concern include issues involving the failure to address domestic violence through IHL and the weak protection afforded to women as internally displaced people. In addition, IHL also does not, for example, address the destruction of women as women. As raised by several scholars, despite a pattern of “femicide” or “gynocide” being present in reality,⁵ this has not inspired a response in international law in general or IHL in particular. Arguments have been advanced, for example, for a convention on gender-based crime in international law, modelled on the Genocide Convention and regulations on crimes against humanity, i.e., creating a convention that prohibits, by way of example, sex-selective abortions, deprivation of nutrition on the basis of sex, sexual abuse in child-

4 United Nations General Assembly (A/54/315 S/1999/943), para 16

5 Radford & Russel, eds (1992); Nenandic (1996), pp 456-464.

hood, rape, domestic violence, “honor” killings, confinement, and forced prostitution as forced sexual slavery, and that recognises these gender-based crimes as a part of the intentional destruction of women as a group.

As the opening quote highlights, the experiences of women in both peacetime and during conflict are often viewed as either something general and parallel to that which men also endure, or something private and overly specific. The result of both views is that the specific experiences of women are slow to stimulate a detailed response in the law. Inherent to this perspective is also the notion that what women endure is generally something “private” (and should be handled with discretion and/or by the family), whilst the experiences of men are “public” and general (and prompt responses in the public sphere including legislative steps). Such a traditional distinction between the “public” and the “private” is something that must be countered by evolving IHL.

Complex conflicts, complex responses

As this chapter highlights, there is no single quick fix to ensure that IHL law is both perfectly constructed and perfectly applied from a gender perspective. Rather, it underscores the fact that ensuring strong and equal protection under IHL can be a complex endeavour that requires both an understanding of, and responses to, societal inequalities and existing gender stereotypes.

Questioning the rationale and aim of both existing and developing IHL from a gender perspective is something that continually must be done in an ever changing conflict environment to ensure non-discriminatory protection of those who suffer during armed conflict. History has otherwise shown us that responses in IHL tend to reflect the perspective, experiences and needs of a man, and therefore really only tells *his* story and not *hers*.

REFERENCE LIST

Geneva Convention Relative to the Protection of Civilian Persons in Time of War (GC (VI)), 12 August 1949.

MacKinnon, Catherine A. (2007). *Are Women Human? And other International Dialogues*. Cambridge: Harvard University Press.

Nenandic, Natalie (1996). "Femicide: A Framework for Understanding Genocide" in Bell, Diane & Klein, Renate, eds. (1996), *Radically Speaking; Feminism Reclaimed*. Melbourne: Spinifex. Pp 456-464.

Radford, Jill & Russel, Diana E. H., eds. (1992). *Femicide: The Politics of Women Killing*. New York: Twayne Publishers

United Nations General Assembly (A/54/315 S/1999/943). *Fourth annual report of the International Criminal Tribunal for the prosecution of persons responsible for genocide and other serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of neighbouring states between 1 January and 31 December 1994. For the period 1 July 1998-30 June 1999. 7 September 1999.*

CHAPTER 17

Gender lessons from a field study in Uganda

Elin Lilijenblad, Project Manager, Swedish Red Cross and Tatiana Melissa Zepeda, Assistant manager, Swedish Red Cross

Introduction

The Swedish Red Cross (SRC) and the Ugandan Red Cross Society (URCS) conducted a field study on international humanitarian law (IHL) and gender in Uganda during the summer of 2014. Support was also given by the International Committee of the Red Cross (ICRC). Interviews were conducted in Kampala and the northern districts of Gulu, Kitgum and Pader. These districts were chosen as they were most affected by the former conflict in Uganda and where humanitarian needs were the greatest.¹ For the interviews, the research team met four categories of persons: Red Cross volunteers; national and international non-governmental organisations (NGOs) working with civilians affected by armed conflict; government officials working with legal conflict and post conflict issues; and first-hand informants.²

The field study focused upon two main questions through a gender lens. *First*, to what extent does the current IHL manage to address the most common humanitarian effects of today that armed conflicts causes for civilian men, women, boys and girls? *Second*, to what extent are the obligations under the law in practice fulfilled in relation to all protected persons without discrimination?

1 Hostilities between warring parties were ongoing from 1986 to 2006, International Committee of the Red Cross, Annual report (2005), p. 120.

2 That is, civilians with personal experience of the armed conflict. The questions to the first hand informants were not related to personal experiences of violence but to issues of a general character such as access to food and shelter.

As an account of the voices that the research team had the privilege of listening to, a report has been finalised.³ It is focused on the situation of the civilian population in the wake of the armed conflict in Northern Uganda. The concluding remarks and recommendations from this study are entirely built upon these voices and therefore do not attempt to establish a singular ‘truth.’ This article highlights some of the themes of the report, and should as such be seen as a contribution to the efforts by the Swedish and Ugandan Red Cross Societies to underline the importance of a gender perspective in relation to IHL.

Through the field study in Uganda some gendered themes impacting protection under IHL became clear. One was the fact that *IHL lacks detailed regulations* for camps for internally displaced persons (IDP-camps) and for inter-civilian violence during armed conflict. The other was how *gendered perceptions of human beings* impact the protection civilians are entitled to under IHL. Below we present and discuss these themes, and give short notion to what measures within IHL can be taken to address these issues.

Gendered themes in IDP-camps

The accounts of the conditions for the civilian population in the protracted displacement in the IDP-camps of northern Uganda highlight some significant humanitarian concerns. Security concerns for women and children within IDP-camps were repeatedly raised by the interviewees. The risk of sexual violence from both armed groups and civilians was a predominant feature in the stories of women and girls. The conditions of the IDP-camps in Uganda were stated by all informants to be unsatisfactory in relation to quantity and quality of food, basic standards of hygiene and security. Despite the rudimentary provisions for IDPs in IHL (for example, the responsibility to ensure access for humanitarian relief and relief personnel), interviewees stated that security was not ensured for the humanitarian relief of food and non-food items, and that it arrived in irregular intervals. Also, medical personnel found it impossible to stay within the camps for longer periods, signalling that the IHL was not fulfilled in this respect.

Furthermore, the death rate from curable diseases in the IDP-camps was pervasive.⁴ Informants working with health and sanitation stated that women and children suffered from these diseases to a higher extent. Informants attributed this both to the design of latrines and from taking care of the sick, resulting in women contracting those contagious diseases.

Gendered concerns in the IDP-camps also stemmed from the fact that women and girls, in addition to their traditional tasks, also assumed the full responsibility for the survival of

³ IHL and Gender – Lessons Learned from a Field Study in Uganda; Swedish Red Cross 2014.

⁴ ICRC (2005), p. 120. Also, it has been suggested by Human Rights Watch (2012) that death rate from curable diseases is higher than deaths with direct links to the armed conflict. ‘How many people have been affected by the long war with LRA?’ available at <http://www.hrw.org/news/2012/03/21/qa-joseph-kony-and-lords-resistance-army#4>

the family. This was partly related to the absence of men.⁵ However, despite the presence of men women and girls assumed this responsibility as many men neglected to contribute to the family's survival. The gendered division of labour led to a higher exposure of violence for women and girls. In addition, as men in IDP-camps no longer fulfilled their role as providers, the lack of "gender appropriate" work led to redundancy and risks of overconsumption of alcohol. The interviewed often mentioned that because the men were selling food or firewood to buy alcohol, the women were perceived as the more reliable party to address relief to, as many agencies did. Informants stated that this damaged the self-perception of men as the head of the family and was much of the cause of intimate partner violence as men tried to assert their self-entitled supremacy over women.⁶ Gendered themes in the vulnerabilities, needs and risk faced by civilians in IDP-camps were in other words abundant and consistent.

Some aspects of violence among civilians in an armed conflict setting

One feature of the conflict in northern Uganda was the high prevalence of intimate partner violence, during, under and after the conflict, stated by informants and supported by studies⁷. One study also suggested that in 60 per cent of the cases of rapes against women the perpetrator was the husband/boyfriend of the survivor.⁸ The heightened level of violence against women has been shown to persist even after cessation of hostilities and often increases in the post conflict setting.⁹

In general, sexual violence in armed conflict disproportionately affect women and girls.¹⁰ Informants stated that women and girls were much more prone than men and boys to be subjected to sexual violence from all groups of men, i.e., civilians, armed groups and others in position of power. During the interviews it was noticed that the interviewed civilian men emphasised sexual violence against women from members of armed groups and downplayed the issue of inter civilian violence. In contrast, women underlined the violence among the civilians as an issue within the camps.

Moreover, the common consequences of violence and sexualised violence from the armed conflict are a vast range of long term and cascading physical and psychological effects.

5 See Isis-WICCE (2001), a local NGO report from 2001 claims there was an absence of men was due to deaths, abductions, emigration and departure for military service.

6 Furthermore, a study found the non-addressed and changed gender relations stemming from the conditions during the conflict might be a possible future conflict driver in northern Uganda. See Advisory Consortium on Conflict Sensitivity (ACCS) (2013), p. 36.

7 Annan et al. (2010), pp. 152-159.

8 Porter (2013) p. 92

9 Violence against women is high throughout Uganda in present time. See Uganda Bureau of Statistics (2013), *Statistical Abstract 2013*; CEDAW, 2013, p. 9.

10 UN Secretary-General (A/66/657*-S/2012/33), p. 3.

The perceptions of gender provide a foundation of discrimination and stigmatisation, whilst not taking into account that the sexual acts were coerced. Studies and reports have pointed out that an aggravating factor in relation to sexual violence is the widespread impunity enjoyed by perpetrators of sexualised violence, no matter if the survivor is a man or a woman.¹¹ Further exacerbating these issues are customs such as bride price and wife inheritance.¹² These traditions position women as belonging to the husband's family, as well as her children, albeit she is not eligible for inheritance of land or property. When a person is perceived as acquired or inherited property, she is seen as a disposable commodity with little to no value at all. These institutionalised practices legitimise discrimination and violence.¹³ This was reiterated in the interviews as making the issue of marital rape being tolerated and even condoned as a husband's 'right' to 'his' wife, an attitude that has been found common in other camps as well.¹⁴ This type of gendered inequalities and practices that allows physical control and is a form of structural violence; therefore structural and interpersonal violence is exacerbated and simultaneously reinforces one another in times of armed conflict.¹⁵

In general, the aspects of violence among civilians that has been studied for this report is linked to structural discrimination of women in social, economic, cultural and political spheres. Armed conflict caused a general rise in violence among civilians.

IHL is a set of rules that seek to limit the effects of armed conflict. However, IHL takes a narrow perspective on what these effects are, and which effects it is intended to address and mitigate. The effects are in general limited to those caused by bullets or bombs. Given the shift in armed conflict during the almost 40 years that have passed since the adoption of the two Additional Protocols to the Geneva Conventions, the question should be raised to which extent current IHL manages to address some of the most common humanitarian consequences of armed conflict. If the pain and horror endured by civilians during armed conflict today is not only caused by violence from armed groups, but also amongst civilians, and if the suffering also derives from the insecurity that internal displacement causes, strongly linked to structural inequality and discrimination of women, perhaps

11 Office of the High Commissioner for Human Rights, (2011). See for instance the UN Security Council Resolution 1674 (S/RES/1674) (2006) on Protection of Civilians in Armed Conflict, and Beijing Declaration and Platform for Action adopted at the Fourth World Conference on Women in 1995 with "women and armed conflict" as one of the critical areas of concern <http://www.un.org/womenwatch/daw/beijing/platform/>. See also ICC, Office of the prosecutor, Policy paper on Sexual and Gender-Based Crimes, June 2014, <http://www.icc-cpi.int/iccdocs/otp/OTP-Policy-Paper-on-Sexual-and-Gender-Based-Crimes--June-2014.pdf>

12 Bride price is a gift that the man gives the woman's family when marrying her. If she does not fulfill her obligations as a wife he has the right to demand the bride price back from the wives family. Wife inheritance means that a widow will be inherited as a wife by the late husband's brothers.

13 United Nations Human Rights Council (A/HRC/17/26), p.12.

14 This is supported by a study in Pabbo Camp suggesting that marital rape was not violence, see Akumu et al. (2005), p. 7.

15 United Nations Human Rights Council (A/HRC/17/26), p.12.

IHL must respond to these consequences in order to stay true to its humanitarian quest to limit the effects of armed conflict. Women and girls experiences of armed conflict have been pushed into the periphery and in some regards, also in the periphery of IHL.

Gendered perceptions impact protection

Historically men have had higher death rates in armed conflict, partly due to armed groups mainly having consisted of men, but also as a consequence of deliberate targeting of civilian men and boys by armed groups. Gender-based violence is inflicted upon men and boys because of normative perceptions of masculinity. Most importantly in the Ugandan context, the perceptions of men and boys as fighters and therefore legitimate targets of violence from armed groups, notwithstanding their protected status as civilians. Boys are especially susceptible to this violence which also violates their rights as children. Gender stereotyping routinely denies persons their individuality.¹⁶

The gendered perception of human beings, where boys and men are categorised as soldiers and women as procreators, care takers and domestic workers, was in general decisive in what type of violence and coercion civilians would face as abductees in Uganda. Men were claimed more likely to be killed or used as porters, and boys forcefully recruited as soldiers. Women and girls, on the other hand, were more subjected to the risk of being mutilated or kept for forced labour, sexual slavery. Another example of armed group violence having gendered effects is the deliberate placement of mines where civilian would encounter them in the homesteads. Such places included in the fire pit and firewood stack. Because the division of labour was gendered, civilian girls and women would be injured or killed by the premeditated locations of the landmines. Women and girls would also face harder social conditions post-mutilation.

Gendered themes in relation to risks and vulnerabilities during the armed conflict were also found beyond the risks of direct attacks from fighting parties to the conflict. The inadequate amount of necessary items such as food, water, soap, or clothes was stated during the interviews as reasons for why women and girls exchanged sex in return for such items. Furthermore, the issue of not being provided with firewood together with the inadequate amount of food and the one sided diet together with the gendered division of labour led women to seek food and firewood outside of the IDP-camps, resulting in further exposure of armed group violence.

All these illustrations taken out of their context could be said to be nothing but examples. However, taken together they tell with a clear voice the story of how the gendered perception of human beings decisively impacts the situation of the civilian men, women, boys and girls respectively during the armed conflict in Uganda. The differences in status, needs and capacities that stem from this gendered perception must be analysed and

¹⁶ This report does not claim that more men than women died during the conflict in northern Uganda.

addressed when planning, performing and evaluating actions under IHL. If not, there is a great risk that the protection provided is not equal to all protected persons, but instead influenced by gendered and often discriminatory perceptions.

Concluding remarks

The field study in Uganda specifically focused on some aspects of the situation in IDP-camps and the consequences of violence among civilians. One key finding was that it is not possible to assure the protection that IHL affords individuals in an equal and non-discriminatory manner without an understanding of how gender impacts and its influences on individuals' status, needs and capacities. From the issues addressed in this field study it can also be noted that the IHL does not comprehensively address all of the most common humanitarian effects of armed conflict experienced by civilians.

But perhaps most importantly, is the understanding that in order to fully protect civilians caught in armed conflict, the discriminatory norms and structures of society that maintain gender inequality must be acknowledged, addressed and eradicated.

REFERENCE LIST

Advisory Consortium on Conflict Sensitivity (ACCS) (2013). *Northern Uganda Conflict Analysis*. September 2013.

http://reliefweb.int/sites/reliefweb.int/files/resources/ACCS_Northern_Uganda_Conflict_Analysis_Report.pdf (last accessed 5 June 2014)

Akumu, Christine Okot, Amony, Isabella & Otim, Gerald (2005). *Suffering in Silence – A Study of Sexual and Gender Based Violence (SGBV) In Pabbo Camp, Gulu District, Northern Uganda*.

Office of the High Commissioner for Human Rights, (2011). *Committee on the Elimination of Discrimination against Women: Concept note, General Discussion on the Protection of Women's Human Rights in Conflict and Post-conflict Contexts*. New York.

International Committee of the Red Cross (1999). *Violence against women, 55th Annual Session of the United Nations Commission on Human Rights, Agenda item 12-13, Statement by the ICRC*.

International Committee of the Red Cross (2005). *ICRC Annual Report 2005 –Uganda*.

Isis-WICCE (2001). *Women's Experiences in Armed Conflict in Gulu 1986-1999: An Isis-WICCE Report, Part I*. Kampala; Isis-WICCE.

Lilijenbladh, Elin & Zepeda, Tatiana Melissa (2014). *IHL and Gender – Lessons Learned from a Field Study in Uganda*. Stockholm: Swedish Red Cross.

Porter, Holly E. (2013). *After Rape Justice and Social Harmony in Northern Uganda*. PhD thesis. London: The London School of Economics and Political Science.

Uganda Bureau of Statistics (2013). *2013 Statistical Abstract. August, 2013*. Kampala: Uganda Bureau of Statistics.

<http://www.ubos.org/onlinefiles/uploads/ubos/pdf%20documents/abstracts/Statistical%20Abstract%202013.pdf> (last accessed 9 September 2015)

United Nations Human Rights Council, (A/HRC/17/26). *UN Human Rights Council: Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo*. 2 May 2011.

United Nations Secretary-General (A/66/657*-S/2012/33). *Conflict-related sexual violence: report of the Secretary-General*. 13 January 2012.

Internet sources

Human Rights Watch, 'What is known about Ugandan army abuses?' available at <http://www.hrw.org/news/2012/03/21/qa-joseph-kony-and-lords-resistance-army#15> (last accessed 18 October 2014)

CHAPTER 18

Strengthening the protection of IDPs?

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The armed conflicts of today are almost all non-international armed conflicts. These complex, and often protracted armed conflicts take a heavy humanitarian toll on civilians. The consequences for civilians range from risk of violence from weapon bearers and forced recruitment, increased domestic violence, loss of livelihood to displacement. United Nations High Commissioner for Refugees (UNHCR) stated this year that worldwide displacement was at the highest level ever recorded. The number of people forcibly displaced had risen to a staggering 59.5 million people at the end of 2014, of which 38.2 million were internally displaced people (IDPs).¹ Syria is the world's biggest producer of both internally displaced people (7.6 million) and refugees (3.88 million at the end of 2014). Afghanistan (2.59 million) and Somalia (1.1 million) are the next biggest refugee source countries.

From a gender perspective, it is well documented that women, girls, men and boys face different challenges when displaced and have different ways of coping with displacement.² Internally displaced women and children continue to face particular protection issues and, today, constitute the majority of the displaced. IDP settings (both camps and non-camp settings) may also heighten the risk for gender based violence, including domestic violence.³ The combination of displacement and limited access to livelihoods and the result-

1 UNHCR (2015)

2 See for example, Internal Displacement Monitoring Centre (2014); Chaloka (2014); Human Rights Watch (2012).

3 Internal Displacement Monitoring Centre (2014) pp.19, 25, 30, 33, 56.

ing poverty can lead to forced early marriage, taking children out of school to help earn an income, and increases the risk of trafficking of displaced women and children. There are also gender-related implications linked to having fled without documents that certify identity, civil status, and property ownership.

The heart of IHL has always been to provide a basis of humanitarian guarantees to those in most need of protection during conflict. This conviction has been the driving force behind the development of the central treaties of IHL. When the lack of health care for the wounded and sick soldiers became apparent, States reacted and created the First and Second Geneva Conventions. When States believed that the harsh and unregulated treatment of prisoners of wars was unacceptable, the Third Geneva Convention was adopted. When the desperate situation of civilians caught in the war became painfully clear during the Second World War, the Fourth Geneva Convention of 1949 was adopted. In this manner, by either adopting new laws or flexibly applying existing rules to novel situations, IHL has shown itself to be relevant and able to address the humanitarian needs created by armed conflict.

Today, we see that IDPs are confronted with enormous humanitarian challenges,⁴ some of which are not covered by IHL. We can also see that the international community is slow, or sometimes even reluctant, to come to the assistance of IDPs. In light of these aspects it is relevant to consider how IHL responds to this pressing humanitarian concern of today, and if there are ways to strengthen IHL to better protect IDPs.

Against the backdrop of the areas of concern raised in the chapters on *Strengthening IHL with a gender perspective*, and *Gender Lessons from a field study in Uganda*, this article explores how IHL could be strengthened in order to better respond to the situations facing internally displaced people. It explores how men and women experience internal displacement (especially in camp settings), and looks at how other areas of international law could inspire the development of IHL in relation to IDPs, including how a gender perspective on the status, needs and capacities of IDPs can be ensured in any developments or application of IHL.

IDPs and the legal framework

Some of the most pressing humanitarian concerns facing IDPs are not comprehensively regulated within IHL. Women and children are particularly vulnerable during displacement, and would benefit from both increased compliance with existing law and developed rules and principles.

⁴ Common threats to the safety of IDPs include: direct attacks and ill-treatment; increased risk that families will be torn apart and that children in particular, will be separated from their parents or other relatives; increased risk of gender violence, e.g., rape or sexual violence against women and girls; increased exposure to health hazards; deprivation of property; restricted access to essential goods and services, including health care; exposure to collateral risks in attempting to meet essential needs; risk of tension between host communities and displaced people; presence of weapon-bearers in camps; forced recruitment; movement through unsafe areas and settlement in unsafe or unfit locations; forced return to unsafe areas. See International Committee of the Red Cross (2009b), p. 600.

The fragmented regulation on the protection and rights of IDPs is found in various bodies of law, including domestic law, human rights law and – if they are in a State involved in armed conflict – IHL. The few provisions of IHL that concern the prevention of displacement and the protection of IDPs are mainly found in the Fourth Geneva Convention and Additional Protocols I and II (AP I and AP II), as well as established in customary international law (see rules 129-133 in ICRC's Study on Customary International Humanitarian Law). Of course, IDPs are also provided general protection from the hostilities under IHL as civilians. Particular mention should be made of the rules prohibiting direct attacks on civilians and civilian objects or indiscriminate attacks, starvation of the civilian population and the destruction of objects indispensable to its survival, and collective punishment. Rules requiring parties to a conflict to allow relief consignments to reach civilians in need also afford protection to IDPs. It is naturally also worth noting that the general rules for the protection of civilians, if respected, can contribute to the prevention of displacement.

Guiding Principles and Kampala Convention

Steps within the international community to address key issues of concern have been taken through the development of the UN Guiding Principles on Internal Displacement⁵ and The Convention for the Protection and Assistance of Internally Displaced Persons in Africa (the Kampala Convention).

The United Nations Guiding Principles on Internal Displacement from 1998 is a key instrument of importance for IDPs. These principles are widely recognised as providing an international framework for the protection of IDPs during all phases of displacement, including return, resettlement and reintegration. However, in addition to the hampering fact that this is a non-binding instrument, these Guiding Principles are also almost 20 years old. They do not reflect modern normative frameworks, donor structures and national institutions aimed at addressing the needs of IDPs, or the growing understanding that displacement often has multiple and overlapping causes that call for wide-ranging responses that promote peacebuilding, governance, stability and rule of law.⁶

The Kampala Convention, which entered into force in December 2012, was the first international treaty to specifically address the matter of protection and assistance for IDPs. However commendable this achievement is, it still remains a regional convention for Africa. The majority of the IDPs are, as the situation in the world appears today, not covered by this Convention.

⁵ United Nations Economic and Social Council (E/CN.4/1998/53/Add.2). See also UN General Assembly, (A/RES/58/177) on Protection of and assistance to internally displaced persons, 12 March 2004.

⁶ Internal Displacement Monitoring Centre (2014), p.15

The Kampala Convention and the Guiding principles are important contributions to the protection of IDP but are not sufficient responses. Besides the above mentioned factors that limit their impact and effectiveness, there are also some gender issues that can be raised. In general both the Kampala Convention and the Guiding principles are “gender neutral” using word such as “humans”, “internally displaced persons” or “woman and men”. Only in a few places do they afford divergent protection and rights. As raised in earlier chapters⁷, “gender neutral” provisions risk having a discriminatory application in practice in an inherently discriminatory setting. This can be mitigated either by keen awareness of gender stereotypes, structural inequalities and their practical impact in a specific context, or by adopting rules and guidelines that define how the rights and protection are to be afforded with due regard to gender and other diversities. With regards to the later, both the Kampala Convention and the Guiding principles could be enhanced by, for example, the inclusion of provisions on the participation of women in all decision-making processes, provisions on how especially women can be supported in obtaining necessary documents, strengthened provisions on how to ensure security in the camps (including safeguarding the freedom from domestic violence), provisions on rights for internally displaced women to have access to legal aid, and specific provisions relating to addressing the needs of men and boys who have been subject to sexual violence.

Refugee Law

It is also interesting to note that there exists a comprehensive legal and structural framework for refugees. Despite the fact that the cause of the flight and displacement of both IDPs and refugees often are similar, the laws affording these individuals rights and protection are different. In brief, refugees are comprehensively regulated through refugee law – mainly by the 1951 Convention Relating to the Status of Refugees, and the 1969 Convention Governing the Specific Aspects of Refugee Problems in Africa – and human rights law, and particularly by the principle of non-refoulement.⁸ In addition, their protection is the core mandate of UNHCR.

Regulation of the protection and situation of individuals in IDPs and POWs – can we learn from the differences?

As is highlighted in the chapter “Gender Lessons from a Field Study in Uganda”, IDP-camps can be a dangerous environment, and they are not coherently regulated by international law. Security concerns stemming from both an ongoing conflict and violence among civilians (including domestic violence) begs the question whether there are possible ways in which to strengthen IHL in order to offer better protection to IDPs. Recognising the humanitarian

⁷ See chapters “Introducing the Swedish approach to IHL and gender” and “Strengthening IHL with a gender perspective” in this publication.

⁸ Refugees also fall under the mandate of the Office of the United Nations High Commissioner for Refugees

challenges facing IDPs, one is inspired to take a look at other areas of IHL that have successfully managed to address humanitarian concerns during armed conflict.

Perhaps there are some valuable lessons to be learned from the regulation of camps for prisoners of war (POWs). Notwithstanding the fact that not all, or at times not even most, IDPs are located in IDP-camps, and whilst recognising the fact that the establishment of IDP-camps may create new sets of needs, risks and dependencies, the discrepancy between the regulation of IDP-camps and POW-camps gives rise to several questions.

The detailed and comprehensive regulation for POW-camps is based on the understanding of the vulnerable situation POWs are in when taken captive by opposing forces. Experiences of soldiers taken as prisoners during the First World War highlighted the need for robust and specific rules protecting and regulating the situation facing this group. The rationale behind the detailed and expanded provisions in the Third Geneva Convention was that the Prisoners of War Convention of 1929 was falling short of affording adequate protection. The Third Geneva Convention has 143 articles, whereas the 1929 Convention had only 97. Due to the changes that had occurred in the conduct of warfare, and the consequences thereof, it became necessary to revise the 1929 Convention on a number of points. Experience had shown that the daily life of prisoners depended specifically on the interpretation of the general regulations. Consequently, certain regulations were given a more explicit form which was lacking in the preceding provisions.

For these reasons, the Third Geneva Convention defines the rights of prisoners of war and sets out detailed rules for their treatment, protection, rights and release. For example, the Convention provides that prisoners of war shall: be afforded with every guarantee of hygiene and wholesomeness and supplies to keep themselves in a constant state of cleanliness; they shall have shelters against air bombardment and other hazards of war; all suitable precautions shall be taken to ensure their safety; quarters shall be protected from dampness, have adequate heating and lighting and all precautions must be taken against the danger of fire; food shall be sufficient in quantity, quality and variety to keep prisoners of war in good health and to prevent loss of weight or development of nutritional deficiencies; sufficient drinking water shall be supplied; appropriate clothing, underwear and footwear shall be supplied; all necessary measures to prevent epidemics shall be taken; every camp shall have an adequate infirmary where prisoners of war may have the attention they require and shall be encouraged to engage in intellectual, educational and recreational pursuits, sports and games.⁹ These comprehensive rules address the key humanitarian concerns faced by prisoners of war.

Differences in the basic understanding of the vulnerabilities and needs of IDPs and POWs – one specific example

In addition to the above-mentioned specific regulations on POWs, the Third Geneva

⁹ Third Geneva Convention, Arts. 25-38.

Convention also states that female prisoners of war shall be confined in quarters separate from male prisoners of war and shall be under the immediate supervision of women. The need for such a separation is also recognised in the Fourth Geneva Convention by provisions related to the treatment of detainees. The rationale behind this is the recognition that men specifically target women with violence.

Women in IDP-camps also face a heightened risk of incidences of violence. As studies suggest, two thirds of the sexual violence women are subjected to is committed by civilian perpetrators, and over 50 percent of IDP women have suffered physical abuse from partners in IDP-camps.¹⁰ Women face violence by men within their family and the displaced community during armed conflict, sometimes possibly to a greater extent than from armed groups. However, the similar need for separation, as in POW-camps, to protect women from this kind of violence is not identified in the law regulating the situation of IDPs. Instead these regulations build upon an understanding that women and men in families have a basic need to be together, as restated in customary rule 131 on IDP-camps.¹¹ In this latter situation, IHL deals with the ‘family’ as a good entity worth keeping together under a principle of family unit, and does not address the possible risks of violence from a family member.

In other words, these two basic needs of being together as a family and being protected from violence might be conflicting. General assumptions regarding the needs of the individuals in IDP-camps must therefore always be contextually analysed from a gender and security perspective.

When acknowledging that the vulnerabilities and needs of people confined to POW-camps and IDP-camps are similar to a large extent, the differences in IHL regulation become striking. The 143 Articles found in the Third Geneva Convention clearly do not have an equivalent for IDPs. From a humanitarian point of view, the rationale behind this disparity in protection is unclear.

Areas for possible improvement

Enhanced regulations with a gender dimension concerning the situation and protection within IDP-camps as discussed in this chapter could contribute to the increased protection of IDPs. This one example of where IHL could be strengthened in order to better acknowledge and respond to the specific needs of women during armed conflict. In addition to this example, there are other areas in which IHL could be strengthened to ease the suffering and improve the well-being of IDPs. Several of these areas were identified and communicated prior to the International Conference of the Red Cross and Red Crescent in 2011, and they merit attention of, and efforts from, the international community. Given the fact that the majority of the displaced today are women and children, and the well documented gender-specific challenges

¹⁰ Porter (2013), p 92.

¹¹ Henckaerts & Doswald-Beck (2005).

that exist during internal displacement, it is also clear that all of these highlighted areas have to be addressed with a gender perspective.¹²

For example, IHL does not currently grant *freedom of movement* and, in many cases, the warring parties/responsible authorities do not allow civilians to escape the fighting, or move within and out of IDP-camps. In the area of the *return or resettlement* of IDPs, IHL does not include a positive duty on the part of the parties to the conflict to take all feasible measures to facilitate voluntary, dignified and safe return. Nor does IHL explicitly prohibit forced return or forced resettlement. Another issue that often arises in the event of displacement, and in which IHL contains very few provisions, is the *absence or loss of documents*. Lack of certain documents can lead a multitude of problems, for instance, the inability to identify oneself, to prove that one is the owner of property, to move freely, and to receive social or humanitarian aid. The lack of documents can perpetuate the vulnerability of groups such as female-headed households and ethnic minorities whose members may traditionally be less likely to possess documented rights. Finally, current IHL does not contain the right to remedy a violation of the law and *the right to individual reparation*. One of the most severe consequences of displacement in humanitarian terms is the loss of property. It is worth noting that many international and national agreements stipulate the right to bring claims and the rights to compensation. Accordingly, it is conceivable that IHL could develop towards creating mechanisms that facilitate reparations.

As described in this chapter, existing human rights law provides a parallel regime that also addresses the rights and protection of IDPs. Nonetheless, this fact should not deter from developments in IHL since IHL has the comparative advantage of being non-derogable during armed conflict, and furthermore, it also imposes obligations on actors other than States. The two legal regimes are complimentary and mutually reinforcing.

If existing IHL was perfectly respected during armed conflict, and if the different status, needs, and capacities of women, girls, men and boys were taken into account in the application of IHL, many of the humanitarian concerns raised in this article would not exist. However, the reality of conflicts show that the laws are not perfectly respected and, even if they were, the challenges outlined in this chapter show that there would still remain areas where the law itself could be strengthening in order to ensure an adequate and non-discriminatory response to the needs of women, men, boys and girls during internal displacement. Based on developments in, and current knowledge of, gender issues, an Additional Protocol to the Geneva Convention relative to the treatment of IDPs could be modelled off existing treaties such as the Third Geneva Convention and the 1951 Convention relating to the Status of Refugees.

¹³ Gender-specific challenges exist in the below mentioned examples in relation to for example specific difficulties for women in obtaining documents and/or accessing the places where documents are issued, specific security concerns facing women and girls upon return or resettlement, gender stereotypes affecting men negatively in relation to freedom of movement when men of weapon bearing risk not being viewed as civilians, difficulties for women to be acknowledged as head of households and the lack of adequate recognition of and compensation for women's household contributions in relation to monetary reparations for wrongful deaths.

REFERENCE LIST

Chaloka Beyani (2014). *Improving the Protection of Internally Displaced Women: Assessment of Progress and Challenges*. Washington, D.C.: Brookings Institution

Henckaerts, Jean-Marie & Doswald-Beck, Louise (2005). *Customary International Humanitarian Law. Volume I: Rules*. Cambridge: ICRC and Cambridge University Press.

Human Rights Watch (2012). *Rights Out of Reach: Obstacles to Health, Justice, and Protection for Displaced Victims of Gender-Based Violence in Colombia*. November 2012. <https://www.hrw.org/sites/default/files/reports/colombia1112forUpload.pdf> (last accessed 7 October 2015)

International Committee of the Red Cross (2009a). *International Displacement in Armed Conflict. Facing Up to the Challenges*. Geneva: ICRC

International Committee of the Red Cross (2009b). "Reports and Documents: Movement policy on internal displacement. Document prepared by the International Committee of the Red Cross in consultation with the International Federation of Red Cross and Red Crescent Societies for the Council of Delegates of the International Red Cross and Red Crescent Movement, Nairobi, Kenya, 23-25 November 2009", *International Review of the Red Cross*. Vol 91, No 875, September, pp 593-611.

Internal Displacement Monitoring Centre (2014). *Girl, Disrupted*. Briefing Paper March 2014. <http://www.internal-displacement.org/publications/2014/girl-disrupted> (last accessed 7 October 2015)

Internal Displacement Monitoring Centre (2014). *Global Overview 2014: People internally displaced by conflict and violence*. May 2014. <http://www.internal-displacement.org/publications/2014/global-overview-2014-people-internally-displaced-by-conflict-and-violence/> (last accessed 7 October 2015)

Porter, Holly E. (2013). *After Rape: Justice and Social Harmony in Northern Uganda*. PhD thesis. London: The London School of Economics and Political Science.

United Nations Economic and Social Council (E/CN.4/1998/53/Add.2). "Guiding principles on internal displacement" in *Further promotion and encouragement of human rights and Fundamental freedoms, including the question of the Programme and methods of work of the commission Human rights, mass exoduses and displaced persons Report of the representative of the Secretary-General, Mr. Francis m. Deng, submitted pursuant to commission Resolution 1997/39. Addendum*. 11 February 1998.

United Nations General Assembly (A/RES/58/177). *Protection of and assistance to internally displaced persons*. 12 March 2004.

Internet sources

UNHCR (2015). "Global Trends Report: World at War", UNHCR. 18 June 2015. <http://www.unhcr.org/558193896.html> (last accessed 7 October 2015)-

STRENGTHENING THE PROTECTION OF IDPs



VII. CONCLUDING REMARKS

CHAPTER 19

Concluding remarks

Cecilia Tengroth, Senior Legal Advisor and Kristina Lindvall, Legal Advisor, Swedish Red Cross

The Swedish joint work on international humanitarian law (IHL) and gender presented in this publication exemplifies different ways by which a *gender perspective* on IHL can be implemented in theory and practice. The activities, studies, good practice, checklists and recommendations presented here are intended to enhance the understanding of how gender impacts individuals' protection, rights and obligations under IHL.

Like all internationally negotiated treaties, IHL is influenced by power and politics, including the existing gendered assumptions prevalent during the negotiations. At the same time, it is clear that the inclusion of a gender perspective in the *application* of the law might be one way to deal with the present situation and further the implementation – without discrimination – of the existing legal regime regulating armed conflict. By striving to deal with reality as it is, and not clinging on to assumptions or gender stereotypes that might or might not be true, there are better possibilities for enhanced protection under IHL of those who are most in need.

The *basis* for a gender perspective on IHL is information on, and a gender analysis of, the contextual situation. Such an analysis examines the underlying differences and inequalities between men, women, girls and boys which determine and shape specific gender status, needs and capacities in a culture, and also identify how gender norms and

inequalities could influence the outcome of actions under the law.

Understanding how gender-related issues impact both the situation of individuals and the protection and rights afforded by IHL brings us closer to an enhanced application of IHL and can contribute to the development of new rules. A gender perspective on IHL simply ensures that we have an understanding of people's different roles, needs, and capacities. In the end, it is about staying true to the heart of IHL that strives to limit the humanitarian suffering that armed conflict causes, regardless of whether the protected person is a man or a woman.

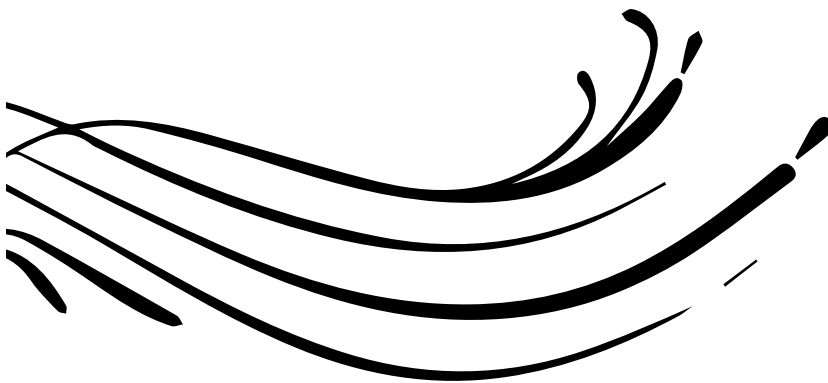
Having said that, it is important to remember that the situations that men, women, girls and boys are forced into during armed conflict, and the risks they face respectively, stem from structures that also are present in times of peace. Accordingly, in order to ensure non-discriminatory protection of all persons protected under IHL during armed conflict, it is obvious that it is not only IHL that needs to be respected, strengthened and fully implemented with a gender perspective. We must also recognise and address the root causes of the diverging challenges men and women face during armed conflict.

Cultures that view women as inferior to men, that ascribe different values and capabilities to men and women, and that deny women and girls basic human rights in peacetime lay the ground for unequal protection and discriminatory effects in the application of IHL during armed conflict. Gender-based violence against women and girls in armed conflicts and during peacetime forms part of the same spectrum of behaviour. In order for men and women to be equally protected during armed conflict there is a need to understand and recognise the effects that existing gender differences and inequalities have on the lives of all individuals also in times of peace. Men, women, boys and girls do not escape the gendered structures influencing their lives in peace time at the outbreak of an armed conflict. The gender differences and inequalities are instead many times fortified, exacerbating suffering during the armed conflict. Therefore efforts to *change unequal and discriminatory structures* in all settings must be a common priority. This already is a common understanding in the international community, expressed recently in the Sustainable Development Goals (2015)¹. Gender equality and female empowerment is a key component for achieving a peaceful, prosperous and sustainable world. In that spirit, we believe that we all can do better to spread humanity and act upon the inequalities and power imbalances which create conflicts and fortify suffering throughout the world.

¹ See Goal no. 5, <https://sustainabledevelopment.un.org/topics> (last accessed 6 October 2015)

CONCLUDING REMARKS

VIII. RECOMMENDATIONS IN ENGLISH, FRENCH, ARABIC AND SPANISH



IHL and GENDER – recommendations

Armed conflict impacts women, girls, boys and men in different ways. The past few decades have witnessed an increasing recognition of this within the international community and responses through international law. Essential to effective action in relation to armed conflicts is therefore the consideration of the distinct and diverse status, needs and capacities as well as the consequences of these in relation to plausible actions. It is through this perspective that the development and application of international humanitarian law (IHL) today also needs to take these facts into consideration. In other words, IHL needs to be approached with a “gender perspective”. All key stakeholders and decision-makers (civilian and military) with responsibilities under IHL must understand how gender factors impact the application of the law, and take responsibility for ensuring that this perspective impacts the planning, conduct and evaluation of military operations and other actions under the law.

The following is a set of recommendations to facilitate the understanding of what a gender perspective on IHL entails. They are based on the findings of the joint Swedish and Swedish Red Cross publication, *IHL and Gender – Swedish experiences*.

A gender perspective in the application of IHL

Why a gender perspective?

Gender, together with factors such as age, ethnicity, and class, influence, among other things, the expected behaviour, roles, power, needs, capacities, resources, constraints and opportunities for people in any culture. Existing gender norms and inequalities, and preconceived gender stereotypes impact the lives of all individuals.

A non-discriminatory legal regime might not have the intended effect in an inherently discriminatory setting. Therefore, it is necessary to collect, analyse and use information regarding gender factors in relation to IHL in order to ensure equal and non-discriminatory application of the law. In addition, a gender perspective on IHL also contributes to other interlinked activities, such as effective humanitarian assistance (including safe and accessible health care).

Collect information

A gender perspective requires the collection of;

- ✓ sex- and age-disaggregated data (SADD). The presence of information gaps regarding sex and age of the individuals in the situational context limits the effectiveness of the application of international humanitarian law;
- ✓ information regarding the situation of the individuals in the specific context. This must also include information about the expected behaviour, roles, power, needs, capacities, resources, constraints and opportunities of men and women respectively; and information regarding how the experience of armed conflict differs between men and women of different ages and backgrounds.

Analyse

A gender perspective requires an analysis of;

- ✓ how the means and methods of warfare chosen in a planned operation affects women and men of different ages and backgrounds respectively;
- ✓ how actions to ensure obligations under IHL, e.g., right to protection, respect for and/or access to health care, are made equally accessible, secure and beneficial for men and women respectively;
- ✓ how acts or omissions committed under the law risk exacerbating inequalities or causing divergent vulnerabilities between men and women in the situational context, which could be avoided with alternative activities.

Use

A gender perspective requires:

- ✓ that the collected information and the analysis of gender factors are consequently included in the planning, conduct and evaluation of military operations; and
- ✓ that information regarding the effects of military operations (including battle-damage assessments) is collected, analysed and used in ways that do not reinforce gender assumptions (for example, female deaths should not automatically be reported as 'civilian').

Participation

Ensure that women and men of different ages and backgrounds are consulted and actively take part in the collection of information regarding the contextual situation, and ensure their participation in relevant analyses and decision-making processes.

One illustrative example; a gender perspective in relation to the provisions on weapons

The production and use of weapons (including ammunition) implicate and impact men, women, girls and boys differently – but not always in stereotypically assumed ways. Therefore, it is important to collect, analyse and use information regarding;

- ✓ how/if gendered differences in status and functions in society create different vulnerabilities to specific types of weapons or to specific use of weapons;
- ✓ how/if gendered differences in, for example, freedom of movement, and access to resources and services create different vulnerabilities to specific types of weapons or to specific use of weapons;
- ✓ how/if biological differences lead to men and women being impacted differently by the direct and indirect effects from weapons; and
- ✓ what constitutes superfluous injury to, or unnecessary suffering in, men and women respectively given their status and function in society, including their respective access to key services.

These gender factors must also impact the review of weapons. A gender analysis is needed in order to make a correct assessment according to the requirements of article 36 of Additional Protocol I.

DIH et GENRE – recommandations

Les conflits armés touchent différemment les femmes, les jeunes filles, les jeunes garçons et les hommes. Au cours des dernières décennies, nous avons assisté à une reconnaissance accrue de cet état de fait par la communauté internationale et à une transposition dans le droit international. Ainsi, pour intervenir de manière efficace lors de conflits armés, il est essentiel de prendre en compte la diversité des statuts, des besoins et des capacités, ainsi que leurs conséquences en fonction des actions possibles. C'est dans cette perspective que le développement et l'application du droit international humanitaire (DIH) doit aujourd'hui prendre ces faits en compte. En d'autres termes, le DIH doit être abordé avec une « approche de genre ». Toutes les parties prenantes et les décideurs-clés (civils comme militaires) ayant des responsabilités aux termes du DIH, doivent comprendre de quelle manière les facteurs liés au genre ont des incidences sur l'application du droit, et ils doivent prendre des mesures afin de s'assurer que cette approche soit prise en compte dans la planification, la conduite et l'évaluation des opérations militaires et autres interventions au titre du droit.

Nous présentons ci-après une série de recommandations destinées à faciliter la compréhension des implications d'une approche de genre sur le DIH. Elles se fondent sur les constatations de la publication conjointe de la Suède et de la Croix-Rouge suédoise intitulée, *IHL and Gender - Swedish experiences* (DIH et genre - expériences suédoises).

Une approche de genre dans l'application du DIH

Pourquoi une approche de genre?

Le sexe, combiné avec des facteurs tels que l'âge, l'ethnicité et la classe, ont notamment une influence sur le comportement, les rôles, le pouvoir, les besoins, les capacités, les ressources, les obstacles et les possibilités attendues des personnes, quelle que soit leur culture. Les normes et inégalités de genre ainsi que les stéréotypes liés au sexe, influent sur la vie de toutes les personnes.

Un régime juridique non-discriminatoire n'aurait probablement pas l'effet escompté dans un cadre foncièrement discriminatoire. Il est donc nécessaire de réunir, analyser et utiliser les informations concernant les facteurs de genre au regard du DIH, afin de s'assurer que le droit est appliqué de manière égalitaire et non discriminatoire. En outre, une approche de genre du DIH contribue également à d'autres activités liées, par exemple à une assistance humanitaire effective (incluant la sécurité et l'accessibilité des soins).

Réunir des informations

L'approche de genre suppose de réunir :

- ✓ des données ventilées par sexe et par âge. Le manque d'informations concernant le sexe et l'âge des individus dans le contexte limite l'efficacité de l'application du droit international humanitaire ;
- ✓ des informations concernant la situation des individus dans le contexte spécifique. Il s'agira ici également d'informations concernant le comportement, les rôles, le pouvoir, les besoins, les capacités, les ressources, les obstacles et les possibilités respectivement des hommes et des femmes ; et
- ✓ des informations concernant la manière dont les expériences en matière de conflits armés diffèrent entre les hommes et les femmes d'âges et de milieux différents.

Analyser

L'approche de genre suppose d'analyser :

- ✓ comment les moyens et les méthodes de combat choisis dans le cadre d'une opération militaire planifiée affectent respectivement les femmes et les hommes d'âges et de milieux différents ;
- ✓ comment les actions visant à faire respecter les obligations aux termes du DIH, telles que le droit de protection, le respect et/ou l'accès aux soins, sont rendues accessibles sur un même pied d'égalité pour les hommes et pour les femmes ;
- ✓ comment les actes et omissions aux termes du droit risquent d'exacerber les inégalités ou d'entraîner des vulnérabilités conflictuelles entre les hommes et les femmes dans le contexte, alors qu'elles pourraient être évitées par la mise en place d'autres interventions.

Utiliser

L'approche de genre suppose :

- ✓ que les informations collectées et l'analyse des facteurs liés au sexe soient correctement prises en compte dans la planification, la conduite et l'évaluation des opérations militaires ; et
- ✓ que les informations concernant les effets des opérations militaires (en particulier l'évaluation des dommages liés aux combats) soient collectées, analysées et utilisées de manière à ne pas renforcer les présupposés de genre (par exemple, les décès de personnes de sexe féminin ne doivent pas être automatiquement déclarés comme décès de « civils »).

Participation

Il convient de s'assurer que les femmes et les hommes d'âges et de milieux différents sont *consultés et participent activement* à la collecte d'informations concernant la situation contextuelle et de veiller à ce qu'ils prennent part aux analyses pertinentes et aux processus de décision.

Un exemple pour illustration: une approche de genre concernant l'approvisionnement d'armes

La fabrication et l'utilisation des armes (y compris des munitions) implique et touche différemment les hommes, les femmes, les jeunes filles et les jeunes garçons - mais pas toujours conformément aux stéréotypes. Il est donc important de collecter, d'analyser et d'utiliser les informations concernant les points suivants:

- ✓ comment/si des différences de statut et de fonction dans la société engendrent des vulnérabilités différentes à certains types d'armes ou à certaines utilisations des armes ;
- ✓ comment/si des différences, par exemple, dans la liberté de mouvement et d'accès aux ressources et aux services, engendrent des vulnérabilités différentes à certains types d'armes ou à certaines utilisations des armes ;
- ✓ comment/si les différences biologiques amènent les hommes et les femmes à être affectées différemment par les effets directs ou indirects des armes ; et
- ✓ ce qui constitue des blessures superflues ou des souffrances inutiles respectivement pour les hommes et les femmes, en raison de leur statut ou de leurs fonctions dans la société, en particulier leur accès respectif aux services fondamentaux.

Ces facteurs de genre doivent également être appliqués à l'examen des armes. Une analyse de genre est indispensable à une évaluation correcte conformément aux exigences de l'article 36 du Protocole Additionnel I.

القانون الدولي الإنساني والنوع الاجتماعي (الجنس) - التوصيات

يؤثر الصراع المسلح على النساء والفتيات والفتيان والرجال بطرق مختلفة. لقد شهدت العقود القليلة الماضية اعترافاً متزايداً بذلك في المجتمع الدولي واستجابات من خلال القانون الدولي. لذلك من الضروري لاتخاذ إجراءات فعالة فيما يتعلق بالصراعات المسلحة النظر في التمايز والتنوع في الأوضاع والاحتياجات والقدرات وكذلك عواقب ذلك فيما يتعلق بالإجراءات المقبولة. ومن خلال هذا المنظور يجب أن يضع تطوير وتطبيق القانون الدولي الإنساني (IHL) حالياً هذه الحقائق بعين الاعتبار. بمعنى آخر، يجب انتهاج القانون الدولي الإنساني من "منظور النوع الاجتماعي". كل الشركاء وصانعي القرار الرئيسيين (المدنيين والعسكريين) الذين لديهم مسؤوليات بموجب القانون الدولي الإنساني يجب أن يفهموا كيف يؤثر النوع الاجتماعي على تطبيق القانون، ويضطلعوا بمسؤولية ضمان أن يؤثر هذا المنظور على التخطيط والتنفيذ والتقييم للعمليات العسكرية والإجراءات الأخرى بموجب القانون.

فيما يلي مجموعة من التوصيات لتيسير فهم ما الذي يستتبعه منظور النوع الاجتماعي على القانون الدولي الإنساني. اعتمدت هذه التوصيات على نتائج المنشور المشترك بين السويد والصليب الأحمر السويدي "القانون الدولي الإنساني والنوع الاجتماعي - خبرات سويدية".

منظور النوع الاجتماعي في تطبيق القانون الدولي الإنساني لماذا منظور النوع الاجتماعي؟

إن النوع الاجتماعي، إلى جانب عوامل أخرى، مثل السن والعرق والطبقة يؤثر، ضمن أمور أخرى، على السلوك المتوقع والأدوار والنفوذ والاحتياجات والقدرات والموارد والقيود والفرص التي يحصل عليها الأشخاص في أي ثقافة. إن المعايير بين الجنسين وعدم المساواة القائمة، والصور النمطية المسبقة للجنسين تؤثر على حياة جميع الأفراد.

إن النظام القانوني غير التمييزي قد لا يكون له الأثر المقصود في بيئة تمييزية بطبيعتها. لذلك، يلزم جمع وتحليل واستخدام المعلومات المتعلقة بالعوامل الجنسانية فيما يتعلق بالقانون الدولي الإنساني من أجل تطبيق القانون بمتاز بالمساواة وعدم التمييز. بالإضافة إلى ذلك، يساهم منظور النوع الاجتماعي في القانون الدولي الإنساني كذلك في الأنشطة المترابطة الأخرى، مثل المساعدة الإنسانية (بما في ذلك الرعاية الصحية الأمانة والمتوفرة).

جمع المعلومات

يتطلب منظور النوع الاجتماعي جمع؛

- I. بيانات مصنفة حسب الجنس والسن (SADD). إن وجود فجوات معلوماتية فيما يتعلق بجنس وسن الأفراد في السياق الظرفي يحد من فعالية تطبيق القانون الدولي الإنساني؛
- II. معلومات متعلقة بوضع الأفراد في سياق معين. ويجب أن تضم كذلك معلومات حول السلوك المتوقع والأدوار والنفوذ والاحتياجات والقدرات والموارد والقيود والفرص الخاصة بالرجال والنساء على التوالي؛
- III. معلومات متعلقة بمدى اختلاف تجربة الصراع المسلح بين الرجال والنساء من مختلف الأعمار والخلفيات الاجتماعية.

التحليل

يتطلب منظور النوع الاجتماعي تحليل؛

- I. كيف أن وسائل وأساليب الحرب المختارة في عملية مخطط لها تؤثر على الرجال والنساء من مختلف الأعمار والخلفيات الاجتماعية على التوالي.
- II. كيف أن إجراءات ضمان الالتزامات بموجب القانون الدولي الإنساني، على سبيل المثال، حق الحماية والاحترام والحصول على الرعاية الصحية، تتم بحيث يتم توفيرها وتكون آمنة ومفيدة بشكل متساوي لكل من الرجال والنساء على التوالي؛

III. كيف أن الإجراءات والإهمال المُفترَف بموجب القانون يؤدي إلى تفاقم عدم المساواة أو التسبب في تباين نقاط الضعف بين الرجال والنساء في السياق الظرفي، وهو ما يمكن تجنبه من خلال أنشطة بديلة.

• الاستخدام

يتطلب منظور النوع الاجتماعي:

- I. أن يتم تضمين المعلومات التي تم جمعها وتحليل العوامل الجنسانية بعد ذلك في التخطيط والتنفيذ والتقييم للعمليات العسكرية؛
- II. أن يتم جمع وتحليل واستخدام المعلومات المتعلقة بآثار العمليات العسكرية (بما في ذلك تقدير أضرار المعارك) بطرق لا تعزز من فرضيات النوع الاجتماعي (على سبيل المثال، لا يجب الإبلاغ عن وفيات الإناث تلقائيًا باعتبارها "مدنية").

• المشاركة

- التأكد أن النساء والرجال من مختلف الأعمال والخلفيات الاجتماعية يتم استشارتهم وبشركون بنشاط في عملية جمع المعلومات المتعلقة بالوضع السياقي، وضمان مشاركتهم في التحليلات وعمليات صنع القرار ذات الصلة.
- أحد الأمثلة التوضيحية؛ منظور النوع الاجتماعي فيما يتعلق بالأحكام بشأن الأسلحة
- إن إنتاج واستخدام الأسلحة (بما في ذلك الذخيرة) يَحم ويؤثر على الرجال والنساء والفتيات والفتيان بطرق مختلفة - ولكل ليس دائمًا بالطرق المفترضة نمطيًا. لذلك، من المهم جمع وتحليل واستخدام المعلومات بخصوص؛
- I. كيف إذا كانت الاختلافات الجنسانية في الوضع والأدوار في المجتمع تتسبب في خلق نقاط ضعف متباينة لأنواع محددة من الأسلحة أو استخدام معين للأسلحة.
 - II. كيف إذا كانت الاختلافات الجنسانية في حرية الحركة والوصول إلى الموارد والخدمات، على سبيل المثال، تتسبب في خلق نقاط ضعف متباينة لأنواع محددة من الأسلحة أو استخدام معين للأسلحة.
 - III. كيف إذا تسببت الفروق البيولوجية بين الرجال والنساء في اختلاف التأثير عليهم من الآثار المباشرة وغير المباشرة للأسلحة؛
 - IV. ما الذي يشكل أضرارًا زائدة، أو معاناة غير ضرورية، على الرجال والنساء على التوالي بالنظر إلى وضعهم ودورهم في المجتمع، بما في ذلك حصولهم على الخدمات الأساسية.
- يجب أن تؤثر هذه العوامل الجنسانية كذلك على استعراض الأسلحة. يجب إجراء تحليل على أساس الجنس لإجراء تقييم صحيح وفقًا لمتطلبات المادة 36 من البروتوكول الإضافي الأول.

DIH y la perspectiva de GÉNERO: Recomendaciones

El conflicto armado afecta a mujeres, niñas, niños y hombres de diferentes maneras. En las últimas décadas hemos sido testigos del creciente reconocimiento que este tema ha tenido en la comunidad internacional y de la necesidad de intervenir a través del derecho internacional. Es esencial, por tanto, para actuaciones efectivas en materia de conflicto armado e tomar en cuenta las diferentes y variadas condiciones, necesidades y capacidades, así como las consecuencias que estas tendrían en posibles actuaciones. Esta perspectiva exige que el desarrollo y la aplicación del derecho internacional humanitario (DIH) hoy en día, también tenga en cuenta estos hechos. En otras palabras, el DIH debe abordarse con una «perspectiva de género». Todas las partes interesadas y los encargados de tomar decisiones (civiles y militares) y que tengan responsabilidades de acuerdo al DIH deben entender la manera en que las cuestiones de género influyen en la aplicación del derecho, y asumir su responsabilidad con el fin de garantizar que la perspectiva de género se tome en cuenta en la planificación, ejecución y evaluación de operaciones militares y en otras actuaciones con arreglo al derecho.

A continuación se ofrecen una serie de recomendaciones que pretenden facilitar el entendimiento de las implicaciones de la perspectiva de género en el DIH. Estas recomendaciones se basan en los resultados de la publicación conjunta sueca y de la Cruz Roja Sueca *IHL and Gender - Swedish experiences* (El DIH y el género: experiencias suecas).

La perspectiva de género en la aplicación del DIH

¿Por qué una perspectiva de género?

El género, junto con factores como la edad, etnia y clase, influyen, entre otras cosas, en el comportamiento, funciones, poder, necesidades, capacidades, recursos, limitaciones y oportunidades que se esperan de las personas en cualquier cultura. Las normas y desigualdades que existen en torno al género, así como los estereotipos en temas de género, repercuten en la vida de todas las personas.

Es posible que un régimen jurídico no discriminatorio no tenga el efecto previsto en un entorno de por sí discriminatorio. En consecuencia, es necesario recopilar, analizar y utilizar información relativa a los factores de género en materia de DIH con el fin de garantizar una aplicación equitativa y no discriminatoria de la ley. Así mismo, la perspectiva de género en el DIH contribuye a otras actividades interrelacionadas, como una efectiva asistencia humanitaria (incluyendo la atención en salud de forma segura y accesible).

Recopilación de información

Una perspectiva de género requiere recopilar:

- ✓ datos desglosados por sexo y edad. La falta de información en torno al sexo y la edad de las personas en un contexto determinado limita la efectividad de la aplicación del DIH ;
- ✓ información acerca de la situación de las personas en un contexto específico. Aquí también se debe incluir información sobre, las funciones, poder, necesidades, capacidades, recursos, limitaciones, oportunidades y el comportamiento esperado de hombres y mujeres respectivamente ;
- ✓ información acerca de cómo difiere la experiencia sobre el conflicto armado entre hombres y mujeres de diferentes edades y entornos.

Análisis

Una perspectiva de género requiere analizar:

- ✓ de qué manera influye en mujeres y hombres de diferentes edades y entornos, las formas y métodos de guerra elegidos en una operación planificada ;
- ✓ de qué manera las medidas para garantizar el cumplimiento de las obligaciones en materia de DIH, por ejemplo, el derecho a ser protegido, el respeto y el acceso a la atención de salud son asegurados de forma igualitaria para hombres y mujeres respectivamente ;
- ✓ de qué manera las acciones u omisiones cometidas con arreglo al derecho exacerban el riesgo de desigualdad o provocan diversas vulnerabilidades entre hombres y mujeres en un contexto determinado; algo que se podría evitar con actividades alternativas.

Utilización

Una perspectiva de género requiere:

- ✓ que la información recopilada y el análisis de los factores de género se incluyan, por tanto, en la planificación, ejecución y evaluación de las operaciones militares ;
- ✓ que la información relativa a las consecuencias de las operaciones militares (incluso la evaluación de los daños después del ataque) se recopile, analice y utilice de manera que no intensifique las presunciones en torno a los asuntos de género (por ejemplo, el fallecimiento de las mujeres no debería informarse automáticamente como «muerte de un civil»).

Participación

Se debe garantizar que mujeres y hombres de diferentes edades y entornos participen en los procesos de consulta e intervengan de forma activa en la recopilación de información sobre la su contexto, y asegurar su inclusión en análisis y procesos de adopción de decisiones relevantes.

Un ejemplo ilustrativo: la perspectiva de género en las disposiciones sobre las armas

La producción y el uso de armas (incluidas las municiones) tienen diferentes implicaciones e impactos en hombres, mujeres, niñas y niños, pero estos no siempre concuerdan con los estereotipos establecidos. Así pues, es importante recopilar, analizar y utilizar información en lo referente a:

- ✓ De qué manera/si las diferencias de género en la condición y funciones sociales crean diferentes vulnerabilidades frente a determinados tipos de armas o a un uso específico de las armas
- ✓ De qué manera/si las diferencias de género en, por ejemplo, la libertad de circulación y el acceso a los recursos y servicios, establecen diferentes vulnerabilidades a determinados tipos de armas o a un uso específico de las armas
- ✓ De qué manera/si las diferencias biológicas provocan que las consecuencias directas e indirectas de las armas tienen un impacto diferente en hombres y mujeres, y
- ✓ Qué constituye daños superfluos o sufrimientos innecesarios en hombres y mujeres respectivamente considerando su condición y función social, incluido su acceso respectivo a servicios fundamentales.

Estos factores de género también deben tener un impacto en la revisión de las armas. Es necesario llevar a cabo un análisis de género para poder realizar una evaluación correcta y acorde con las exigencias del artículo 36 del Protocolo Adicional I.

LIST OF ACRONYMS

AP	Additional Protocol (I and II)
AU	African Union
CDC	Centers for Disease Control and Prevention
CDR	Commander
CTE	Chronic Traumatic Encephalopathy
DAI	Diffuse axonal injuries
DDR	Disarmament, Demobilisation and Reintegration
DRC	Democratic Republic of the Congo
EU	European Union
EUFOR	European Union Force
FAO	Food and Agriculture Organization of the United Nations
GBV	Gender-based violence
GC	Geneva Convention
GenCap	Gender Standby Capacity Project
GFA	Gender Field Advisors
HCA	Humanitarian Crises Analysis
HCT	Humanitarian Country Teams
IASC	Intern-Agency Standing Committee
ICC	International Criminal Court
ICRC	International Committee of the Red Cross and the Red Crescent
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
IDP	Internally displaced persons
IHL	International Humanitarian Law
IRL	International refugee law
ISAF	International Security Assistance Force

Lt Col	Lieutenant Colonel
Maj	Major
MINURCAT	United Nations Mission in the Central African Republic and Chad
NATO	North Atlantic Treaty Organization
NGCM	Nordic Centre for Gender in Military Operations
NGO	Non-Governmental Organisations
OPJ	Officier de Policier Judiciaire
POW	Prisoners of war
PRT	Provincial Reconstruction Team
PSG	Particular social group
PTSD	Post-traumatic stress disorder
RCA	Central African Republic
RSS	Rwamwanja Refugee Settlement
SADD	Sex- and age-disaggregated data
SFOR	Stabilization Forces
SBGC	Sexual and gender-based crime
SGBV	Sexual and gender-based violence
Sida	Swedish International Development Agency
SRC	Swedish Red Cross
TBI	Traumatic brain injury
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
UNMIL	United Nations Mission in Liberia
URSCS	Ugandan Red Cross Society
USA	United States of America
WBGS	West Bank and Gaza Strip
WHO	World Health Organization
WPS	Women, Peace and Security



