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.....Chapter XI  
**MONITORING AND  
PROTECTING THE HUMAN  
RIGHTS OF RETURNEES  
AND INTERNALLY  
DISPLACED PERSONS.....**

*Key concepts*

*United Nations human rights operations have an essential role to fill in monitoring and protecting the human rights of returnees and internally displaced persons. People displaced within their own country can be particularly vulnerable to violations of their human rights and may need a specific form of human rights protection.*

*Human rights officers can address the human rights protection needs of returnees and IDPS at several levels: during the period of displacement itself; in preparation for a return home; during a return process; and after a return, during a period of re-integration. At all stages, it is essential that human rights officers be familiar with the specific threats with which returnees and IDPs may be confronted, and with the relevant international law which provide protection against those threats.*

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## **A. Introduction**

1. This chapter focuses on the human rights situation of **returning refugees** (returnees) and **internally displaced persons** (IDPs) — it thus concerns the human rights of **persons who are displaced from their homes, but who are within their own country**. After highlighting the particular relevance of international human rights standards to the protection of these categories of people, the chapter also seeks to identify ways in which UN human rights field operations can respond to their needs.
2. People who are within their own country and experiencing displacement may spend this period in any number of different situations. Public attention is often drawn the most rapidly to displaced persons living in camps, usually because large

concentrations of people are more visible. In fact, displaced persons never actually settle in camps — they may live only in much smaller community or family groups, and may be constantly on the move. They may, for example, be forced to continue their displacement for many months to escape an evolving situation of armed conflict in their country. Refugees who re-enter their country as returnees may continue to live through a long period of “internal displacement” — lasting several years or more — before they are finally able to return to their homes and reintegrate into their communities.

3. Internally displaced persons sometimes make specific efforts to distance themselves from any formal camp situation, precisely because being identified as an “IDP” can, in some situations, itself place a person at risk. In some countries, IDPs may choose to hide in forests and marshland so as to avoid being forced to live in a camp situation. In addition, **the ultimate objective of returnees and IDPs is usually to return to their homes — assuming that it is safe to do so** — and the return process itself, while lasting many months, can also expose them to human rights violations.

4. This chapter thus addresses the **human rights protection needs** of returnees and other displaced persons within their own country and while **outside of any formal camp situation**. The chapter looks in particular at protection needs during displacement or settlement in a non-camp situation, and during the process of returning home. The protection of the human rights of persons living in camps — be they refugees, returnees or IDPs — raises a series of specific concerns which are addressed in **Chapter X: “Monitoring and Protecting the Human Rights of Refugees and/or Internally Displaced Persons Living in Camps”**.

## B. Overview of the human rights situation of returnees and IDPs

### 1. Definition of terms

#### a. Refugee

5. The definition of “refugee” is set forth in Article 1 of the Convention relating to the Status of Refugees (modified by Article 1 of the Protocol relating to the Status of Refugees) as any *person who “owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside of the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country”*.

6. The definition of refugee has been expanded — particularly by the Organisation of African Unity (OAU) Convention on Refugees and the Cartagena Declaration — to include persons fleeing generalized violence (international war, internal armed conflict, foreign aggression or occupation, severe disruption of public order, or massive violations of human rights) in the whole or part of the country of nationality.

## **b. Returnee**

7. “Returnee” is the term used by the international community to identify a person who was a refugee, but who has recently returned to his/her country of origin. Defining a returnee is thus applicable on a person’s prior refugee status.

8. When a refugee decides to go home, it is usually because the *threat or danger that had caused him/her to leave his/her place of habitual abode has significantly diminished* or the danger in the place of refuge has become greater than the risk of returning home. Often return may be prompted by the end of a civil war or the replacement of a previous repressive government. The term “returnee” is a descriptive term that acknowledges the fact that returning refugees are in need of certain assistance, and sometimes protection, during an interim period until they have re-integrated their communities. Defining the period of time in which a person can continued to be identified as a returnee is difficult and will be different according to each specific situation.

## **c. Internally displaced persons**

9. According to the **Guiding Principles on Internal Displacement**, internally displaced persons are:

“persons or groups of persons who have been **forced or obliged to flee or to leave their homes** or places of habitual residence, in particular **as a result of** or in order to avoid the effects of **armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters**, and **who have not crossed any internationally recognized State border.**”

10. This definition is a broad one, largely because, the term “internally displaced person”, like the term “returnee”, is a descriptive term and not a legal designation. The definition includes the major causes of displacement — armed conflict, generalized violence, violations of human rights, natural or human-made disasters — but uses the qualifying term “in particular” to emphasise that **it does not exclude other causes.**

11. The definition focuses on persons who, if they were to cross an international border, would qualify as refugees, both under the OAU Convention and the Cartagena Declaration and, arguably in many cases, under the narrower definition of the Convention relating to the Status of Refugees. The definition also **includes**, however, **some persons who would not qualify as refugees, for example, those displaced by natural or human-made disasters.** The argument for including these disasters is based essentially on cases where governments respond to such disasters by discriminating against or neglecting certain groups on political or ethnic grounds or by violating their human rights in other ways.

12. The definition does not encompass persons who migrate because of economic reasons. Persons forced from their homes because of economic injustice and marginalization tantamount to systematic violation of the economic rights would however come under the definition.

13. IDPs are distinguishable from other persons in movement, and are of concern to the international community, essentially because of the coercion that impels their movement, their subjection to human rights abuse emanating from and as a result of their displacement, and the lack of protection available within their own countries.

## **2. Problems facing returnees and IDPs**

### **a. Returnees**

14. Returnees — as explained in the above definition — are former refugees who have re-entered their country but who have not yet re-integrated their homes and communities. Normally, re-entering one's country after a period of time spent as a refugee should mark the end of personal suffering and displacement and a return to a normal life. In practice, however, refugees are increasingly returning to situations which are far from safe. Sometimes, they may choose to return because their situation in the country of refuge has become worse than the situation in the country of origin. In other instances, refugees are forced to return home — even though a forced return is a violation of a fundamental right accorded to all refugees, and a violation of international law.

15. A refugee's "return" might take many months or years. When re-entering a country, a returnee might find it impossible to travel immediately to his or her home region. While waiting for an opportunity to return home returnees need to have access to food, water, shelter, health and education facilities, among others. "Long-term" returnees, living in a community other than their own, can thus face many difficulties, and can find themselves in a situation identical to that of internally displaced persons.

### **b. Internally displaced persons**

16. Internally displaced persons can be obliged to flee their homes for any number of reasons. They may choose to leave for their own safety, or they may be forced to leave, for example, by a military group. Often the only factor which distinguishes IDPs from refugees in the same region is the fact that the latter group has crossed an international border out of their country. In addition, IDPs, because they have not left the country, may still be suffering from the immediate factors which led to their flight. Sometimes IDPs may have been unable to leave their country, perhaps because the borders are too far, or because armed conflict and mines make the journey too dangerous. Like returnees, IDPs often have very limited access to adequate food, water and shelter, to health or education facilities, and to employment. They often suffer from violations of their human rights, which initially caused them to flee their homes; they may experience further threats to other rights during the period of displacement; and others during the process of return and re-integration to their home communities.

### **c. Factors affecting the human rights of returnees and IDPs**

17. Returnees and IDPs are vulnerable to violations of both civil and political and economic, social and cultural rights (see below for a detailed analysis of the different violations and international law responses to which returnees and IDPs may be

exposed). There may be many different causes behind each violation or pattern of violations; however, a few fundamental factors can often be identified. Understanding the specific vulnerability of returnees and IDPs in comparison with other members of a population helps to clarify their situation — and therefore the response needed from HROs.

18. Three key areas can be identified:

**i. Discrimination based upon membership of a group**

Depending upon the background reasons which had originally forced people to flee their homes, returnees and IDPs from particular countries or regions are often the members of an identifiable group — they may all be the members of a religious, linguistic or ethnic minority group, for example. As such they may be the object of discriminatory practices on the part of the other groups of the population or authorities. They may, for example, find that their freedom of movement is restricted, or that their children are not offered places in local schools. They may also be the victims of attacks, killings and arbitrary arrests.

**ii. Displacement from community of origin**

The simple fact of being displaced from one's community — leaving behind property, status, employment, family members, etc — places returnees and IDPs in a vulnerable situation. For example, because of their displacement IDPs and returnees may have difficulty in proving their identities and so claiming the normal rights which accompany a national in his or her own country — such as access to free health care, employment, freedom of movement, etc. Returnees and IDPs may be discriminated against simply because they come from another region of the country and the local population does not wish, or is unable, to share local resources. In fact, the presence of a large displaced population in a region can place a very heavy burden on available food, housing, jobs and other essentials. Prices typically rise dramatically and the standard of living of local population may fall. Tensions can rapidly result.

**iii. The return and re-integration process**

Returnees and IDPs can face a series of difficulties during their return journey home, and in the months following the return. Problems related to travel through war zones, the recovery of occupied or stolen property, compensation and rehabilitation, tracing of lost family members, can all be fundamental to a returnee or IDPs success in re-establishing a normal life. Vulnerability during this stage of displacement can also require a specific human rights response which is different from that needed by other members of a population in the same region.

### **3. Legal protection of the human rights of returnees and IDPs**

**a. International human rights instruments**

19. Like any other person, returnees and IDPs benefit from the protection of the human rights provided for in international human rights law instruments (see **Chapter III: “Applicable International Human Rights and Humanitarian Law: The**

**Framework” and Chapter IV: “Overview of International Human Rights and Humanitarian Law Standards”.)** Where returnees or IDPs are in a situation of armed conflict, which is quite often the case, then they are also entitled to the protection of international humanitarian law.

20. The fact of being a returnee or IDP does not remove or limit any of the human rights to which these categories of a population are entitled. The only distinction which should be made is a positive one: precisely because returnees and IDPs are in a situation of displacement from their homes they are more vulnerable to abuses of their rights, and may therefore require a more specific form of human rights legal protection than other persons who have not been displaced.

21. International human rights law does allow, nevertheless for derogations from a State’s obligation to respect certain human rights according to conditions within a country or region. In times of armed conflict, for example, a State can sometimes derogate from its respect of the freedom of movement of a population. There are strict conditions governing the regimes for derogations from human rights responsibilities, and these are explained in **Chapter III: “Applicable International Human Rights and Humanitarian Law: The Framework”**.

### **b. Refugee law**

22. Persons who leave their countries as refugees benefit from a body of international law (sometimes known as “refugee law”) which aims to compensate in part for the fact that these persons no longer benefit from the legal protection normally offered by their State. The United Nations High Commissioner for Refugees is the UN agency which carries principal responsibility for ensuring that refugees are adequately protected. This body of law is legally binding upon all those States who have ratified the relevant international instruments.

23. When refugees re-enter their country, as returnees they are no longer entitled to the full protection afforded by international law to refugees. However, elements of that law, and of the mandate of the UNHCR, focus on achieving “durable solutions” and a return in “safety and dignity”. On this basis one can infer that returnees continue to benefit from a form of protection related to their former status as refugees. In practice, for example, the UNHCR will continue to help returnees for a period of time following their return into their country of origin. The basic notion upon which this protection is based is that a refugee does not cease to be a refugee, in practical terms of vulnerability, the moment he or she re-enters the country of origin, but will require a period of time in which to “re-integrate”. As mentioned above, it is not possible to define precisely how long a person can continue to be defined as a returnee, and therefore for how long a returnee continues to benefit from this “former refugee status” protection.

### **c. The Guiding Principles on Internal Displacement**

24. Because internally displaced persons, by definition, have not crossed an international border out of their country, they never benefit from the protections afforded by international law to refugees or, by extension, to returnees. Concern with the vulnerability of IDPs has led to the formulation of “Guiding Principles on Internal Displacement” (see **Chapter X: “Monitoring and Protecting the Human Rights of**

**Refugees and/or Internally Displaced Persons Living in Camps”, Appendix II).** The Guiding Principles, as an instrument, are not legally binding upon States; however, many of the rights to which they refer are already defined in other international human rights instruments which are of a legally binding character. In fact, the Guiding Principles were not intended to provide a strict legal framework for the protection of IDPs; rather, they were created so as to draw upon elements of existing international human rights law which are of particular relevance to the protection of IDPs, and to apply those elements to the specific situations and threats experienced by IDPs. The body of Principles are intended, as their name suggests, to provide “guidance” in the application of international human rights instruments to the protection of IDPs.

25. Can the Guiding Principles be applied to returnees? It is unlikely that “long-term” returnees can continue to claim some protection from refugee law indefinitely. In cases where the return process lasts, for example, for several years, with returnees settling in temporary camps while awaiting an opportunity to return, they may at some point lose their returnee status, in spite of the fact that the return has not been completed. At this point they should ideally be classified as IDPs, at which point the Guiding Principles will help to apply international human rights law to the specific situation of returnees, often identical to that of IDPs in the same country.

#### 4. Objectives and role of a human rights field operation in protecting the human rights of returnees and IDPs

26. To be compelled for any reason to leave one’s home, country or locality is one of the most traumatic events any individual may endure. The return of refugees and internally displaced persons should ideally involve and reflect a restoration of their rights and their connection to their home and community. The *return of refugees and IDPs* is also an important step towards the *reconciliation of a society* and the return to normal life after the troubles which caused the initial displacement.

27. In defining the characteristics of efforts by UN human rights operations on behalf of returnees and IDPs, it is useful to refer to the objectives of the UNHCR. The organization’s Statute, referring to the return of refugees, uses a number of terms which help to express the overall objectives of its assistance: the return should be conducted in “**safety**” and in “**dignity**” and it should be conducted as a part of a “**durable solution**” so that the returnees will not be forced to flee their homes again in the future.

28. These terms also help to summarize the overall aims of work by a UN human rights field operation; each one implies certain rights which respond to the problems experienced by displaced populations. “*Safety*” indicates that returnees should be protected from threats to the rights to life and to personal security. A return in “*dignity*” suggests a need *to respect the religious, cultural, ethnic or other identity of returnees, and also rights related to security of the person.* The requirement of a “*durable solution*” emphasizes that the arrival of a returnee in his or her community does not in itself mean that the return has been successfully completed. It is often extremely important to undertake activities to ensure that the return itself is durable. These activities include efforts to make sure that the returnees will be accepted back into their communities, for example, through

*preparatory work with local government officials, discussions with potential employers, agreements with groups which might oppose the return, and general informational activities in the area.*

29. The work of a United Nations human rights operation should take place within this overall context. A human rights operation might, for example, focus on addressing the original causes of displacement, in protecting the human rights of persons who continue to live in a situation of displacement (whether as returnees or as IDPs), in monitoring and assisting in a return process, or in monitoring and assisting a period of re-integration following a return.

30. The types of efforts that HROs will carry out on behalf of returnees and IDPs will depend on a number of different factors. These factors include:

- ✓ the **mandate** of the human rights operation;
- ✓ the **current situation of returnees and IDPs in the country**;
- ✓ the numbers of people who are actually engaged in a **process of return and the reasons for the return**;
- ✓ the **conditions** under which any return is taking place;
- ✓ the **human rights situation in the region of return**; and
- ✓ the **work of other organizations** in the region.

31. This chapter is intended to provide assistance to HROs working to address a variety of different situations.

32. Working towards the respect of the human rights of returnees and IDPs can be a very difficult and complicated task. For example, situations in which one ethnic group has been forced to move by another ethnic group require an *understanding of the background of tension and conflict*. There may be *land disputes* dating back for hundreds of years — themselves based on different interpretations of poorly recorded history. These situations raise very strong feelings. For example, the perpetrators of human rights violations, who have forced people to flee their homes, may *feel that they are justified* in committing those violations *because of earlier abuses* they suffered at the hands of members of the displaced population. In addressing current human rights violations, a human rights operation may also need to respond to a need for truth and justice for acts committed in the past.

33. Providing assistance to returnees may require very specific field experience; for example, when returnees are detained in violation of their right to liberty, HROs will need to work with the detaining authorities. In addition, among the returnee community there will usually be people who are *particularly vulnerable* to human rights violations. *Women, children, the elderly and the disabled, for example, often suffer the most from shortages of food and from long journeys on foot*. Human rights operations need to be prepared for the human rights protection needs of vulnerable groups.

34. Trying to prevent further human rights violations and to assist the displaced population in returning home requires a very well planned approach, a very thorough understanding of the situation, and sensitivity to the different groups involved.

## C. Particular threats to returnees and the international law response

35. The threats and human rights violations to which returnees and IDPs are at risk can be described in several categories. Many people who are not returnees or IDPs may also become victims of the same human rights violations. These two categories are, however, often *particularly vulnerable* to human rights violations because of their displacement from a community or because they are *clearly identified as belonging to a particular group* within the population. In situations of inter-State conflict, for example, many people may suffer from lack of food or water; however, returnees and IDPs will often have the *most restricted access to any supplies* that are still available within the region.

36. This section describes some of the principal threats to returnee and IDP populations. It also explains some of the *binding international legal provisions* that can provide protection from human rights violations. *Note that no references are made to the Guiding Principles on Internal Displacement — this instrument is included as an appendix to the chapter and should be referred to directly.* The Guiding Principles help especially in applying relevant human rights law to the situation of IDPs. The threats to returnees and IDPs are identified here to provide easy reference to HROs.<sup>1</sup>

37. Defining the ongoing situation in the country or region of return is very important in terms of the international law which is applicable and which can be used as the basis for protecting the rights of returnees and IDPs. The United Nations Special Representative for Internally Displaced Persons has defined *three common contexts* in which the rights of displaced people may be at risk<sup>2</sup>: (1) situations of *tensions and disturbances* (or disasters); (2) *internal armed conflict*, and (3) *international armed conflict*. Different legal regimes apply to each of these situations and thus affect the rights of returnees and IDPs. These different contexts and the applicable legal principles are discussed in **Chapter III: “Applicable International Human Rights and Humanitarian Law: The Framework”**.

### 1. Discrimination

38. A very significant problem faced by returnee and IDP populations following their return to a home country or region is that of *discrimination from the national or local authorities*. Many international human rights instruments require States parties to respect and ensure the rights recognized by those conventions *without discrimination*. Article 26 of the Covenant on Civil and Political Rights, for example, provides for equality of treatment and governs the exercise of all rights, whether protected under the Covenant

<sup>1</sup>Not all of the legal references are provided here and a more detailed and complete reference can be found in the report of the Special Representative for Internally Displaced Persons, UN Doc. E/CN/1996/52 (1995). This section also relies heavily upon United Nations High Commissioner for Refugees, *Handbook, Voluntary Repatriation: International Protection* (1996).

<sup>2</sup>Report of the Special Representative of the Secretary-General, Mr. Francis Deng, to the UN Commission on Human Rights, UN Doc. E/CN.4/1996/52 (1995).

or not, which the State party confers by law on individuals within its territory or under its jurisdiction.

39. Discrimination on the basis of “race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status” is prohibited. “Other status” has been given a broad interpretation and can be argued to include internally displaced persons.

40. In situations of armed conflict, humanitarian law also prohibits discrimination. For example, Common Article 3 to the four Geneva Conventions provides that in non-international armed conflict, “Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria”. Similar provisions forbid discrimination in a context of international armed conflict (*see, e.g.*, Fourth Geneva Convention, Article 27).

## 2. Life and personal security

41. Returnees and IDPs may be at *risk from acts of violence*. The violence may, for example, involve *killings, rapes, torture, beatings or forced disappearances*. These acts might be committed by the local authorities or by other members of the local population. In situations of armed conflict they may be committed by one or more of the forces involved in the conflict.

### a. Threats to life

42. In *situations of tensions and disturbances or disasters*, as in all other situations, the right to life is a fundamental right of returnees and IDPs. This right is affirmed in Article 6(1) of the Covenant on Civil and Political Rights: “Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life”.

43. Because of the non-derogable right to life, the use of force by law enforcement officials is restricted to that which is both *proportional and necessary*. Law enforcement officials are only allowed to take a person’s life when their own lives, or the life of a third person is threatened, and there is no other way to remove that imminent threat.

44. The *Convention on the Prevention and Punishment of the Crime of Genocide* also provides a certain protection for the right to life of returnees and IDPs; insofar as they, as members of a group (national, ethnic, racial or religious), are subjected to killings; serious bodily or mental harm; the intentional imposition of conditions of life calculated to bring about the physical destruction of the group, in whole or in part; measures which are intended to prevent births within the group; or the forced transfer of children from the group to another group.

45. In *situations of armed conflict* the life and personal security of returnees and IDPs are protected by Common Article 3 of the 1949 Geneva Conventions in so far as the returnees and IDPs are not participating in the conflict. Common Article 3 provides that:

Persons taking no active part in the hostilities, including those members of the armed forces that have laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any distinction...

46. Common Article 3 goes on to specify a number of acts that are prohibited: violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; taking of hostages; outrages upon personal dignity, in particular humiliating and degrading treatment; and summary executions.

47. Returnees and IDPs, insofar as they are civilians, are protected by the Geneva Conventions and Additional Protocols. Civilians, including returnees and IDPs, may not be the target of attack. Note, however, that returnees and IDPs might not benefit from this protection if they are present in or near significant military targets.

48. In situations of *international armed conflict* returnees and IDPs who are in regions controlled by an opposing armed force will often fall into the category of *protected persons* to whom Article 32 of the Fourth Geneva Convention is applicable and which prohibits the parties to the conflict:

...from taking any measure of such a character as to cause the physical suffering or extermination of protected persons in their hands. This prohibition applies not only to murder, torture, corporal punishment, mutilation and medical or scientific experiments not necessitated by the medical treatment of a protected person, but also to any other measures of brutality applied by civilian or military agents.

49. In situations where returnees and IDPs are not defined as protected persons, they should nonetheless benefit from the *minimum protection* of Article 75 of Protocol I which prohibits violence to the life, health, or physical or mental well-being of persons, including in particular murder. Article 51 of Protocol I addresses this risk: “The civilian population . . . shall not be the object of attack. Acts or threats of violence, the primary purpose of which is to spread terror among the civilian population, are prohibited.”

50. This prohibition would include, for example, acts or threats by armed groups intended to prevent IDPs from leaving their camps to return home. Article 51 goes on to state that indiscriminate attacks are prohibited, and describes indiscriminate attacks as “those which are not directed at specific military objectives” and “those which employ a method or means of combat which cannot be directed at a specific military objective or... which employ a method or means of combat which cannot be limited... and are of a nature to strike military objectives and civilians... without discrimination”.

## **b. Forced disappearances**

51. Returnees and IDPs can sometimes be at particular *risk from forced disappearances*. The presence of a person who is a returnee or IDP in a specific region may not be registered in any national or local official documents. Returnees and IDPs are often excluded from any established community that would help to ensure their protection

from a forced disappearance. For these reasons, and particularly in a situation where the forced disappearance of a returnee leads to the death of the victim, it can be very difficult to prove that a forced disappearance has occurred. IDP *children, for example, are particularly vulnerable to a forced disappearance imposed in order to recruit them into an armed force.*

52. The Declaration on the Protection of All Persons from Enforced Disappearance<sup>3</sup> describes a forced disappearance, in the 3rd paragraph of its preamble, as a situation in which:

...persons are arrested, detained or abducted against their will or otherwise deprived of their liberty by officials..., or by organised groups or private individuals acting on behalf of, or with the support, direct or indirect, consent or acquiescence of the Government, followed by a refusal to disclose the fate or whereabouts of the persons concerned or a refusal to acknowledge the deprivation of their liberty, thereby placing such persons outside the protection of the law.

53. Article 1 of the Disappearance Declaration describes the act of enforced disappearance as “...a grave and flagrant violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights...”. The Disappearance Declaration is based on accepted customary law and on case law of the Inter-American Court of Human Rights and the Human Rights Committee established under the Covenant on Civil and Political Rights. The Vienna Declaration<sup>4</sup> and Programme of Action “reaffirms that it is the duty of all States, under any circumstances, to make investigations where there is reason to believe that a forced disappearance has taken place on a territory under their jurisdiction and... to prosecute its perpetrators”.

54. The prohibition of forced disappearance has been inferred by the Human Committee from the protections for the right to life in Article 6 of the Covenant on Civil and Political Rights and the protection against torture and ill-treatment in Article 7 of the Covenant.

55. In situations of *internal or inter-State armed conflict* a prohibition of forced disappearances needs to be inferred from other guarantees that are mentioned in humanitarian law. Specifically, these guarantees are the prohibitions of violence to life and person, outrages upon personal dignity, and the passing of sentences and carrying out of executions without judicial guarantees. Other provisions relating to humane treatment are also useful for this purpose. With regard to internal conflict the relevant provisions are contained in Articles 3, 4, 5 and 6 of Protocol II. For inter-State armed conflicts the relevant provisions are contained in Articles 27 and 32 of the Fourth Geneva Convention, and in Article 75 of Protocol I.

### **c. Missing and dead persons**

56. During the return of large numbers of displaced people — particularly where the return is forced and/or where there is continuing military conflict — *returnees and IDPs may become separated from their families.* In such situations it is often impossible for a

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<sup>3</sup>Adopted by UN General Assembly in resolution 47/133 of 18 December 1992.

<sup>4</sup>Adopted by the 1993 World Conference on Human Rights.

family to begin a search for the missing person and to cope with the trauma of not knowing what has happened.

57. International law places a certain *obligation on authorities to search for missing persons and to inform relatives of their fate*. When returnees and IDPs are killed, the authorities have an obligation to make the bodies available for an adequate autopsy and investigation and eventually to dispose of the remains of the dead in a dignified manner.

58. In situations of tension and disturbance, national domestic laws governing public health can be used to demand the proper disposal of persons who have been killed.

59. In situations of internal armed conflict, Article 8 of Protocol II requires that authorities search for the dead and dispose of their remains.

60. In situations of inter-State armed conflict, the Fourth Geneva Convention requires parties involved in the conflict to facilitate steps to search for the dead and to protect them from ill-treatment. Section III of Part II of Protocol I provides that families should be informed of the fate of their missing relatives.

61. The International Committee of the Red Cross maintains a Central Tracing Agency which assists with the reunification of families during periods of armed conflict and internal troubles.

#### **d. The use of land mines and similar devices**

62. Returnees and IDPs are often very vulnerable to the risk of injury or death from land mines. Mines may be used on roads or paths that they have to follow in order to return home. They may also be used in villages and cities, or *in cultivated fields* in order to render these places useless to the population. Land mines are indiscriminate and can remain active for many years, sometimes claiming victims long after the end of a conflict.

63. The principal international law governing the use of *land mines* is contained in the Land Mines Protocol, which is annexed to the United Nations Weapons Convention.<sup>5</sup> The Land Mines Protocol seeks essentially to protect civilians from the dangers of land mines. The preamble to the Weapons Convention requires that parties to a conflict respect provisions in the Protocol which reinforce customary rules from other relevant humanitarian law instruments, such as the prohibition against *indiscriminate* attacks and attacks on civilians. There have been further efforts to ban land mines which *may soon result in a complete ban* on their manufacture, transfer or use. Even if these efforts are successful, there remain many previously placed mines which kill and injure civilians and military personnel.

#### **e. Other acts of violence and ill-treatment, including torture**

64. Returnees and IDPs, in addition to being particularly vulnerable to violations of the rights to life and to forced disappearances may be at risk from other forms of violence.

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<sup>5</sup>United Nations Convention on Prohibitions or Restrictions of Use of Certain Conventional Weapons.

65. Regardless of the situation in which returnees and IDPs may find themselves, they should always benefit from the minimum protection afforded by Article 5 of the Universal Declaration of Human Rights: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”

66. This prohibition is generally accepted as forming a part of international customary law and is reproduced in Article 7 of the Covenant on Civil and Political Rights. The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment<sup>6</sup> indicates that an act of torture is a universal crime and establishes rules that define the competence and obligations of States parties in dealing with incidents of torture. *Cruel, inhuman or degrading treatment and punishment* are also prohibited as acts or omissions which cause suffering not reaching the level of severity necessary for torture or which lack the element of intentionality.

67. In situations where returnees and IDPs are arrested and placed in detention, Article 10 of the Covenant on Civil and Political Rights recognizes the right of people that have been deprived of their liberty to “be treated with humanity and respect for the inherent dignity of the human person”.

68. Prohibitions of torture and cruel or inhuman treatment or punishment are non-derogable and apply therefore in *situations of armed conflict*. Humanitarian law provides additional protection through Common Article 3 of the four Geneva Conventions which prohibits: “Violence to life and person, in particular... mutilation, cruel treatment and torture” and “outrages upon personal dignity, in particular humiliating and degrading treatment”.

69. Article 4 of Protocol I, Article 75 of Protocol II, and Articles 27 and 32 of the Fourth Geneva Convention provide similar protection.

### 3. Personal liberty

70. Refugees and IDPs who return to their country or region of abode may be at risk from arbitrary detention by authorities on the basis of discrimination or some other factor. For reasons similar to those mentioned above (para. 47) in the section on forced disappearances, returnees and IDPs may not be registered in a particular community and are often particularly vulnerable to arbitrary detention. In addition, efforts may be made by national or local authorities, or by groups within the local population, to confine returnees and IDPs to certain regions or even to a specific camp.

71. Article 9(1) of the Covenant on Civil and Political Rights provides that: “Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law”.

72. “Arbitrary arrest or detention” has been interpreted to prohibit arrest and detention which is not in accordance with domestic law or not in accordance with international standards of liberty and security of person. These standards concern, in particular, judicial guarantees defined in Article 9(2) to 9(5) of the Covenant on Civil and Political Rights. They include the right to be informed of the reason for an arrest

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<sup>6</sup>Adopted by UN General Assembly in resolution 39/46 of 10 December 1984.

and of the charges; the right to be brought promptly before a judge; the right to a trial within a reasonable period; and the right to a review of the lawfulness of one's detention.

73. Where returnees and IDPs are held in camps, such as “transit camps”, prior to returning to their home community, such detention must be both *necessary* and *reasonable*. Defining what is necessary and reasonable will depend on the particular situation in each country. HROs should be aware that the detention of returnees and IDPs in, for example, transit camps within their own country may infringe upon the rights of individuals. Such detention should be kept to an absolute minimum and should be accompanied only by those restrictions which are strictly necessary under the situation.

74. With regard to humanitarian law, Article 5 of Protocol II provides guidelines for the treatment of persons deprived of their liberty for reasons related to internal armed conflict. With regard to situations of inter-State armed conflict the Fourth Geneva Convention allows for the internment of protected civilians if necessary for the security of the detaining authority. Such internment is subject to particular standards of treatment and to a regular review.

## 4. Social and economic rights

75. Returnees and IDPs, by virtue of the displacement that they have experienced, are very often dependent on assistance from governments or from international organizations for the provision of minimum subsistence needs, including *food, water, housing and health care*.

76. Without this assistance, it can become impossible for displaced people effectively to return and reintegrate in their communities. In some situations, governments and others may attempt to restrict the access of returnees and IDPs to subsistence needs precisely in order to prevent an intended return. Problems of distribution can lead to serious tensions and even conflict in a region of return. It is essential that all returnees and IDPs have safe access to minimum subsistence needs.

77. Returnees and IDPs will usually need assistance in the form of material aid when they first reach their home region. Returnees and IDPs will need employment, a *minimum standard of living*, access to education, a means of participating in the local community decision-making process, etc. As returnees and IDPs recover their self-reliance, they will achieve an essential element in the process of reintegration into a community.

### a. Food, water and housing

78. It should be recalled that the Convention on the Prevention and Punishment of the Crime of Genocide, in its Article II(c), defines genocide to include “Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part”. Hence, in extreme cases, the deprivation of food with such a genocidal intent could qualify as genocide.

79. Article 11(1) of the Covenant on Economic, Social and Cultural Rights recognizes “the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing...”. The Committee on Economic, Social and Cultural Rights, interpreting States’ obligations under the Covenant, has declared that States parties have a “minimum core obligation to ensure the satisfaction of each of, at the very least, minimum essential levels of each of the rights”. A State party that is unable to fulfil this obligation must “demonstrate that every effort has been made to use all resources at its disposition in an effort to satisfy as a matter of priority those minimum obligations”.

80. A further interpretation by the Committee, and one that is of particular importance with regard to returnees and IDPs, is the requirement that a State demonstrate that it has made a *maximum effort to use all the resources at its disposal to satisfy these minimum obligations* (see **Chapter XVII: “Monitoring Economic, Social and Cultural Rights”**). This effort includes not only resources within the country but also resources made available by the international community. This provision can be interpreted as an obligation upon States to allow the international community to provide assistance in the form of subsistence needs to returnees and IDPs.

81. The Committee on Economic, Social and Cultural Rights has interpreted the right to housing as a “right to live somewhere in security, peace and dignity.” In assessing the adequate nature of housing one can consider the availability of services (water, electricity), materials and infrastructure (roads, hospitals, etc.), affordability, habitability, accessibility (particularly to the disabled, to children, or to the elderly), location and cultural adequacy.

82. In *situations of armed conflict*, Common Article 3 does not explicitly refer to food, water or adequate housing but provides for *humane* treatment of all persons who are not taking an active part in the conflict. Humanitarian law prohibits starvation of civilian populations as a means of combat. It also prohibits the destruction, removal, or rendering useless of objects which are “indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas for the production of food stuffs, crops, livestock, drinking water installations and supplies and irrigation works”. For internal armed conflicts, the essential provisions are contained in Article 14 of Protocol II. For inter-State conflicts, reference should be made to Article 54 of Protocol I.

83. In *internal conflicts*, Article 5(1) of Protocol II provides for the minimum standards of treatment of people detained during armed conflict, including notably the provision of drinking water, food and protection from the weather and conflict. These rights are not, however, repeated in Article 5(3) which provides for the treatment of people whose liberty is restricted in any manner other than by detention. Hence, unless returnees and IDPs are detained, Article 5 may not assure the provision of water, food, etc.

84. In *inter-State conflicts*, Article 55 of the Fourth Geneva Convention requires that the occupying power ensures that food supplies reach the population. The article also prohibits the occupier from requisitioning food without taking into account the needs of the civilian population.

## **b. Health services**

85. Returnees and IDPs are often at risk from sickness and/or injury. Certain groups of returnees and IDPs — women, children, the elderly and the disabled — are particularly vulnerable.

86. Article 12 of the Covenant on Economic, Social and Cultural Rights sets as an objective “the right of everyone to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health.” The second paragraph of this article requires States to take measures to attain this objective and requires notably “(d) the creation of conditions which assure to all medical service and medical attention in case of sickness.”

87. Under both human rights and humanitarian law, returnees and IDPs should not suffer discrimination regarding their access to medical supplies and facilities. In *situations of internal armed conflict*, Common Article 3 requires the *humane* treatment of all persons not actively participating in the conflict. The same article also requires the parties to a conflict to collect and care for the wounded without conditions. This protection should be made available to returnees and IDPs. Article 7 of Protocol II states that in the provision of medical care no distinction is allowed on any grounds other than medical considerations. No distinction should therefore be made against returnees and IDPs. In situations where it becomes necessary to move members of the civilian population, Article 17(1) of Protocol II requires the taking of “all possible measures... in order that the civilian population may be received under satisfactory conditions of hygiene, health, safety and nutrition”.

88. In *situations of inter-State armed conflict*, Article 55 of the Fourth Geneva Convention requires that the occupying power ensure medical supplies to the population. Article 6 imposes a duty on the occupying power to ensure and maintain medical and hospital facilities and services. In Articles 16, 17, 18, 19, 21 and 22 of the Fourth Geneva Convention, provision is made for the sick and injured, for expectant mothers, for the protection of medical facilities, and for the evacuation of the sick and wounded.

## **c. Access to property**

89. Returnees and IDPs may lose possession of their property during displacement. It is important for the successful reintegration of returnees and IDPs that they are able to *reclaim ownership and possession of belongings, cars, offices and land*. The restitution of houses occupied by other individuals is often a problem faced by displaced people who return home. It is also important that returnees and IDPs be allowed to maintain possession, or to reclaim, any money that they own.

90. Article 1 of the First Protocol of the European Convention on Human Rights provides that every person should have the right to “the peaceful enjoyment of his possessions”. Article 1 prohibits the deprivation of such possessions “except in the public interest and subject to the conditions provided for by law and by the general principles of international law”. Similar provisions exist in Article 14 of the African Charter on Human and People’s Rights, and in Article 21 of the American Convention.

91. In *situations of internal armed conflict*, Article 4 of Protocol II prohibits “pillage”, and thus provides a certain *protection for the personal property of returnees and IDPs* in displaced persons’ camps or in homes. Article 14 of Protocol II prohibits the “attack, destruction, removal, or rendering useless of those objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works”.

92. In *situations of inter-State armed conflict*, the Hague Regulations Respecting the Laws and Customs of War on Land of 1907 provide a certain *protection to property*. Article 25 prohibits the “attack or bombardment, by whatever means, of towns, villages, dwellings, or buildings which are undefended”. Articles 28 and 47 prohibit the pillage of a town or place during hostilities or occupation.

93. Article 53 of the Fourth Geneva Convention prohibits any destruction of *real or personal property* by an occupying power. Article 97 provides that sums of money and other items of value, can only be taken away from civilian internees in exchange for a receipt. Objects with a personal or sentimental value cannot be taken away.

#### **d. Employment**

94. Article 23 of the Universal Declaration of Human Rights provides that:

- (1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
- (2) Everyone, without any distinction, has the right to equal pay for equal work.

#### **e. Right to education**

95. Returnees and IDPs may find themselves excluded from education opportunities when they return home. There may be insufficient places available, the fees may be too expensive, or there may be discrimination against the returnees and IDPs in the attribution of places in educational institutions. Education is extremely important to returnees and IDPs and fulfils a principal role in the process of reintegrating into a community. *Education is particularly important for returnee children* who will often have missed several years of formal and structured schooling.

96. Article 13 of the Covenant on Economic, Social and Cultural Rights recognizes the right to education for everyone — particularly compulsory and free primary education. The UNESCO Convention against Discrimination in Education also prohibits discrimination at all levels of education.

## **5. Restrictions on movement**

97. *Freedom of movement* is an extremely important right for returnees and IDPs. It is also a right that is frequently denied them. For example, returnees and IDPs leaving a country or region in which they have been seeking refuge will often need to travel long distances in order to reach their home region. National or local *authorities may try to force the returnees and IDPs to use a particular route of return*. Sometimes these specified routes may

be *longer or more dangerous* than other alternatives, and the restriction of movement has the effect of preventing or discouraging displaced persons from making the return journey. Returnees and IDPs are sometimes *forced to settle in one particular area, for example, in a region where the soil is not suitable* for farming, where there are few water sources, or where mines have made the *area very dangerous*.

98. Returnees and IDPs have already suffered a violation of their right to freedom of movement when they were forced to flee as refugees or as IDPs. It is therefore all the more important that as displaced people return, this right should be respected. Accordingly, it is essential that returnees and IDPs be guaranteed the right to freedom of movement. Any restrictions imposed on movement by local authorities under Article 12 of the Covenant on Civil and Political Rights should be critically examined and, where possible, avoided.

### **a. Moving within one's own country**

99. The principal contexts in which a returnee's right to *freedom of movement* might be violated are: when moving within his/her own country; when choosing a residence; and as a result of decisions to displace, relocate or transfer groups of returnees and IDPs.

100. The Universal Declaration of Human Rights recognizes, in Article 13(1), the freedom of residence and movement as a basic human right. Article 12(1) of the Covenant on Civil and Political Rights provides that: "Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence."

101. In *situations of tensions and disturbances* the right to freedom of movement is derogable and subject to various possible limitations. Article 12(3) of the Covenant on Civil and Political Rights provides that the only restrictions permitted are those "which are provided by law, are necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present covenant." The American Convention adds "public interest" to the possible justifications for restrictions of freedom of movement. In all cases any restrictions should be proportional to the necessity.

102. A *situation of internal armed conflict* may provide justification for a restriction of freedom of movement. Article 17 of Protocol II, however, prohibits the forced movement of civilians, except under special circumstances:

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

103. In *situations of inter-State armed conflict* Article 49 of the Fourth Geneva Convention provides for the freedom of movement of displaced persons: "Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of the motive."

104. Article 49 continues,

Nevertheless, the occupying power may undertake total or partial evacuation of a given area if the security of the population or imperative military reasons do demand. Such evacuations may not involve the displacement of protected persons outside the bounds of the occupied territory except when for material reasons it is impossible to avoid such displacement.

105. Article 85(4)(a) of Protocol I characterizes the intentional “transfer by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory in violation of Article 49 of the Fourth Convention” as a grave breach of the protocol.

106. As referred to above, the term “protected persons” can be interpreted to cover returnees and IDPs. In some situations returnees and IDPs, as members of a civilian population, may be forced to leave their residences so as to shield military objectives from attack. This form of forced displacement is prohibited by Article 51(7) of Protocol I.

## **b. Leaving one’s own country and seeking asylum**

107. Sometimes refugees and displaced people who return to their home country or region decide to leave again. The decision to leave may be made, for example, after a change in the security situation, or because there are no longer sufficient opportunities to find employment.

108. Returnees and IDPs, like other members of the population, are entitled to leave their country. Article 12(2) of the Covenant on Civil and Political Rights provides “everyone shall be free to leave any country, including his own.” Article 12(3) provides, however, that the right to leave a country is subject to restrictions imposed by law which “are necessary to protect national security, public order (*ordre public*), public health and morals, or the rights and freedoms of others...”.

109. Returnees and IDPs also have the right to seek asylum. The Vienna Declaration and Programme of Action provides “that everyone, without distinction of any kind, is entitled to seek and to enjoy in other countries asylum from persecution.” Article 14(1) of the Universal Declaration of Human Rights similarly provides that: “Everyone has the right to seek and to enjoy in other countries asylum from persecution.”

110. Under *humanitarian law*, Article 73 of Protocol I considers the situation of people who flee their country before the beginning of a war, and are accepted into another country as refugees. If, subsequently, the country of refuge is occupied by the armed forces of the country of origin, the refugees, although nationals of the occupying country, must be treated as protected persons.

## **6. Requirement of identification documents**

111. In many places, nationals of a country may be required to present identification documents. These *documents may be necessary, for example, to purchase bus or train tickets, to pass*

through checkpoints, to reclaim one's own place of residence, or to apply for a job. The documents required may include passports, birth certificates, insurance certificates or driver's licences. It is often impossible for displaced people to present all or any of these documents. After months or years of displacement, returnees and IDPs may have lost, or had stolen, many of their belongings. Displaced people may have been forced to flee without their documents. Where births or deaths occurred during the period of displacement, returnees and IDPs may have been unable to obtain the relevant certificates. In *some refugee or IDP camps registration facilities are provided*; however, displaced persons are sometimes unwilling to identify themselves as returnees and IDPs in their community of origin and prefer not to use these documents. Also, identity cards are sometimes only provided to male heads of households, a practice that may place women at risk in crossing borders or checkpoints.

112. The requirement of certain documents which displaced people are unable to obtain may prevent returnees and IDPs from travelling within their country, or from obtaining homes or jobs within a community.

113. *International law provides for the right to a legal personality for each person.* Article 16 of the Covenant on Civil and Political Rights declares "Everyone shall have the right to recognition everywhere as a person before the law".

114. Refugee law requires that States respect the *personal status, such as marriage*, of a refugee prior to his or her displacement. It also requires that countries of asylum provide administrative services to refugees including the delivery to these persons of "such documents or certifications as would normally be delivered to aliens by or through their national authorities".

115. In *situations of internal armed conflict*, no specific references are made to the documentation requirements of displaced people, except as provided in the Covenant on Civil and Political Rights. With regard to *situations of inter-State armed conflict*, Article 80 of the Fourth Geneva Convention provides that the legal personality of civilian internees should be protected. Article 97(6) provides that family or identity documents cannot be taken away from their owners without a receipt being given in exchange. In addition, Article 97 provides that at no moment should civilian internees be without identity papers. These provisions of the Fourth Convention could be used to provide relevant protection for returnees and IDPs.

## 7. Keeping a family together

116. During a return process, many families may become divided, and children, in particular, become lost. In some situations, displaced people returning home may find that local authorities order certain people to specified regions. These orders may lead to the division of families and communities. Some of these problems can be avoided through application of the international law with regard to freedom of movement. There exist, however, a significant number of provisions specific to *maintaining the unity of families*.

117. The Covenant on Civil and Political Rights provides in Article 23(1) that "The family is the natural and fundamental group unit of society and is entitled to protection by society and the State". There are similar provisions in the Universal Declaration of Human Rights; the Covenant on Economic, Social and Cultural Rights; the African

Charter; and the American Convention. The Convention on the Rights of the Child in particular makes detailed provisions on the importance of the family for children.

118. In *situations of internal armed conflict*, Article 4(3)(b) of Protocol II provides that all appropriate steps shall be taken to facilitate the reunion of families temporarily separated.

119. With regard to *inter-State armed conflict*, Article 74 of Protocol I requires each party to the conflict to “facilitate in every possible way the reunion of families dispersed as a result of armed conflicts.” This article applies to the whole population, including the nationals of the party to the conflict. Article 49 of the Fourth Geneva Convention requires that, where an Occupying Power evacuates members of the population, the Occupying Power should ensure to the greatest possible extent that members of the same family are not separated.

## 8. Language and culture

120. Returnees and IDPs, living in a region other than their own, or following their return home, may be *prevented from using their own language and pressured to use the language of the local or national authorities* and/or of a larger linguistic group in the region.

121. *Linguistic rights* are explicitly protected by a number of treaties. The right to speak one’s own language is also inferred from a number of other rights, such as the right to freedom of expression.

122. Article 27 of the Covenant on Civil and Political Rights provides, “In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied their right, in community with the other members of their group, to... use their own language.”

123. In *situations of internal armed conflict*, Common Article 3 requires the humane treatment of all persons who do not or who no longer participate in hostilities. Such treatment must be accorded “without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria”. Language is arguably covered by “similar criteria”. An analogous provision is found in Article 75 of Protocol I with regard to *situations of inter-State armed conflict*.

## 9. Freedom of assembly

124. In many places, returnees and IDPs will not be well represented in local or national associations and administrative structures. They may *need to form associations and to represent themselves*. In some countries, restrictions are placed on the right of certain groups to gather.

125. Article 21 of the Covenant on Civil and Political Rights provides, “the right of peaceful assembly shall be recognized.” In addition, Article 22 states, “everyone shall have the right to freedom of association with others...”. These rights are, however, subject to restrictions provided by law and which are necessary in the interests of national security, public safety, or the rights of others.

## 10. Participation in governmental and public affairs

126. *Returnees and IDPs may find themselves excluded from any opportunity to participate in governmental or public affairs.* Such exclusion may, in turn, lead to other violations of their human rights.

127. Article 25 of the Covenant on Civil and Political Rights provides that every citizen shall have the right and the opportunity to participate in the conduct of public affairs and to vote and be elected at genuine periodic elections. *Returning citizens should be assured their rights of political participation.*

128. A 1991 United Nations General Assembly resolution declares “the right of everyone to participate in the government of his or her country is a crucial factor in the effective enjoyment by all of a wide range of other human rights and freedoms...”.

129. Restrictions on the right to participate in public affairs are permitted but they must not be unreasonable and they must be proportional (Article 25 of the Covenant on Civil and Political Rights). Although international law assures only citizens the right to vote and be elected, Governments have and should consider extending participatory rights to others residing in the community.

### D. Vulnerable groups

130. Returnees and IDPs are often a vulnerable group deserving particular attention from the human rights operation. There are, however, particularly vulnerable categories of people within returnee populations. There may, for example, be particular groups of returnees and IDPs that will be the targets of human rights violations because of their opinions, religious beliefs, ethnic identity, or other reason.

131. Specific attention should be drawn to *women, children, the elderly and disabled persons*. These categories of returnees and IDPs are often at the most risk of violations of their human rights or other suffering during the return process. For example, returnees and IDPs are often obliged to walk for many days in order to return to their home country or region, carrying all of their belongings with them. These journeys may take place under harsh weather conditions, with extreme heat or cold, and with little food or water. These conditions create the most difficulties for children, the elderly and disabled, as well as for the women returnees and IDPs who care for them.

132. This part gives an indication of some of the problems that vulnerable groups of returnees and IDPs may face, and provides brief information on some of the international legal norms that can be used to protect each category. The information provided here is by no means exhaustive. In particular, attention is drawn to the fact that only those rights which correspond to violations frequently suffered by vulnerable group as returnees and IDPs are mentioned. HROs should be aware of the vulnerable categories within the returnee populations in their region. The human rights field operation’s returnee unit should provide clear guidance to staff members as to what assistance they may offer to particularly vulnerable returnees and IDPs. (See **section H below** for more information.)

## 1. Women

133. Women usually form the largest single category of displaced people. Returnee women are often left to look after their children entirely on their own and will sometimes take on the additional responsibility of caring for unaccompanied children. In spite of this heavy burden *women are often left out of any decision-making process* within the returnee community. The decision to return, for example, may have been made by men, and without consideration for the sometimes different priorities of women and children. During the period of displacement *women may be particularly vulnerable to physical violence, and rape in particular*. The victims of such violence are sometimes stigmatized by their families and other returnees and IDPs and may be unable to return to their community.

134. The problem of *exclusion from decision-making structures*, and other forms of discrimination, often continues following the return. In many countries, for example, women heads of households may be prevented by local tradition, or even national law, from owning land or property. Women may be excluded from control over the distribution of food or other aid that is essential to their reintegration into the community.

135. There is increasing awareness within international humanitarian organizations of returnee women's needs and of the importance of *involving returnee women in the development and local management of aid programmes*.

136. *Discrimination* based on gender is the cause of many human rights violations that are suffered by women returnees and IDPs. The UN Charter and human rights treaties forbid sexual discrimination and provide for the right to gender equality, for example, in Article 2 of the Universal Declaration of Human Rights and Articles 2(1), 3 and 26 of the Covenant on Civil and Political Rights.

137. Returnee women may be the victims of "*gender specific violence*" such as rape. These violent acts are committed sometimes by members of armed groups in the territory through which returnees and IDPs must travel to reach their home region. In some cases the violent acts may be committed by men within the returnee population. While many women are vulnerable to gender specific violence, however, returnee women — who are often separated from their families and other members of the community — are particularly vulnerable.

138. The human rights violations inherent in gender specific violence are prohibited by many principles of international law on other acts of violence and ill-treatment, including torture. Specifically, the United Nations Declaration on the Elimination of Violence Against Women affirms that States have an *obligation to prevent and redress such violence*. States should understand their obligations under these international instruments as imposing an affirmative duty to respect and ensure protection from violence as well as to prevent and punish acts committed by private individuals.

139. Returnee women may be *coerced into prostitution* in exchange, for example, for food, safety, or the right to enter or leave a country or region. The victims of these violations may suffer physical and/or mental pain and, in addition, may risk catching the HIV/AIDS virus. In situations of internal armed conflict, Article 4(2)(e) of Protocol II prohibits "rape, enforced prostitution and any form of indecent assault".

Similar provisions exist in Article 76(1) of Protocol I with regard to situations of inter-State armed conflict.

140. In many situations returnee women do not have equal access, with men, to *personal identification documents* and to *registration procedures*. The absence of personal documentation may make it impossible, for example, for women to travel or have access to food or property without the agreement of a husband or other male relative. The UNHCR in particular concentrates on ensuring that women are able to acquire an independent legal status.

141. Article 11 of the Convention on the Elimination of All Forms of Discrimination Against Women guarantees women equal rights with men in *employment*. These equal rights include the same employment opportunities, equal remuneration, and equal treatment in respect of work of equal value.

142. Article 15 of the Convention on the Elimination of All Forms of Discrimination Against Women provides that women are equal with men before the law, and that they, in particular, shall be accorded “equal rights to conclude contracts and to administer property...”. Article 16(1)(h) of the Convention emphasizes the equal rights of husband and wife in owning, acquiring, managing, administering, enjoying and disposing of *property*. Returnee and IDP women often face problems with regard to the inheritance of property. During displacement, especially in an environment of armed conflict, many people may die. Where a woman loses her husband, she may later, upon her return home, be unable to inherit the family property which was registered in his name.

## 2. Children<sup>7</sup>

143. Within returnee populations there are often large numbers of *unaccompanied minors*. These children may have become separated from their parents when they first left their homes, or during the return. In many cases their parents may have been killed. During the return unaccompanied minors often have very limited access to food aid. *Exhaustion* and *malnutrition*, combined with their young age, can make children (unaccompanied or otherwise) particularly vulnerable to *illnesses* such as cholera and malaria. In many countries young boys are the victims of *conscription* by armed groups and obliged to take part in hostilities; unaccompanied children are particularly vulnerable to this violation of their rights.

144. Those children who succeed in returning to their home regions may have no homes to locate; they have often missed several years of education, drastically reducing their employment opportunities for the future.

145. Returnee children may be *confined* to camps, or other places, by local authorities. Article 37(c) of the Convention on the Rights of the Child provides that: “Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age”.

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<sup>7</sup>For further information on the rights specific to children, please refer to **Chapter XII: “Children’s Rights”**.

146. Children are guaranteed a particular right to *family unity* which is especially relevant to returnee children. Article 7 of the Convention on the Rights of the Child provides that a child, as far as possible, has the right to know and be cared for by his or her parents. Article 5 provides that the States parties to the Convention are required to respect

the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

147. Article 9 of the Convention refers to situations where a *child is separated from his or her parents*. The article provides that

where such separation results from any action initiated by a State party, such as the detention, imprisonment, exile, deportation or death of one or both of the parents, or of the child, the State party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well being of the child.

148. The Convention refers to conditions of *family reunification*. Article 10 provides that children and parents have the right to leave any country, including their own, and to enter their own country for purposes of maintaining contact with each other. With regard to refugee children (or children seeking refugee status), Article 22 stipulates that States parties

shall provide, as they consider appropriate, cooperation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations cooperating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family.

149. Article 27 of the Convention on the Rights of the Child provides that every child has the right “to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development”. States parties “in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing”. (See also **Chapter XII: “Children’s Rights”**.)

### 3. The elderly and disabled

150. In many societies the elderly and disabled receive care from their families. In situations where populations are displaced, however, *families become easily separated; the elderly and disabled may find themselves left on their own*. As with unaccompanied children, this category of returnees and IDPs often has limited access to food and other aid. The travelling involved in the return process may be very exhausting for them. *Physically*

*disabled people, in particular, may be unable to walk long distances, if any distance at all.* The elderly are especially vulnerable to illness, and disabled people may be particularly at risk from discrimination and/or degrading treatment based on their disability.

151. HROs should be aware of the vulnerability of the elderly because of their old age and isolation from the normal protection mechanisms within the community. The United Nations Standard Rules on the Equalization of Opportunities for Persons with Disabilities<sup>8</sup> provide that persons with disabilities are entitled to enjoy to the maximum extent feasible the same rights and freedoms as those who are not affected by disabilities. The Standard Rules provide that “the term ‘disability’ summarizes a great number of different functional limitations occurring in any population in any country of the world. People may be disabled by physical, intellectual or sensory impairment, medical conditions or mental illness. Such impairments, conditions or illnesses may be permanent or transitory in nature”.

152. Article 2 of the Covenant on Economic, Social and Cultural Rights prohibits disability-based discrimination. The Committee on Economic, Social and Cultural Rights has defined such discrimination as including “any distinction, exclusion, restriction or preference, or denial of reasonable accommodation based on disability which has the effect of nullifying or impairing the recognition, enjoyment or exercise of economic, social or cultural rights”.<sup>9</sup>

## **E. Human rights field operation: preparing for the return**

153. The principal objective of returnees and IDPs is to end their situation of displacement and to return to a normal life. As far as possible, most people will wish to return to their home regions, to recover their land, homes and other property. Aside from the general monitoring and protection of the rights of returnees and IDPs during displacement — referred to above — UN human rights field officers can also play an important role in preparing for the return of these displaced persons. Elements of such “preparation” involve working within the human rights operation, and with key partners to ensure that there is a thorough understanding of the human rights situation confronting returning displaced persons. Other aspects of the “preparation” may involve working to address some of the problems that returnees and IDPs may face during the return process. Such activities might involve, for example, helping the authorities to develop a system of property restitution and compensation in conformity with national and international law, or training local police to mediate in disputes between returnees/IDPs and others.

154. There are thus any number of activities in which a human rights operation may engage in preparation for a return. Several of these are addressed in other chapters of this Manual — such as protecting the human rights of detained persons, the

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<sup>8</sup>Adopted by G. A. res. 48/96 of 20 December 1993.

<sup>9</sup>Committee on Economic, Social and Cultural Rights, General Comment No. 5, UN Doc. E/1995/22-E/C.12/1994/20, at 99 (1994).

administration of justice, etc — while others are addressed in separate UN human rights training texts covering, for example, human rights promotion, human rights and law enforcement, and human rights for lawyers and judges.

155. Attention is drawn here to a limited list of activities which should, themselves, help a human rights operation to better develop its strategy and approach to providing more substantive assistance to returnees and IDPs. The human rights field operation can prepare for the return of refugees or IDPs in four ways: (1) *information gathering*, (2) work in the context of *special agreements*, (3) *consultation*, and (4) *training/information activities*.

## 1. Information gathering

156. The first preparatory stage is *understanding the situation*. Information should be gathered on the returnees and IDPs, on the region where they will return, and on the overall return situation. This information should be used to build a profile of the return situation.

### a. Information on the returnees and IDPs

157. Area offices and the field operation's central office returnee unit — where it exists — should collect detailed information on the returnees and IDPs who are expected to arrive. *Who* are they? Are the displaced people identified with one or more groups (political, ethnic, religious, etc.)? Do they form one professional or social group (e.g., farmers)? Are there any vulnerable groups within the returnee population? Are there *tensions* between the displaced group and any other group, for example, in the home region? What is the history of the relationship between the groups? *When* did the returnees and IDPs leave their homes and why? In which countries or places did they seek refuge? What were the *conditions of life* in the place of refuge? What pressures have those conditions placed upon the returnees and IDPs? In particular, to what extent is the return voluntary? *When* is the return expected to take place? Over what period of time? *How many* people are expected and to *what areas* will they return?

158. This information should be gathered either through contact with returnees and IDPs that have already arrived, or through contact with displaced people in refugee or IDP camps (see **Chapter X: “Monitoring and Protecting the Human Rights of Refugees and/or Internally Displaced Persons Living in Camps”**). They should be asked for their opinions on the return. What are their hopes for the return? What are their fears? Attention should be drawn to *issues such as personal security, relations with the local authorities, housing and employment*. It is essential that any such survey be conducted among women returnees and IDPs as well as men. Women may have very different priorities and, as a vulnerable group, their rights may be at greater risk.

### b. Information on the region of return

159. Area offices in the region where the returnees and IDPs are going should inquire as to the housing and employment situation that is likely to face returnees and IDPs. HROs can make *contact with members of the local population* in order to discover how they feel about the arrival of the returnees and IDPs. What do they hope and fear from

the return? How will those people who are living in the community receive the returnees and IDPs? Are there groups who will oppose the return or who may seek to violate the human rights of the returnees and IDPs? What are the principal problems that could arise if the displaced people were to return now? What would be the conditions, from a human rights perspective, with which they would be met? For example, would there be a shortage of housing, which in turn may lead to disputes over home ownership and subsequent human rights abuses? Would there be *arrests of the returnees and IDPs for their alleged conduct prior to departure*? By predicting these sorts of problems HROs can do much to prepare for them, for example, by raising such issues with local authorities.

### c. **Building a profile**

160. With the above information the human rights field operation can *build a profile* of the returnees and IDPs and the situation of return. The profile will help to facilitate planning and to emphasize potential problems so that they can be addressed as soon as possible. Profiles should be updated regularly and, where necessary, can be specific to particular regions of return covered by the operation.

## 2. Working within special agreements

161. The field operation should ensure that it is informed of the content of any special agreements that may have been signed by the national or local authorities with regard to the returnees and IDPs. Such *agreements can help to reinforce the protection of returnee rights by providing specific guarantees on the part of the national or local authorities* of the way in which they will treat returnees and IDPs. The UNHCR in particular maintains the practice of signing “Branch Office Agreements” between the UNHCR and the national authorities. On occasion, the UNHCR will also participate in “Tri-partite Agreements” with the host country and the country of origin. It may be important for the human rights field operation to ensure that its work respects and enters within the context of such agreements.

## 3. Consultation with the Government, UNHCR and others

162. It is extremely important that, at both the *national and local levels*, the human rights field operation discuss potential problems with the Government, the UNHCR, other international organizations, non-governmental organizations and other groups that will be involved in an eventual return of displaced people. Indeed, the *UN human rights field operation should consider developing an agreement between the various interested institutions in which responsibilities are shared*. Several such agreements on various aspects of the return problem were developed by the UN Human Rights Field Operation in Rwanda and the UNHCR. The basic agreement is found in **Appendix 1** and might serve as a model in this regard.

163. Area offices should *inform* the *local authorities* and *other organizations* of the field operation's mandate with regard to displaced people. They should also *consult* the local authorities and other groups as to plans for the return. It is essential that the authorities be involved in making decisions about the return of the displaced people.

164. Area offices may also wish to raise potential problems — such as housing, the availability of gainful employment, and the impartiality of the judicial system — with the relevant authorities. It is far better to raise sensitive issues before they need to be handled. Such consultations should involve an *exchange of information*. The focus of the human rights field operation's efforts should be on *assisting* the authorities in their task as well as monitoring the way in which they accomplish it.

## 4. Other preparation activities for the return

165. As part of the preparation for the arrival of returnees and IDPs, the human rights field operation may carry out a number of different activities according to the mandate of the particular operation.

166. These activities can address specific issues, such as human rights training for local security forces, or they can address broader issues such as tensions between the returnee group and the local population. For example, area officers may notice that local police tend to beat crowds of returnees and IDPs during food distribution, or there may be hostility on the part of the local population towards the returnees and IDPs as they arrive home. Human rights training and information activities can be organized to address these problems. Police officers might be trained in human rights principles and techniques for controlling civilian crowds. *Meetings and discussions can be held with the local population to alert them to the needs of the returnees and IDPs; other efforts can be used to inform the local population of the rights of groups* (such as ethnic, religious or political minorities).

167. It is important that members of the target groups be involved closely in the development of any training or other information programme.

## F. Human rights field operation: activities during the return of displaced persons

168. This section looks at the possible role of a UN human rights field operation during the actual return voyage of returnees and IDPs to their home regions and communities. A process of “return” can take place in many different ways and under varying conditions, both of which will be determinant in defining the respect of human rights. The role of HROs will have to be defined in accordance with these ways and conditions and, as mentioned in the introduction to this chapter, in accordance with the mandate and resources of the operation and the role of other organizations.

## 1. The right to return, “non-refoulement” and voluntary return

169. Refugees have the legal right to return to their country when they wish to do so. They also benefit from legal protection preventing States from forcing them to return. Aside from the respect or violation of these legal provisions, whether or not a return is voluntary can have an important impact on the way the returnees and IDPs are received. *People who are forced to go back to their countries may have to do so when the security situation is unstable, or when there is insufficient food for them in their home region.* These factors increase the risk of loss of life, of injury, or of sickness among the returnees and IDPs. The nature of the particular risks faced by returnees and IDPs will inevitably affect the focus of efforts made by the human rights operation to provide assistance.

### a. The “right to return” in international human rights law

170. Article 13(2) of the Universal Declaration of Human Rights, Article 12(4) of the International Covenant on Civil and Political Rights, the Fourth Protocol to the European Convention on Human Rights, Article 22(5) of the American Convention on Human Rights, and Article 12(2) of the African Charter on Human and Peoples’ Rights recognize the *right of an individual to return to her/his home country*. For example, Article 12(4) of the International Covenant on Civil and Political Rights provides that, “No one shall be arbitrarily deprived of the right to enter his own country.”

171. Similarly, Article 13(1) of the Universal Declaration of Human Rights, Article 12(1) of the International Covenant on Civil and Political Rights, the Fourth Protocol to the European Convention on Human Rights (Article 2(1)), Article 22(1) of the American Convention on Human Rights, and Article 12(1) of the African Charter on Human and Peoples’ Rights *guarantee freedom of movement within a state*, which would include the right of internally displaced persons to return to their home. For example, Article 12(1) of the International Covenant on Civil and Political Rights provides that, “Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.”

### b. “Non-refoulement” and “voluntary return”

172. A fundamental precept of international refugee law is that of *non-refoulement*. Article 33 (1) of the 1951 Convention Relating to the Status of Refugees<sup>10</sup> provides that:

No Contracting State shall expel or return (“*refouler*”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

<sup>10</sup>See also the 1966 Protocol relating to the Status of Refugees which extends the validity of the Convention.

173. This provision establishes the principle of *voluntary repatriation*. As a direct consequence of this provision, refugees will normally only return to their countries when they wish to do so. In order for a refugee to make an entirely voluntary decision about return, s/he must be provided with accurate and up-to-date information on the situation in their country and home region. This information allows the refugees to make an *informed decision*. Other factors, such as assistance with transport and resettling, are also important in the decision-making process and the UNHCR, in particular, will often facilitate voluntary repatriation by offering various forms of assistance.

174. The Convention and Protocol relating to the Status of Refugees do not apply to IDPs. The right to freedom of movement, however, applies to every person within his or her own country and means that IDPs should have the same choice voluntarily to return home (see paras. 20-21 and Article 12 of the Covenant on Civil and Political Rights).

175. In most situations displaced persons and refugees who have accurate information are they themselves the persons best placed to decide whether it would be safe and appropriate to return home. Knowing whether a return is voluntary will provide HROs with important information on the threats that may confront returnees and IDPs.

## 2. Types of return

176. In spite of the international legal guarantees of voluntary return and freedom of movement within a country, the principle of voluntary repatriation is not always fully respected. On some occasions, despite the efforts of the UNHCR, countries of asylum may violate the norm of “*non-refoulement*”, compelling refugees on their territory to return home. Sometimes groups of refugees may return home because their *place of refuge becomes more dangerous than the risks they face at home*.

177. There are a number of different types of return, often related to whether or not a return is voluntary. The extent to which the return is voluntary will usually affect the manner in which the return takes place and, consequently, the activities of a human rights field operation.

178. A *voluntary return* process should be characterized by the *planned* and relatively *organized* nature of the return. There is usually time to prepare adequate transport and other necessary facilities. The numbers and often the names of returnees and IDPs are well documented, making it easier to keep track of individuals and families.

179. Where the principle of voluntary return is not respected, displaced people may be *forced to return*. Also, there may be situations in which refugees or displaced persons participate in a *spontaneous return*. Such returns are often very *disorderly*; they may involve the movement of very *large numbers* of people. There may be insufficient transport, food supplies and medical care available. Massive forced returns, in particular, can lead to enormous *suffering* and even death for many returnees and IDPs, and especially for any vulnerable groups within the returnee community (see **section D: “Vulnerable groups”**). The type of return that takes place will influence the role the human rights operation will fulfil during the return. For example, there are less likely to be human rights abuses during an orderly and voluntary return.

### 3. Situation in the home country/region within which the return occurs

180. The political situation in the country or region to which people return will also have a very marked effect on the conditions and success of the return. People who return to a region in which an *armed conflict* is being waged are far less likely to be able to settle durably, and in safety and dignity, than people who return to a peaceful situation and as part of a political settlement, for example.

### 4. Activities during the return

181. During the return area offices will generally need to monitor the human rights conditions accompanying the movement of the displaced persons.

182. Monitoring activities should include:

#### a. Presence at the border and other control points

- ✓ To make sure that all of the displaced people are allowed through and that any searches of personal belongings are conducted with respect.
- ✓ Returnees and IDPs should be permitted to bring their personal belongings back home without the imposition of customs or other limitations. No fees should be charged to returnees and IDPs for the privilege of crossing borders or other checkpoints.
- ✓ Area offices should make sure that border authorities do not impose unreasonable or discriminatory health strictures on returnees and IDPs, their belongings or vehicles.
- ✓ Patrols along roads used by returnees and IDPs who are on foot to ensure that there is no threat to the returnees and IDPs from the local population or the security forces.
- ✓ Presence at any transit centres on the route.
- ✓ Patrols in the towns and villages of origin to monitor how the new arrivals are received.

#### b. Maintaining constant contacts with authorities

- ✓ HROs should, by their presence, by contacts with authorities, and by other means, seek to discourage such problems as harassment, physical or verbal threats, bodily harm to the returnees and IDPs, or discriminatory arrests.
- ✓ They should also monitor problems of dehydration, cold, lack of food, exhaustion, illness, etc., and alert relevant aid agencies and services to help address these problems.

#### c. Coordinating with the potential human rights work of partner organizations

- ✓ An essential element of monitoring the return of displaced people will be coordinating the work of the human rights field operation with that of other international organizations participating in the return process.

- ✓ In addition, where there are very large numbers of people returning it may be necessary to redeploy HROs within the operation or to recruit additional officers. These issues are addressed below in **section H: “Human rights field operation: structure of work with returnees and IDPs”**.

## G. Human rights field operation: activities after the return

183. Following the return of returnees and IDPs to their communities, HROs can continue to play an important role by *monitoring* a returnee’s *reintegration*. Returnees and IDPs should in many situations be considered as a *vulnerable group* that should be monitored more closely than other categories of the population. In addition, returnees and IDPs are often outside the scope of the normal *protection mechanisms* that help to protect a person’s rights in the community.

184. An HRO’s objective in monitoring returnees and IDPs following their arrival in their region of abode is to ensure that the returnee’s and IDPs human rights are not violated during this *period of transition* from returnee/IDP to member of the community. Any problems that are identified through the monitoring can be communicated to the local authorities, to other organizations, or can be otherwise addressed by the human rights area office. Once a returnee or IDP has “reintegrated” in a community, he/she is no longer considered to be a part of a high risk group and so is no longer in need of particular monitoring.

185. Monitoring reintegration is, however, difficult to define. What exactly does *reintegration* mean in this context? How can one determine when a returnee or IDP has “reintegrated” in a community? How does the HRO *monitor* reintegration? When does a returnee/IDP stop being a “returnee or IDP”?

### 1. Monitoring the mechanisms that contribute to the returnee/IDP’s protection

186. Within a community there are a number of “*protection mechanisms*”. Protection mechanisms are elements within a person’s environment which make him/her *feel safe*, and which contribute to his/her protection. Returnees and IDPs very often do not have access to the protection mechanisms that exist in a community. One important element of monitoring returnees and IDPs is to look at the protection mechanisms that exist and the extent to which returnees and IDPs benefit from them. In a way, this information is another form of indicator of returnee/IDP reintegration. Some examples of protection mechanisms are provided below:

- ✓ **The family** is often the most immediate protection mechanism. People can usually rely on the members of their family for assistance. Many returnees and IDPs do not have their family with them. Many returnee/IDP women are either widowed or have returned alone with their children.

- ✓ **The community** can include the immediate neighbourhood or a whole town. People usually depend upon the support of their immediate community for protection. Returnees and IDPs sometimes find themselves the object of suspicion within the community which can even act as a threat rather than a protection mechanism. HROs should always try to develop a sense for the general situation within a community. (See **Chapter VII: “Information Gathering”**.)
- ✓ **Work and participation in economic activities** can provide money and serve as a protection mechanism. People who earn money within the community can maintain a certain status and standard of living. They are less dependent on others. Returnees and IDPs may be obliged to spend a period of time without any form of employment or income.
- ✓ **The administrative structure**, including local officials, can offer a certain amount of protection to returnees and IDPs. They can assist in the recovery of homes and land; they mediate in any disputes within the community. These same officials can also, should they wish, create problems for returnees and IDPs and make their lives difficult. The disposition of these local officials towards returnees and IDPs is thus very important. HROs should, through their efforts to become familiar with the community, know how the local administration will behave towards returnees and IDPs.
- ✓ **The judicial system**, if it is functioning, can serve as a formal protection mechanism. If the judicial system worked effectively in every community, there would probably be no need to monitor returnees and IDPs. Unfortunately, the reality is that the judicial system often fails to protect the rights of many under its jurisdiction. Also, even if it is generally functioning, the judicial system may be slow or unresponsive to certain kinds of claims (*e.g.*, minor claims). Hence, monitoring may still be useful.

187. Not only should HROs monitor the effectiveness of the various protection mechanisms, but they should also be attentive to ways of improving the functioning of these mechanisms through training of officials, assistance to the judicial system, etc.

## 2. Monitoring reintegration

188. “Reintegration” is not an easy notion to quantify. To make the task easier HROs may find it useful to identify certain “*indicators*” of reintegration:

- ✓ **House:** Has the returnee or IDP recovered his/her house? Property recovery is often a major problem and can sometimes be linked to violations of human rights.
- ✓ **Land:** Has the returnee or IDP recovered land? Is the returnee/IDP farming the land? Farmed land represents food and an income, both of which are essential to a returning farmer’s reintegration in the community.
- ✓ **Work:** In the absence of land does the returnee/IDP have paid or otherwise compensated work?
- ✓ **Arrest/detention:** Has the returnee/IDP been arrested?
- ✓ **School:** Are the returnee’s children able to attend school?
- ✓ **Meetings/associations:** Does the returnee/IDP participate in local meetings? Is he/she a member of any local associations?

- ✓ **Responsibility:** Does the returnee/IDP occupy any position of responsibility in the community?
- ✓ **Discrimination:** Does the returnee/IDP feel that he/she is the subject of discrimination by members of the community? How has the local population reacted to the returnees and IDPs?
- ✓ **Material assistance:** Does the returnee/IDP receive any material assistance because of his/her status as a returnee? This last point can be both positive and negative. Returnees and IDPs that receive material assistance may then be in a better position to re-establish themselves in the community. The fact of receiving such assistance, however, indicates that they are still distinguished from the community. In addition, members of the community may be angry or jealous of the material assistance and may then reject the returnee.
- ✓ **Sense of security:** Does the returnee/IDP feel safe? If not, why?

### 3. Effective monitoring involves regular contacts with sources in the community

189. In the same way that HROs developed contacts at the beginning of the returnee/IDP process, these contacts with the authorities, with journalists, teachers, etc. should be maintained. They can provide useful information on the reintegration of returnees and IDPs into the community.

### 4. Taking action

190. Depending on the mandate of the field operation, it may be possible for HROs to take action to address problems identified by monitoring. HROs can refer to the information on the human rights of returnees and IDPs provided in this chapter, and may bring problems to the attention of local authorities.

191. For example, monitoring may reveal that a group of returnees and IDPs have been refused access to their houses and land. HROs can make contact with the relevant authorities and explain both the importance and the right of returnees and IDPs to recover their own property. Similarly, in situations where returnees and IDPs are the victims of arbitrary arrests, HROs may be able to visit them in detention and subsequently negotiate their release. (See **Chapter IX: “Visits to Persons in Detention”**.)

192. HROs may be able to mediate between the returnees and IDPs and the local authorities to address particular problems. It is essential, however, that HROs remain neutral as to potentially conflicting claims or rights. It will be important for the operation to develop clear policy guidelines on the principal problems likely to be encountered during monitoring. With reference to the above examples, HROs should know exactly what type of mediating role they may fulfil, if any, and the basis of this role should be established with the national and local authorities. (See **Chapter XXI: “Conciliation and Mediation in the Field”**.)

## 5. When does a returnee/IDP stop being the subject of particular monitoring?

193. As has been shown earlier in this section, HROs monitor new returnees and IDPs because they are seen as a “high risk” category. Monitoring of returnees and IDPs cannot continue indefinitely. When are returnees and IDPs no longer a “high risk category”? When does a returnee/IDP stop being a “returnee” and become a member of the local population? This question is important because it indicates that there is a point at which HROs *stop monitoring* each group of returnees and IDPs.

194. Providing a clear and precise response to the question “when does a former returnee/IDP stop being a ‘returnee’” is not easy. Two guidelines can be proposed — that of the *situation* of the returnee, and that of *time*. These indicators should be used together.

### a. Situation

195. A returnee/IDP is no longer a “returnee” when he/she forms a part of the community and is not distinguished from that community for any reason related to the person’s former status as a refugee or displaced person. *One indicator can be whether aid organizations still distribute aid to the individual* — although distributions may end simply because a budget has been exhausted. Another indicator is whether the returnee/IDP is the victim of any discrimination based upon his/her former status as a refugee. The most common *areas of discrimination are identified above, including home, land, employment, etc.*

### b. Time

196. In parallel with the situation of the returnee/IDP, the HRO should also use *time* as a guideline. After a *certain lapse of time, for example six months, HROs need to focus their attention on new returnees and IDPs*. The time after arrival should be fixed, according to the experience of the human rights field operation, to cover the period when rights violations that are motivated by the fact that the victim is a returnee/IDP would be expected to occur. Setting a specific time indicator can be very difficult. In some countries returnees and IDPs can continue to suffer from violations of their human rights two or more years after returning to their homes. Care must be taken in setting any time limits.

## H. Human rights field operation: structure of work with returnees and IDPs

197. If protection of returnees and/or IDPs is a significant issue in the country of operation, it is important that adequate attention be given to creating a structure within the human rights operation for dealing with such issues. The structure chosen will

ultimately depend on the returnee/IDP situation in the region and on the mandate of the operation. Some guidelines are provided here.

## 1. Returnee/IDP unit or focal point

198. The operation may wish to establish a specialized *returnee/IDP unit* as a part of the central office, or to appoint an individual as a returnee/IDP focal point within the office. The unit or focal point can be given responsibility, under the direction of the chief of the operation, for developing the operation's *policy* towards returnee/IDP issues and for developing and implementing a *plan of action*.

199. The unit or focal point would also be responsible for developing *contacts* with other relevant international organizations and with representatives of the national authorities. It should develop "*national profiles*" on the returnee/IDP situation and should *coordinate* the work of the area offices in this regard.

200. It is essential that any returnee/IDP structure within the human rights operation *identify the principal problems* that HROs are likely to encounter during monitoring of the situation, return and reintegration of displaced persons. For example, the information available to the unit may indicate that returnees and IDPs will be particularly at risk from: violations of the right to freedom of movement during the return; violations of the right to reclaim homes and other property; violations of the right to freedom of assembly; and violations of the right to liberty.

201. The returnee/IDP unit should *develop the field operation's policy* with regard to each of these human rights violations. HROs should be informed of how to identify each violation, and of what they may do, under the mandate and any agreement with the national authorities, to address the problem. In this way it will also be possible for HROs to raise such problems with the local and national authorities before they occur, and for problems to be dealt with as effectively as possible.

202. The returnee/IDP unit should give particular attention to the needs of *vulnerable groups*, such as women and children, within the returnee/IDP population. HROs should be informed of what rights vulnerable groups have and how those rights may be protected. In many returnee/IDP situations there will be other international organizations working specifically with these vulnerable groups. The returnee/IDP unit should coordinate the work of the human rights operation towards vulnerable groups with these organizations.

203. As mentioned above, much of the monitoring of returnees and IDPs will involve registering and addressing cases of human rights violations. In this respect the work of the returnee/IDP unit will *overlap* with that of any monitoring or similar unit that exists within the operation. It is important that the work of each unit be clearly defined, and that lines of communication between the units, and between the area offices and each unit, be efficient.

## 2. Area offices and staff

204. As information arrives on an evolving returnee/IDP situation, it may be useful for the human rights operation to *open area offices* in regions to which displaced people are expected to return (if this step has not already been taken).

205. Within each area office at least one staff member should be appointed as the *returnee/IDP officer*. This person will maintain contact with the central office returnee/IDP unit and will be responsible for contacts with the principal authorities and relevant international organizations in the region as to returnee/IDP issues. The returnee/IDP officer will also be responsible for ensuring that other staff members in the office are informed of policy decisions taken by the returnee/IDP unit.

206. Each area office should produce a “*regional profile*” of the returnee/IDP situation in the region and should write regular *report updates* on the evolution of that situation (perhaps as a part of the office’s periodic reports). These reports on the changing situation should be disseminated throughout the operation, because major changes in one region may have a significant impact on the work of other area offices.

### 3. Logistical preparations

207. There are a number of logistical and resource issues which require preparation. Depending on the size of the human rights field operation, and on the particular role that it will play with regard to returnees and IDPs, the director of the human rights operation may wish to *increase the numbers of HROs* within the operation to cover the return period. Returnee/IDP monitoring is very labour intensive and the more officers that are present in the field the more effective the monitoring will be.

208. In some situations it may be appropriate to “re-deploy” staff already with the operation to areas where they will be most needed. Any movement of staff members from one area office to another should be planned as far in advance as possible to avoid disrupting ongoing work.

209. Re-deployment and the arrival of new staff members will only be effective if a sufficient number of *vehicles and radios* (where relevant) are provided to them. In some places these items may not be readily available, and their purchase will have to be planned well in advance.

### 4. Coordinating and collaborating with other organizations

210. Every effort should be made to *coordinate* the work of human rights area offices with other organizations that are also working with returnees and IDPs to ensure that there is no duplication or contradiction. This principle is especially important with regard to monitoring the actual return, a period during which displaced populations may be the most at risk.

211. Where major problems arise in the return process it is very important that the principal international organizations coordinate and collaborate in their response. For example, in the event of a serious violation of human rights committed by local authorities against the returnees and IDPs the international organizations should seek a common position. This consultation process between organizations should take place at the central office level and also at the *area office level*. Guidance on organizations with which area offices should develop contacts may be found in **Chapter VII: “Information Gathering”**.

212. This section provides brief guidelines on what information should be shared and how different responsibilities may be attributed.

### **a. Sharing information**

213. The main information of interest will be objective details concerning the returnee/IDP population — such as the *reasons for return, the voluntary nature of the return, the numbers of people expected, when and where they will arrive, the routes and means by which they will travel, the presence of vulnerable groups (women, children, etc.), and the numbers and types of violations reported*. Some organizations, such as the ICRC, may be unable to provide certain information because of confidentiality rules in their mandate.

214. It may be useful to develop *common reporting forms* that can be used by all of the principal organizations involved in monitoring a large return. This common approach will facilitate the exchange of information. Where radio communications are used, a *common radio channel* should be designated and staff members selected to maintain contact with partner organizations.

### **b. Choosing who does what**

215. There may be an overlap between the respective mandates of the human rights field operation and those of other organizations. It is important that certain tasks be attributed to certain organizations.

216. When choosing the *tasks that each organization will carry out*, it is useful to consider such factors as resources (in terms of staff members, transport and communications facilities), access throughout the relevant region — returnee/IDP monitoring may require crossing international boundaries, going into military restricted areas, entering detention centres, etc. — and expertise (legal, medical, logistical, etc.).

### **c. Setting up joint structures**

217. To facilitate communication it may be useful for the human rights field operation to set up or participate in structures that gather all of the principal international organizations working with returnees and IDPs. This structure could bring together one *representative from each organization* at the national level and, where possible, at the area office level. Meetings should be fixed at regular intervals.

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## **I. Conclusions**

218. In conclusion, it is useful to point out that all of the *different stages* at which HROs may work towards the protection of the rights of returnees and IDPs — monitoring and protection during a period of displacement, preparation for the return, monitoring during the return, and monitoring following the return and during a period of reintegration — *will probably take place concurrently*. There may, simultaneously, be people at every one of these stages.

219. In the past the objective of the international community, when working with **refugees** — and by extension **returnees** — was to seek one of *three durable solutions: permanent integration in the country of refuge, permanent resettlement in a third country, or voluntary repatriation*. Where there are very large numbers of refugees, however, the only realistic option is the eventual return of displaced people to their own country and community.

220. The recent emphasis of international efforts on behalf of refugees has thus focused increasingly on re-integration in the country of origin. Positively, this focus has led the international community to concentrate further on the original causes of displacement, and specifically to ensure that respect for human rights within a country of origin is suitable for refugees to return. Moreover, the increasing focus on repatriation and on human rights within countries of origins has drawn attention to the human rights situation of IDPs, often identical to that of refugee from the same country. United Nations human rights operations, in collaboration with the work of humanitarian agencies, have an essential role to play in addressing the human rights situation of returnees and IDPs.

## Appendix 1 to Chapter XI

# Memorandum of Understanding (MOU) No.5 between HRFOR and UNHCR Rwanda on Returnee Monitoring

### Guiding Principles

- 1.0 Human Rights Field Operation in Rwanda (HRFOR) and the Office of the United Nations High Commissioner for Refugees (UNHCR) in Rwanda.
- 1.1 Recalling the Note of Cooperation (the Note) between UNHCR and HRFOR signed in Kigali on September 29, 1995, formalizing already existing field cooperation between the two agencies in Rwanda in accordance with their respective mandates;
- 1.2 Recalling in particular Articles 8 through 18 of the Note providing, *inter alia*, the outlines of returnee monitoring, priorities of the two agencies and scope of cooperation relevant thereto;
- 1.3 Recalling also the MOU on Exchange of Information and the MOU on Human Rights Education Projects between HRFOR and UNHCR signed in Kigali on 2 and 3 May, 1996 respectively, in partial implementation of commitments undertaken in the Note;
- 1.4 Decide, in the spirit of efficiency and optimum use of resources in areas of mutual concern, to further cooperate and coordinate their returnee monitoring activities through a division of tasks and responsibilities at field level.
- 1.5 This MOU does not in any way limit the scope of relevant Articles agreed upon in the Note and the two MOUs referred to above. Nor does it prevent the two agencies from practically, or through additional agreement, go beyond the present MOU and further coordinate their returnee monitoring activities.
- 1.6 In the event of change or modification of mandate of HRFOR, or developments affecting the level of its personnel in Rwanda or the focus of its activities, each agency may request a modification or arrangements agreed in this MOU.

### Mandates of each Agency

- 2.0 It is mutually accepted that UNHCR is the leading agency for repatriation of refugees and has a legitimate concern for the consequences of return. The monitoring of returnees is part of its mandate. It is equally recognized that HRFOR had a lead role in the promotion and protection of human rights and in the investigation of the human rights situation in Rwanda.
- 2.1 As both agencies have common concerns in returnees, division of monitoring tasks is undertaken in the interest of avoiding duplication and creating a climate for respect of the work undertaken by the two agencies. Monitoring tasks will be divided and shared on the basis of the mandates of each agency.

- 2.1.1 UNHCR monitors the fulfilment of assurances given by the Rwandese Government as to the safety, treatment in accordance with human rights, and humanitarian standards of Rwandese refugees during their repatriation and upon return to their home areas (“refugee returnee monitoring”).
- 2.1.2 HRFOR monitors the ongoing human rights situation, and through their presence, helps redress existing problems and prevent possible human rights violations from occurring. In defining mutual concerns HRFOR remains particularly focused on vulnerable groups. of which returnees is one among other groups, including genocide survivors, and witnesses to crimes against humanity.

## **Specific Areas of Returnee Monitoring of Mutual Concern**

- 3.0 UNHCR will monitor returnees at entry points, transit centres and way-stations as well as convoys, registrations and issues arising out of registration. HRFOR will also monitor these places upon request from UNHCR, or in the event that there are widespread human rights violations. HRFOR will appoint a Human Rights Officer with the duty to liaise with UNHCR in the implementation of this item.
- 3.1 UNHCR will monitor returnees in their communes in partnership with HRFOR. The monitoring will be conducted according to mutually agreed procedures.
- 3.2 UNHCR and HRFOR have both the right and responsibility to obtain information on the situation of returnees arrested and detained, including through independent visits to cachots and detention centres. However, with the exception of occasional joint or independent visits, UNHCR will rely on HRFOR’s monitoring of cachots and detention centres to be systematically informed about conditions of returnees so held. HRFOR will assume primary responsibility for the collection of information on the total detainee population, including returnees, and sharing it with UNHCR. UNHCR will logistically assist HRFOR for that purpose. These arrangements will be implemented at each prefecture and at the national level.
- 3.3 At the prefectural, UNHCR and HRFOR, coordinated through their respective heads of office and team leaders, will divide the task of monitoring returnees as follows: UNHCR agrees to share returnee registration information with HRFOR, and in regular meetings between the agencies the geographical division of monitoring will be decided. In this way duplication of effort can be avoided and the specific mandates of each agency can be best addressed.
- 3.4 The results of such monitoring will be shared through appropriate means regularly with the other agency, i.e. completed monitoring forms will be made available for review, analysis, reporting and intervention at the field level, if necessary.
- 3.5 A series of workshops will be arranged for UNHCR Protection Officers and HRFOR Field Officers together to discuss monitoring methodologies.
- 3.6 Reintegration of returnees in the community of origin/return is very much influenced by the situation and attitude of the local population, including old caseload and survivors of the genocide, the above arrangements should allow for coordinated monitoring and information-sharing with respect to these groups.

## Land and Property Issues

- 4.0 Issues related to land and property occupancy and procedures of reclaiming them by returnee owners are of priority concern to UNHCR and relevant to HRFOR. Monitoring and follow-up of information sharing should pay special attention to trends in each commune regarding the pattern of restitution of land, time frame, implications for those returnees pursuing their claims, availability or absence of alternative solutions, including developments on land allocation for old caseload and survivors of the genocide. UNHCR will continue to help authorities solve the problem of property occupation through the shelter programme and HRFOR will rely on UNHCR to follow-up on individual cases with problems of property. HRFOR will continue to monitor property issues with regard to identifying and investigating human rights violations.

## Serious Violations of Human Rights

- 5.0 UNHCR and HRFOR will share, without undue delay, results of monitoring on serious violations of human rights involving returnees.
- 5.1 UNHCR will on a regular basis draw upon the investigative capacity and experience of HRFOR to follow-up on violations of returnee human rights, particularly incidents involving arrest, detention, serious violence, killings, torture and the disappearance of returnees. Mechanisms of coordinated monitoring and information sharing will be discussed in regular meetings of the two agencies at field level.

## Intervention on Behalf of Returnees

- 6.0 HRFOR and UNHCR each may decide to make independent representations on behalf of returnees in pursuit of their responsibilities. However, in the interest of better results, and in order to sensitize the authorities to the overlapping mandates of the two agencies, UNHCR and HRFOR agree to make joint representation at various levels as frequently as deemed feasible and appropriate.

## Conflict Resolution

Any dispute arising from the interpretation or implementation of this MOU will be resolved by the parties through negotiations in the spirit of United Nations inter-agency coordination and cooperation.

Done at Kigali, 6 December 1996

W.R. Urasa  
Representative  
UNHCR Kigali-Rwanda

Javier Zuñiga  
Chief  
HRFOR Rwanda

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# .....Chapter XII

# CHILDREN'S RIGHTS.....

## *Key concepts*

*This chapter of the manual focuses on children's rights and the contribution that can be made by a human rights field operation, and individual human rights officers, to their respect, fulfilment, promotion and protection. Special attention is given here to children because:*

- | *of the particular vulnerability of children;*
- | *some children's rights are different from those accorded to adults;*
- | *some children's rights may need to be respected, fulfilled or protected in different ways from more general human rights; and*
- | *in many situations in which human rights officers may operate, such as internally displaced persons camps, children often make up over 50% of the population.*

## **A. Why do children have a set of human rights specific to them?**

1. The general thrust behind national and international action on behalf of children is the moral and legal recognition of their emotional, physical and psychological vulnerability, their need for special care, and recognition of the obligation to respect and ensure respect for their rights, including having their views respected. These concerns reflect the value that society places on childhood for its own sake, not as a training ground for adulthood. Simultaneously we must recognize that events in childhood will affect the individual as an adult, and consequently society as a whole. The international community has recognized the need for standards beyond those defined by the international bill of human rights to address specific classes of injustice and the status of entire groups of persons, and it has acknowledged the need for programmatic tools to address the special needs of vulnerable communities. In the case of children, the Convention on the Rights of the Child(CRC) is the main legal instrument of an increasing body of international law specific to them.

## 1. Children are the subjects of rights

2. A key concept of the CRC is that children — as individuals — have rights, and these must be enumerated, legally binding, and made specific to the evolving development of the child.

## 2. Children can be affected differently from adults by the same violations

3. Children benefit from almost all of the same human rights that are accorded to adults. Interruptions to children's development have the potential to affect them far more seriously than adults. An adult who lives through a situation of armed conflict, who is displaced from his home, who is unable to gain steady employment, and who suffers from malnutrition and ill-treatment over a period of 4 years, may be expected to continue his life in a normal manner at the end of the displacement and its causes. A child living through the same situation: may suffer permanently from stunted growth and mental development as a result of malnutrition and ill-treatment, and without access to a school during the displacement may never again be able to recover the lost opportunity for education and thus be deprived of many opportunities in the future. It is clear that the same threats to the same human rights of adults can affect children differently. It follows that children require different types of human rights protection and promotion.

## 3. The rights of children as individuals are closely linked to the rights of other persons

4. The majority of human rights accorded to adults are assessed on the basis of the rights and obligations of the individual. While recognizing and indeed emphasizing that children as individuals are the subjects of rights, one should note also that children's rights are closely linked to the rights of other persons of significance to them. In broad terms, this happens in two ways:

▼ **The link between children and adults:** Many human rights protections for adults are based around the concept of ensuring that an adult has the opportunity to take decisions that will affect him/her or has the opportunity to represent his/her views. Refugee law, for example, provides that every person has the right to return to his or her country; however, the capacity to exercise that right depends on the refugee having all the relevant information and understanding required to make a good decision. A baby clearly cannot make such decisions and is dependent on older persons. Older children have varying capacities to make decisions according to their individual personalities and according to their age, and are also dependent upon adults for the protection of their rights, albeit to varying extents. Thus, the protection of the human rights of children often gives a major role to an adult — usually a child's parents or other legal guardian. By extension, the effective protection and promotion of a child's rights can often be closely linked to the effective protection and promotion of the rights of those adults upon whom a child

is dependent. For example, when an adult refugee who has responsibility for 3 children is arbitrarily detained, the rights of the 3 children may well be violated as a direct consequence of the violation of the adult's rights.

- ✓ **The rights of parents or other legal guardians:** While children benefit from numerous rights, these are accompanied by the rights of parents, or a child's other legal guardians, which can include a significant role for these persons in deciding what is in the child's best interests. One should be able to respect a child's rights and advance his/her best interests without infringing on the rights of adults. In strict legal terms, the rights of parents and other guardians over children are limited to the best interests of the child.

## 4. Children's vulnerability

5. According to their age, children may be less able to protect themselves from violations of their rights, or even to take advantage of forms of protection that may be available. In addition, particular situations or circumstances can be more dangerous for children than for adults; indeed, some violations are faced only by children. Paedophilia and the use of children in pornography, for example, are acts specific to children. Female genital mutilation is typically performed on girls whose young age prevents their opinions from being taken into consideration in decisions as to whether or not such procedures should be performed. Children in certain situations may find themselves criminalized, even though they have committed no crime. This is sometimes the case, for example, for children living on city streets or in railway stations.

6. There are a number of factors which can be said to greatly increase the vulnerability of most children to additional abuses of their rights. These include poor access to education; poor access to health care; situations of armed conflict in the region in which a child lives; population displacement; family break-up; and severe poverty. In particular, one should note that it is often a combination or sequence of different factors which create the most vulnerability; for example, a combination of poor education and population displacement can be factors which aggravate the spread of HIV/AIDS, which in turn contributes to family break-up (where parents fall ill and die) and severe child poverty.

7. Some threats to children's rights might be more likely to affect girls rather than boys, or vice versa. For example, boys are more likely to be recruited as child soldiers, while girls are more likely to be the victims of sexual exploitation by soldiers or armed opposition groups. Girls are more likely to be the victims of forced early marriages. However, it is important to be cautious when categorizing risks by gender — girls can also be forcibly recruited as soldiers and boys can also be the victims of sexual exploitation, for example.

## B. The protection of children under international human rights and humanitarian law

8. As described above, children benefit from a wide range of human rights instruments and provisions. Many of these are the same as the human rights protections available to adults. Others, however, are specific to children. The Convention on the Rights of the Child provides the single, most comprehensive human rights protection instruments for children. Other international legal instruments provide complementary protection, some of which are specific to issues — such as juvenile justice, adoption and exploitation — or to situations — such as the use of children in armed conflicts. International instruments are sometimes supported by the existence of regional instruments; and regional instruments sometimes set higher standards than international treaties.

9. Many of the relevant legal instruments are described in detail in Part Two, Chapter III of this manual, “Applicable International Human Rights and Humanitarian Law: The Framework”, and readers should also extensively draw information from Chapter III when working on children’s rights. The present section focuses only on legal instruments of specific relevance to children and notably on the Convention on the Rights of the Child.

### 1. The Convention on the Rights of the Child

10. The human rights of children are most concisely and fully articulated in one international human rights treaty: the Convention on the Rights of the Child.

- ✓ The Convention is the most widely ratified human rights instrument in history.<sup>1</sup>
- ✓ The Convention is the first legally binding international instrument to incorporate such a broad range of human rights — civil and political rights as well as economic, social and cultural rights.
- ✓ The Convention is the only human rights treaty to incorporate aspects of international humanitarian law.<sup>2</sup>

11. The entry into force of the UN Convention on the Rights of the Child on 2 September 1990 marked the culmination of nearly 70 years of efforts designed to ensure that the international community give proper recognition to the special needs and vulnerability of children as human beings.

<sup>1</sup>As of October 2000 the Convention had been ratified by every State in the world with the exception of two.

<sup>2</sup>The following comments within Part C.1 on the Convention are excerpts from an introduction prepared for Defence for Children International (DCI) as Part 1 of the DCI Kit of international standards concerning the rights of the child.

### **a. The Convention in general**

12. Rather than a catalogue of children's rights, the Convention in fact constitutes a comprehensive listing of the obligations that States are prepared to recognize towards the child. These obligations may be of a direct nature — providing education facilities and ensuring proper administration of juvenile justice, for example — or indirect, enabling parents, the wider family or guardians to carry out their primary roles and responsibilities as caretakers and protectors.

13. The Convention covers the whole range of human rights. Traditionally, these have been classified as civil and political on the one hand, and economic, social and cultural on the other. Although reference is made to this classification in article 4 of the treaty, the substantive articles themselves are not explicitly divided in this way. Indeed, the whole thrust of the Convention is to emphasize the inter-connected and mutually reinforcing nature of all rights. In this respect, it can be more useful to describe the range of rights covered by the Convention as the three "Ps": provision, protection and participation. Thus, essentially, children have the right to be provided with certain things and services, ranging from a name and nationality to health care and education. They have the right to be protected from certain acts such as torture, exploitation, arbitrary detention and unwarranted removal from parental care. They also have the right to do things and to have their say, in other words to participate both in decisions affecting their lives and in society as a whole.

14. In bringing together all these rights in a single cohesive text, the Convention sets out to do three basic things:

1. To reaffirm, with regard to children, rights already afforded to human beings in general through other treaties. Some of these rights, such as protection from torture, are non-controversial in terms of their applicability to children. Others, such as freedom of expression, freedom of assembly, freedom of religion and the right to social security, gave rise to heated debate during the drafting process as to whether or not, and under what conditions, children could and should be the explicit beneficiaries. Consequently, reaffirmation was by no means a superfluous exercise, but a very necessary means of underlining the fact that children are human beings too.
2. To upgrade certain basic human rights in order to take account of the special needs and vulnerability of children. An obvious example here is that of acceptable conditions of employment, where standards must be tighter for children and young people than for adults. Another is the conditions under which children may be deprived of their liberty.
3. To establish standards in areas that are pertinent only, or more specifically, to children. Safeguarding the child's interests in adoption proceedings, access to primary education, prevention of and protection from intra-familial abuse and neglect, as well as the recovery of maintenance payments, are among the child-specific issues addressed by the Convention.

## b. The Convention's provisions

15. The Committee on the Rights of the Child has identified the following articles as “*general principles*” that are basic to implementation of all rights contained in the Convention:

- ✓ Article 2 on non-discrimination;
- ✓ Article 3 on the best interests of the child;
- ✓ Article 6 on the right to life, survival and development;
- ✓ Article 12 on respect for the views of the child.

16. The Convention contains *three major substantive innovations*:

- ✓ Firstly, it introduces “participation” rights for children, which were notably absent from previous declarations. Linked with this is the explicit recognition of the need to ensure that children themselves are informed about their rights.
- ✓ Secondly, the Convention takes up questions never previously dealt with in an international instrument: the right to rehabilitation of children who have suffered various forms of cruelty and exploitation, for example, and the obligation of governments to take measures to abolish traditional practices harmful to children’s health.
- ✓ Thirdly, it includes principles and standards that have so far figured only in non-binding texts, notably those relating to adoption and juvenile justice.

17. The Convention also introduces *two significant conceptual elements* with important substantive ramifications:

- ✓ The “best interests of the child” (article 3) becomes the compulsory criterion “for all actions concerning children” — necessarily in conjunction with all pertinent rights set out elsewhere in the Convention.
- ✓ The principle that parents (or others responsible for the child) should provide guidance to their child in exercising his or her rights, in accordance with the child’s “evolving capacities” (article 5).

18. A significant number of the CRC’s provisions have *innovative characteristics*:

1. **Preservation of identity (art. 8):** This is a totally new obligation. Here, the Convention underscores the child’s right to a name and a nationality by the careful protection of the child’s identity. The drafters of the Convention included this provision at the suggestion of Argentina in the light of that country’s experience during the Seventies of mass “disappearances” of children whose identity papers had been deliberately falsified and family ties arbitrary severed.
2. **The child’s opinion (art. 12):** The right of the child not only to express an opinion but also to have the opinion taken into account in matters that affect him or her is a highly significant recognition of the need to give children a greater say in their own lives.
3. **Child abuse and neglect (art. 19):** The feature of special interest in this article is the emphasis placed on the prevention of intra-familial abuse and neglect, which has never previously figured in a binding instrument.

4. **Adoption (art. 21):** This article is of special importance because of the emphasis it places on the need for strong safeguards surrounding the adoption process — especially with regard to inter country adoption — and the fact that it brings into this instrument principles that were adopted only three years previously by the United Nations in the framework of a non-binding declaration.
5. **Health (art. 24):** In addition to its explicit references to primary health care, and to education regarding the advantages of breast-feeding as means of promotion access to the highest attainable standard of health, this article stands out because it mentions for the first time in a binding international instrument a State obligation to work towards the abolition of traditional practices, such as female circumcision and preferential treatment of male children, that have harmful consequences on children's health.
6. **Periodic review of placement (art. 26):** The obligation to review periodically all institutional placements designed to ensure the care, protection or treatment of children, in order to determine whether or not they are still appropriate, responds to a recently-voiced concern and, again, has never previously figured in human rights instrument.
7. **Education (art. 28):** The novelty here is that, whilst corporal punishment is not explicitly outlawed, there is reference to the fact that school discipline must be administered “in a manner consistent with a child's human dignity”.
8. **Drug abuse (art. 33):** This is the first time that explicit mention is made of the need to protect children from drug abuse and from being used in the production and distribution process of illicit substances.
9. **Deprivation of liberty (art. 37):** The aspect of special note in this article is the inclusion of the principle that deprivation of liberty must be looked upon as a last resort and, if it is nonetheless ordered, must be limited to the shortest possible period of time.
10. **Social rehabilitation and rehabilitative care (art. 39):** An important addition to the body of children's rights is this article which places an obligation on States to promote adequate treatment for children harmed physically or psychologically as a result of violations of their right to protection, in particular from exploitation and cruelty.
11. **Administration of juvenile justice (art. 40):** Many of the essential principles of the 1985 UN Standard Minimum Rules of Administration of juvenile justice — a non-binding instrument — have been incorporated into this article — the longest and the most detailed of the whole Convention — with the result that international norms in this sphere have been significantly upgraded.
12. **Making the Convention known (art. 42):** Strictly speaking, this article comes under the implementation provisions of the Convention. It is well worth highlighting here, however, because it is the first time that specific and explicit recognition has been given to the need for children themselves to receive information on their rights. This is a further indication of the gradually changing attitude towards children that, overall, this Convention both reflects and helps to foster.

19. This is not an exhaustive list of the improvements that the Convention brings to children's rights. Many others improvements — including those dealing with minority children or indigenous children, the special needs of handicapped children, protection from all forms of exploitation, freedom of expression and association, to name but a few — could also validly be mentioned.

### **c. The Committee on the Rights of the Child**

20. The *CRC creates a monitoring mechanism* along the same general pattern as earlier international treaties such as the Convention Against Torture. Under the implementation mechanism provisions in the Convention itself, a Committee on the Rights of the Child, composed of ten “independent experts”, is elected for renewable terms by States Parties to the Convention (i.e. those States that have ratified the CRC) and monitors States' compliance with their obligations. The Committee conducts its monitoring work based on reports provided by States every 5 years, as well as other information made available by reliable sources. The number of experts on the Committee is likely to be raised to 18 to cope with a growing workload.

### **d. Applicability**

21. The Convention is legally binding within the jurisdiction of every State in which it has been ratified — although different States have differing methods of introducing international law into their domestic legal systems, which will in turn have an impact on the manner in which the Convention can be used, for example, by domestic courts.

22. The rights provided for in the Convention are applicable to all children within the jurisdiction of a State, irrespective of a child's nationality or other status. Thus, any child who has entered a foreign country (which has ratified the Convention) will be entitled to all of the Convention's rights in the same way as children who are nationals of that country.

## **2. Optional Protocols to the Convention on the Rights of the Child**

23. Two Optional Protocols to the Convention on the Rights of the Child were adopted by the United Nations General Assembly on 25 May 2000:

- ✓ Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict
- ✓ Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography

24. In order for the Optional Protocols to enter into force, States must ratify each of the Protocols following the same procedure required when ratifying the Convention. In the case of the Optional Protocol on the involvement of children in armed conflict, upon ratification States are also required to make a binding declaration regarding the age at which they will permit voluntary recruitment into national forces.

### a. **Optional Protocol on the involvement of children in armed conflict**

25. In article 38, the Convention on the Rights of the Child urges States Parties to take all feasible measures to ensure that persons who have not attained the age of fifteen take no direct part in hostilities. On 25 May 2000, the General Assembly adopted by consensus the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.

26. The Optional Protocol's main provisions include:

- ✓ **Participation in hostilities:** States Parties must take all feasible measures to ensure that members of their armed forces who are under the age of eighteen do not take direct part in hostilities.
- ✓ **Conscription:** States Parties must not conscript (compulsorily recruit) any persons under the age of eighteen.
- ✓ **Non-governmental armed groups:** Rebel or other non-governmental armed groups are prohibited from recruiting under-18 year-olds or using them in hostilities. States Parties are required to criminalize such practices and take other measures to prevent the recruitment and use of children by such groups.
- ✓ **Voluntary recruitment:** States Parties must raise their minimum age for a voluntary recruitment beyond the current minimum of fifteen, and must deposit a binding declaration stating the minimum age they will respect. (In practice, this means the minimum age for voluntary recruitment is sixteen.) States Parties recruiting under-18 year-olds must maintain a series of safeguards, ensuring that such recruitment is genuinely voluntary; is done with the informed consent of the person's parents or legal guardians; that recruits are fully informed of the duties involved in military service; and that proof of age is established.
- ✓ **Implementation:** States Parties must demobilize children recruited or used in violation of the Protocol, and provide appropriate rehabilitation and reintegration assistance.
- ✓ **Ratification:** All States can sign and ratify the Protocol, regardless of whether or not they have ratified the underlying Convention on the Rights of the Child.

27. Relevant UN bodies and NGOs are currently urging States to ratify the Optional Protocol and to endorse 18 as the minimum age at which voluntary recruitment will be permitted. The United Nations has indicated that countries contributing to UN peace-keeping operations should not send civilian police or military observers under age 25, and troops should, ideally, be over 21, but never younger than 18.

### b. **Optional Protocol on the sale of children, child prostitution and child pornography**

28. The Optional Protocol supplements the provisions of the Convention on the Rights of the Child by providing detailed requirements for the criminalization of violations of the rights of children in the context of the sale of children, child prostitution and child pornography.

29. Key provisions include:

- ✓ Definitions for the offences of “sale of children”, “child prostitution” and “child pornography”.
- ✓ Setting standards for the treatment of violations under domestic law, including with regard to offenders.
- ✓ Protection of victims and prevention efforts.
- ✓ Providing a framework for increased international cooperation in these areas, in particular for the prosecution of offenders.

30. The Optional Protocol gives special emphasis to the criminalization of serious violations of children’s rights — namely sale of children, illegal adoption, child prostitution and pornography. Similarly, the text stresses the value of international cooperation as a means of combating these transnational activities, and of public awareness, information and education campaigns to enhance the protection of children from these serious violations of their rights.

31. It is important to recall that interpretation of both Optional Protocols to the CRC must be undertaken in light of the Convention as a whole and be guided by the principles of non-discrimination, best interests and child participation.

### **3. The protection of children under the Geneva Conventions and their Additional Protocols**

32. International humanitarian law (IHL) is applicable in all situations of armed conflict. Detailed information on the overall content of IHL is provided in earlier chapters of this Manual, and clearly the general provisions in international humanitarian law on the protection of civilians in armed conflict apply equally to children. In addition, however, the 1949 Geneva Conventions and the two Additional Protocols of 1977 contain some 25 articles which specifically refer to children. Human rights officers are encouraged to draw upon standards of international humanitarian law in their work, including those provisions specific to children. The following is an overview of some of these provisions.

33. The Fourth Geneva Convention, which deals with the protection of civilians in armed conflict, contains several provisions for the protection of children. For example:

- ✓ Article 14 indicates that safety zones may be used to provide protection to children under fifteen, in particular.
- ✓ Children are also mentioned in Article 17, which provides for the evacuation of civilians from besieged areas.
- ✓ Article 23, which deals with the free passage of relief consignments intended for particularly vulnerable groups among the civilian population, explicitly refers to children under fifteen.
- ✓ Article 24 is devoted to the protection of children under fifteen who are orphaned or who are separated from their families as a result of the war, and provides for the identification of children under twelve.

- ✓ In Article 38, which applies to protected persons in the national territory of belligerents, children under fifteen are included amongst those persons who should enjoy preferential treatment to the same extent as nationals of the State concerned.
- ✓ Article 50 deals with children in occupied territories and the institutions devoted to their care, while Article 51 prohibits the occupying State from compelling children under eighteen years of age to work.
- ✓ Article 68 prohibits the sentencing of the death penalty to a protected person who was under eighteen years of age at the time of the offence.

34. In addition to these provisions, the principle of the special protection of children as victims in international armed conflict is explicitly stated in Additional Protocol I to the Geneva Conventions. Article 77 (1) of the Protocol states that “Children shall be the object of special respect and shall be protected against any form of indecent assault. The Parties to the conflict shall provide them with the care and aid they require, whether because of their age or for any other reason.”

35. Additional Protocol II to the Geneva Conventions contains similar provisions with regard to the protection of children in non-international armed conflict. Article 4 of Additional Protocol II on ‘fundamental guarantees’, for example, contains provisions devoted specifically to the protection of children and reiterates some of the principles contained in the Fourth Geneva Convention, including Articles 17, 24 and 26 in particular.

36. It is important to note that responsibility for the implementation of international humanitarian law, including the special protection it affords to children, is a collective responsibility. It is the duty of the State Party to the Geneva Conventions to respect and ensure respect for these standards. The Convention on the Rights of the Child reiterates this duty in Article 38, which provides that “States Parties undertake to respect and ensure respect for rules of International Humanitarian Law applicable to them in armed conflicts which are relevant to the child”. According to this article, States Parties to the Convention on the Rights of the Child “shall take all feasible measures to ensure protection and care of children who are affected by armed conflict” in accordance with their obligations under international humanitarian law to protect the civilian population in armed conflict.

## 4. Other human rights instruments specific to children

37. Some of these instruments provide guidance and are not considered binding in and of themselves; while others are legally binding upon ratification.

### a. *Juvenile justice instruments*

38. The following instruments provide guidance as to the application of juvenile justice, and are not legally binding in themselves, although a significant number of their provisions can be argued to be legally binding in the context of other legal instruments.

- ✓ United Nations Rules for the Protection of Juveniles Deprived of their Liberty (UN Doc. A/45/113 (1990)).

- ✓ United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines) (UN Doc. A/45/112 (1990)).
- ✓ United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”) (U.N.Doc. A/40/33 (1985)).

**b. ILO Convention 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour**

39. In June 1999, the International Labour Conference adopted a new Convention (No. 182) concerning the prohibition and immediate elimination of the worst forms of child labour. The Convention entered into force on 19 November 2000. Its main provisions include:

- ✓ **Article 1:** Each State Party to this Convention shall take immediate and effective measures to secure the prohibition and immediate elimination of the worst forms of child labour as a matter of urgency.
- ✓ **Article 2:** For the purpose of this Convention, the term ‘child’ shall apply to all persons under the age of 18.
- ✓ **Article 3:** For the purpose of this Convention, the term ‘the worst forms of child labour’ comprises:
  - (a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict”;
  - (b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;
  - (c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;
  - (d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

**c. African Charter on the Rights and Welfare of the Child (1990)**

40. The African Member States of the Organization of African Unity have developed a regional child rights instrument, the African Charter on the Rights and Welfare of the Child (1990), that entered into force in November 1999. The Charter establishes an African Committee of Experts on the Rights and Welfare of the Child empowered to receive State reports as well as communications from individuals, groups or non-governmental organizations recognized by the OAU, a Member State or from the United Nations. A particularly important aspect of the Charter is that — unlike the CRC — the African Charter defines a child as anyone under 18 — with no exceptions. Further, the African Charter also defines duties of the child.

**d. Security Council resolutions**

41. Numerous recent UN resolutions and other developments have contributed to the protection and promotion of children’s rights. While these initiatives do not have the status of international legal instruments, they can often contribute to the legal

protection available to children in specific situations or regions. Many commentators see these sorts of resolutions as a part of “soft law”.

42. In August 1999 the United Nations Security Council adopted Resolution 1261 strongly denouncing the targeting of children in situations of armed conflict. With this Resolution the Security Council has signalled that it will no longer tolerate the killing and maiming of children, sexual violence, abduction and forced displacement, recruitment and use of children in armed conflict. The Resolution also condemns attacks on places that usually have a significant presence of children, such as schools and hospitals.

43. In August 2000 the United Nations Security Council adopted Resolution 1314, the second resolution on children and armed conflict, which put in place key building blocks for the protection of war-affected children as a follow-up to Resolution 1261 (1999).

#### **e. *Statute of the International Criminal Court (ICC)***

44. The Statute, adopted in Rome on 17 July 1998, includes in its list of war crimes within the Court’s jurisdiction the active involvement in hostilities of children under 15 or their recruitment into national armed forces during an international armed conflict (Art.8, para.2b(xxvi)) or into the national armed forces or other armed groups during a non-international armed conflict (Art.8, para.2e(vii)).

45. According to the principle of complementarity, the Court has jurisdiction in situations where a State is unable or unwilling to prosecute. In order to take advantage of this principle and to ensure repression at the national level, States should adopt legislation enabling them to prosecute the perpetrators of such crimes.

#### **f. *The Guiding Principles on Internal Displacement***

46. The Guiding Principles on Internal Displacement (E/CN.4/1998/53/Add.2) were developed by the Representative of the Secretary-General on Internally Displaced Persons (see below). The Principles, which set out the relevant standards providing protection against arbitrary displacement, protection and assistance during displacement and during return or resettlement and reintegration, pay special attention to the needs of internally displaced children. The General Assembly and the Commission on Human Rights have requested the Representative to use the Principles in his dialogue with Governments. The Guiding Principles are being disseminated widely, and their application promoted by UN agencies, regional organizations and NGOs.

## **5. Some useful UN mechanisms**

47. The UN system includes many different mechanisms and structures, almost all of which can be linked in some way to the protection of children’s rights. This section draws attention to a small number of mechanisms which may be particularly relevant to the protection and promotion of children’s rights by human rights officers working in the field. Ideally, human rights officers will familiarize themselves with the full range of UN human rights mechanisms.

48. The capacity of UN mechanisms to protect and promote children's rights depends in large part upon the child rights information made available to those mechanisms. It is important that information concerning violations of children's rights is fed into **all** mechanisms. The Commission on Human Rights (CHR) special procedures, conventional human rights mechanisms and other UN human rights mandates — such as activities conducted by OHCHR (e.g. technical cooperation projects, field presences) — depend for their information on sources in the field. States, national and international NGOs and others can provide very valuable information from a country or region. UN human rights field operations can provide an essential channel for such information, complementing this with child rights data collected from their own monitoring.

**a. Conventional mechanisms: treaty monitoring bodies**

49. “Conventional mechanisms” refer to committees of independent experts established to monitor the implementation of international human rights treaties by States Parties. By ratifying a treaty, States Parties willingly submit their domestic legal system, administrative procedures and other national practices to periodic review by the committees. These committees are often referred to as treaty-monitoring bodies (or “treaty bodies”).

- ✓ Committee on Economic, Social and Cultural Rights (monitors the implementation of the International Covenant on Economic, Social and Cultural Rights)
- ✓ Human Rights Committee (monitors the implementation of the International Covenant on Civil and Political Rights)
- ✓ Committee on the Elimination of Racial Discrimination (monitors the implementation of the International Convention for the Elimination of all Forms Racial Discrimination)
- ✓ Committee against Torture (monitors the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment)
- ✓ Committee on the Elimination of Discrimination against Women (monitors the implementation of the Convention on the Elimination of All Forms of Discrimination against Women)
- ✓ Committee on the Rights of the Child (monitors the implementation of the Convention on the Rights of the Child)

50. Human rights officers can contribute to the work of these Committees by providing them with information prior to their consideration of a State Party's report. Following publication of a Committee's concluding observations, human rights officers can support State and NGO efforts to implement the recommendations they contain.

**b. Extra-conventional mechanisms: special procedures**

51. “Extra-conventional mechanisms” refer to those mechanisms established by mandates emanating not from treaties, but from resolutions of relevant United Nations legislative organs, such as the Commission on Human Rights or the General Assembly. Extra-conventional mechanisms may also be established by expert bodies, such as the Sub-Commission on the Promotion and Protection of Human Rights (formerly the

Sub-Commission on Prevention of Discrimination and Protection of Minorities). They normally take the form of an independent expert or a working group and are often referred to as “special procedures”.

52. Special procedures of the Commission on Human Rights (CHR) and the Sub-Commission on the Protection and Promotion of Human Rights include a number of child-specific procedures and many broader procedures which increasingly include references to children’s rights in the context of their particular mandates. Special procedures include:

- ✓ Special rapporteurs, special representatives, special envoys and independent experts, working groups – thematic or country (Urgent Actions)
- ✓ Complaints procedure 1503.

53. The following provides a brief description of activities undertaken by some special rapporteurs and/or representatives in the context of children’s rights within their various human rights mandates. Some of these mandates are child specific, but most focus on general human rights issues that are nevertheless important in overall efforts to protect and promote children’s rights. It is essential to recognize the potential of almost all UN human rights mechanisms and procedures for contributing to the protection and promotion of children’s rights, and the following list does not include all mechanisms (the full list is included as an annex to this Manual).

- ✓ **Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography:** The mandate of the Special Rapporteur (SR) was created in 1990 to investigate and receive information about the situation of children facing these concerns throughout the world. The Special Rapporteur can receive information about individual situations and bring these to the attention of the Governments concerned. The Special Rapporteur also makes recommendations to Governments, NGOs, UN agencies, and other members of civil society. During her tenure as mandate holder, she studied and made recommendations as to the role of the justice system, the media, education and the family with regard to the concerns of her mandate.
- ✓ **Special Rapporteur on the Right to Education :** The Special Rapporteur on the Right to Education focuses on the availability, accessibility, acceptability and adaptability of education services, working closely with relevant UN partners.
- ✓ **Special Rapporteur on Torture:** In his 1996 report (E/CN/.4/1996/35) to the Commission on Human Rights, the Special Rapporteur on Torture raised the issue of conditions of detention of children and made recommendations according to the provisions of relevant UN standards. In his 2000 report to the UN General Assembly, the Special Rapporteur continued to report upon conditions of detention for children and also placed particular emphasis on the situation and treatment of children cared for in non-penal institutions; the report also referred to the situation of children in regions of armed conflict.
- ✓ **Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions:** In reports and contacts with Governments, the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions has on numerous occasions expressed deep concern over the continuing use in some countries of the death penalty against juvenile offenders and persons accused of crimes committed when they were under the age of 18. The Special Rapporteur has also expressed grave concern at the use of

children as soldiers and support staff in the world's conflicts, and has called on Governments to unilaterally raise the age of enlistment to 18, and concluded that the use of children in armed conflict constitutes a serious and direct threat to the protection and enjoyment of the right to life.

- ✓ **Special Rapporteur on Violence against Women:** The Special Rapporteur on Violence against Women has taken a life-cycle approach to her mandate, and in so doing has addressed the rights of girls particularly with regard to violence in the family, but also to girls in armed conflict situations. The Special Rapporteur reports that gender-specific violence does not begin at a certain age, but throughout a woman's life-cycle there exists various forms of gender-based violence that manifest themselves at different stages. The Special Rapporteur has expressed concern that even before birth, females in cultures where preference for sons is prevalent are targeted by the violent discriminatory practices of sex-selective abortion and infanticide, and has reported on different forms of violence inflicted on girls including inter alia enforced malnutrition, unequal access to medical care, as well as physical and emotional abuse, incest, female genital mutilation, early childhood marriage and other harmful traditional practices, and the sale of children by their parents for prostitution or for bonded labour.
- ✓ **Country-specific Special Rapporteurs:** The CHR has named a number of Country-specific Special Rapporteurs with mandates to focus on the human rights situations in particular countries and regions. Increasingly, Country-specific Special Rapporteurs have included a child rights dimension in their reports and work.
- ✓ **Representative of the Secretary-General on Internally Displaced Persons:** The Representative systematically focuses on the plight of children, who typically constitute at least 50 per cent of internally displaced populations.
- ✓ **Special Representative of the Secretary-General on the Impact of Armed Conflict on Children:** The Special Representative was appointed in September 1997 for a three-year term, which was recently renewed by the General Assembly for another three years. Throughout his mandate the SRSG/CAC has sought to ensure that the protection of the rights of war-affected children are comprehensively addressed by key actors at international, regional and national levels. His role has centred on, inter alia: proposing initiatives and engaging key actors to protect war-affected children; proposing concrete initiatives to protect children in the midst of war and engaging parties to conflict to undertake specific commitments in that context; making the protection of children a priority concern in peace processes and peace operations and in all efforts to consolidate peace, heal and rebuild in the aftermath of conflict; and notably, the Special Representative has placed the children and armed conflict agenda squarely on the peace and security agenda of the UN as well as a number of regional organizations.

54. Some other relevant mechanisms include working groups on enforced or involuntary disappearances and on arbitrary detention; Special Rapporteurs on the independence of judges and lawyers; religious intolerance; freedom of opinion and expression; racism, racial discrimination and xenophobia; effects of foreign debt; human rights and extreme poverty; right to development; right to housing.

## C. Integrating children's rights into human rights field operations and developing a strategy

55. There are several general points which need to be emphasized and which provide guidance to HROs in developing their child rights field work.
- ✓ A particular strength of UN HR Ops is that they allow the promotion and protection of children's rights to take place within a wider human rights framework.
  - ✓ HR Ops should provide a link between the child rights situation in a country or region and UN international human rights mechanisms (e.g. UN treaty bodies, Special Rapporteurs).
  - ✓ HR Ops should strengthen and complement the work of other actors (including the State, the UN and NGOs), while avoiding duplication.
  - ✓ HR Ops can have a specific specialist role in some areas of concern, such as juvenile justice.
  - ✓ In other areas UN HR Ops can ensure a link with, and provide access to information on, specific child rights issues — thereby supporting the work of other actors.

### 1. Some management decisions concerning an operation's child rights work

56. This chapter focuses on providing guidance to HROs. However, including a focus on children's rights within the work of an operation will also require several policy and managerial decisions. As with other sections of this Manual, it is useful for some brief references to these issues to be made.

57. The inclusion of a child rights focus among an operation's activities will have certain structural, training, recruitment and budgetary consequences — all of which should ideally be taken into consideration at the planning stage of an operation.

#### a. *Interpreting the mandate of the operation*

58. The mandate of the human rights operation may or may not make specific reference to children and their rights. Even where specific references are made there will usually be a need for the human rights staff to interpret the mandate according to an evolving situation and to their available resources. Ideally, every human rights operation, no matter how small, will focus to some extent on the promotion and protection of children's rights.

## **b. (Methodological) structure**

59. There are different approaches to conducting child rights work through a human rights operation:

- ✓ All HROs with the operation can include children's rights within their range of activities. It is useful, nevertheless, to have at least one staff member as a "focal point" for children's rights, as this person can provide coordination and a contact person for cooperation with partners.
- ✓ Where a human rights operation has staff posted outside the capital city and at different provincial locations, ideally every team should ensure that a child rights approach is adopted in its provincial work. If possible, each team could have one staff member with specific responsibility for children's rights — a "Provincial child rights focal point".

60. The type of structure or methodology selected will have implications for the budget requirements of the operation and for the qualifications of staff recruited as human rights officers — with additional funding required for staff with a specific child rights background to serve as child rights focal points.

## **2. Basic terms of reference**

61. Basic terms of reference for the child rights work of a human rights operation and of individual HROs could include some of the following:

1. **Development of a child rights strategy** (including priorities, objectives and practical actions). The human rights operation child rights strategy should be developed in awareness of the overall child rights situation in the country/region and the efforts being made by other actors (including the State, the UN and NGO actors). Strategies should ensure complementarity, avoid duplication and emphasize the particular contribution that should be made by a UN human rights presence.
2. **Ensuring that all the operation's activities are sensitive to children's rights.**
3. **Ensuring human rights training with a child rights perspective** for other human rights officers within the operation and for government, UN and NGO partners. Children's rights training should include not only the dissemination of information on the CRC, but also guidance on the Convention's implementation. The human rights operation may provide training itself, but may also encourage and support training activities of partners. In particular, HROs should emphasize links between children's rights and the broader international human rights framework.
4. **Conducting regular monitoring and analyses** of the evolving child rights situation
5. **Reporting** on the evolving child rights situation.

### 3. Child rights checklist for human rights officers — developing a strategy

62. The following checklist provides a helpful tool to HROs in defining a child rights strategy. It can be used as a complement to the above basic terms of reference. Keeping the following questions in mind should provide a basis for the development of the human rights operation's overall child rights objectives and strategies.

#### **The child rights situation**

1. What are the main child rights concerns in the country/region?
2. In what ways are these child rights concerns related to other main human rights concerns?
3. How is the child rights situation evolving?

#### **Structure and activities with a potential to improve the child rights situation**

4. What national structures (State, NGO, other) exist that have a capacity to improve the child rights situation? How can the UN's human rights effort contribute to supporting and strengthening their impact on the child rights situation?
5. What are the main actions currently being taken by State, UN and NGO partners in favour of children's rights?
6. Does the Common Country Assessment (CCA) include a child rights perspective and accurately reflect the child rights situation? Have child rights concerns been addressed in the UN Development Assistance Framework (UNDAF)?
7. What regional and international human rights mechanisms can be used to address the situation and how can they be linked to country child rights situation and to national structures addressing the situation?

#### **The child rights potential of the UN human rights operation**

8. How do the main activities (e.g. technical cooperation projects, national human rights institution building, monitoring, etc) of the human rights operation have a positive impact on children's rights? How can the positive impact be strengthened?
9. Given the child rights situation and activities of other actors, what role should the human rights operation fulfil? What should the operation's strategy include? How can the operation's strategy complement the ongoing work of partners?
10. What role is the operation playing in the CCA and UNDAF processes with regard to children's rights?
11. How can the operation link the international and regional human rights mechanisms with the child rights situation? Which of these mechanisms are the most relevant to the child rights situation?

12. Where is the country in the CRC reporting process? How can the operation contribute to strengthening this process? In what way can the reporting process be supported so as to help in addressing the current most urgent child rights concerns?
13. Which UN treaty bodies have published concluding observations on the country's implementation of its treaty obligations? How many of the specific concluding observations are of direct relevance to the current child rights situation? Can the human rights operation support the State in the follow-up to the concluding observations?
14. Which UN Special Rapporteurs, Representatives and other relevant experts have reported on the country and included concerns and recommendations of relevance to the child rights situation? Can the operation support follow-up to these reports?
15. Does the operation's monthly report include a child rights perspective? Can this be strengthened?
16. How can the operation contribute to strengthening juvenile justice? What are the key concerns?
17. How is the operation sharing information on the child rights situation, and efforts to address it, with headquarters and with relevant partners outside of the country?
18. Are there any upcoming or ongoing international child rights activities (e.g. international conferences on children affected by war, regional workshops on the trafficking of children, etc.)? Could any of these activities be used to create momentum for improving the child rights situation in the operation's country?
19. Have there been any recent national, regional or international initiatives (e.g. the adoption of legislative instruments, the passing of resolutions, the publication of reports by the Secretary-General) of relevance to children's rights in the country? Can the operation make use of, and provide information on, these initiatives?
20. What international human rights instruments have not yet been ratified by the country in which the human rights operation is working? What can the operation do to support further ratifications?

## **D. Some examples of broad child rights strategies**

63. The following paragraphs focus on 3 broad child rights strategy areas. This short list is not in any way exhaustive, but provides an indication of the manner in which a child rights strategy and its component activities can be developed.

## 1. Strengthening the child rights impact of the operation's current activities

64. It should be possible to find a potential positive impact on respect for children's rights from almost any activity undertaken by a human rights operation — e.g. detention work, investigations, training for soldiers, promotion of the human rights of women, capacity building for local human rights NGOs, etc. However, the impact of these activities on children's rights may remain merely potential or incidental, unless there is a concerted effort to ensure that child rights are taken into consideration at the planning stage of activities in the operation's strategies.

65. For example, human rights training for police officers, judicial and prison officials may focus on:

- ✓ rights to freedom of movement and speech,
- ✓ the rights of defendants in criminal trials,
- ✓ minimum standards of conditions of detention, and
- ✓ the rights of detainees not to suffer ill-treatment or torture.

66. From a child rights perspective, the same training programme could be strengthened to include a focus on:

- ✓ juvenile justice principles,
- ✓ the principle of the best interests of the child,
- ✓ the obligation for the detention of minors to be used only as a measure of last resort,
- ✓ alternatives to imprisonment sentences,
- ✓ the obligation for minors to be detained or imprisoned separately from minors, etc.

67. One aspect of the human rights operation's strategy could be to ensure that all the operation's main activities include a child rights perspective and that the operation's overall analysis of the human rights situation includes child rights concerns.

## 2. Supporting the work of partners

68. Supporting and strengthening the efforts of others to protect and promote children's rights should be a major aspect of any strategy to promote and protect children's rights. "Partners" is a term that can be used very broadly to include parts of the State (e.g. the ministries of education or justice), other UN bodies, and national or international NGOs. Two examples are given below.

1. **Partners with a general mandate to assist children:** The work of many organizations in favour of children focuses on the more material aspects of rights protection. The expertise and mandates of these organizations are best suited to this task; human rights operations can, however, often contribute to helping these missions achieve their objectives by complementing and strengthening their work using the operations' particular mandate and expertise.

For example:

- ✓ While access to education in a certain region may be a fundamental child rights problem, its cause may be a combination of a lack of school buildings, equipment and teachers on the one hand, and the practice of discrimination through which local officials prevent children from a particular religious or ethnic group from attending school on the other.
- ✓ Many humanitarian organizations are uncomfortable with directly addressing human rights violations in a manner which goes beyond the provision of assistance as described in their mandates. Human rights operations can usefully fill this sort of gap by ensuring, as in the above example, that the provision of material aid genuinely addresses existing rights violations.

2. **“General measures of CRC implementation” — supporting national structures:** The CRC devotes several articles to “general measures of implementation” (also known as the 1st cluster in the CRC reporting guidelines). Respect for children’s rights cannot be truly effective unless a State successfully implements various “general measures of implementation”. These include:

- ✓ the strengthening of domestic legislation;
- ✓ establishment of national structures to develop and coordinate child rights policy;
- ✓ development of a human rights (including child rights) national plan of action;
- ✓ development of mechanisms for the accurate collection of data relevant to the child rights situation;
- ✓ involvement of civil society in implementation of the CRC;
- ✓ implementation of child rights training programmes for relevant persons, including Ministry officials, the police, teachers, social workers, parents, etc.

These factors, among others, are considered to form a major base upon which children’s rights can be securely established. Many of these factors are as relevant to the implementation of broader human rights standards as they are to child rights standards, and there are relatively few organizations with the relevant mandate and expertise to provide assistance in these areas. By way of example, human rights operations in an appropriate situation could very valuably contribute to the strengthening of some aspects of a State’s general measures of implementation.

### 3. Building upon the CRC reporting process

69. A further example of a broad strategic area through which a human rights operation can contribute to the protection and promotion of children’s rights is through support to treaty body reporting processes (and to that of the CRC in particular) and the follow-up to treaty body concluding observations. The regular presentation to the Committee on the Rights of the Child of a State’s report (in principle every 5 years) is only one stage in a process which creates multiple

opportunities for the improved protection of children's rights. UNICEF provides valuable support to States throughout the CRC reporting process and follow-up to concluding observations. There are also some areas in which UN human rights operations have a specific expertise to contribute. For example:

- ✓ The preparation of a State's report requires the gathering of specific information on the Convention's implementation. Some of this information should be drawn from areas that fall within the competence of the human rights operation — HROs can support the State in ensuring accurate data collection and help to establish permanent data collection mechanisms for particular human rights criteria.
- ✓ The reporting guidelines implicitly require States to consult with NGOs in the preparing their report; human rights operations can support the contribution of national human rights NGOs to this process and in so doing help to strengthen independent national human rights organizations.

70. Human rights operations can usefully contribute to the CRC, other treaty body and special procedures reporting processes as part of strategy to improve respect and promotion for children's rights.

## E. Monitoring and reporting on respect for children's rights

71. Human rights operations often monitor and report upon the human rights situation in a country. Children's rights should be taken into consideration in this process and should, ideally, have a specific section in the operation's reports.

72. Other chapters of this manual provide detailed guidance on human rights monitoring and reporting. This section emphasizes, however, that monitoring and reporting upon respect for children's rights can require a slightly different approach than that taken towards reporting on general human rights monitoring.

### 1. Monitoring — identifying priorities in a child rights situation

#### a. *What child rights criteria?*

73. **Types of rights:** many human rights operations focus their monitoring, investigative and reporting activities on violations of civil and political rights, often because of the immediate urgency of responses that are required to violations of many of these rights. Efforts to protect and promote children's rights should focus their analyses on a broader range of rights — including economic, social and cultural rights as well as civil and political rights.

74. **Referring to the human rights of parents/family:** Monitoring and reporting on children's rights should take into consideration relevant violations of the human rights of their parents and immediate families, as these are often linked to respect for

children's rights. One should re-emphasize, nevertheless, that children are the subjects of rights in their own individual capacity.

75. **Focus on structures:** Analyses of children's rights should include reference to the role of "structures" which contribute to the protection and promotion of children's rights, including: access to schools and health care; the strength of immediate and extended family structures; the effectiveness of those government ministries with responsibility for issues affecting children; etc. Analyses should be aware of both modern and traditional structures, where relevant.

### **b. Recognizing the importance of "time" and "vulnerability"**

76. It is essential when seeking to protect and promote children's rights to note the importance of "time" as a factor affecting the impact of a situation on a child.

77. Children, at different stages of their development, are more vulnerable to an enormous array of influences that will have lasting consequences on their moral, physical, emotional and psychological development, and their ability to function as fully participatory citizens when they reach adulthood. They will be detrimentally affected (and differently affected than adults) by virtually any violation of their rights to varying degrees, whether it is a denial of education, denial of access to health, denial of the freedom of association or expression, forced participation in armed conflict, etc.

78. "Time" should be taken into consideration in addressing children's rights issues in 2 ways:

- ✓ Children may be affected far more seriously than adults by violations of their rights which continue over a certain duration of, for example, weeks or months — this argument is applicable to almost any rights violation, e.g. torture, food deprivation, poor conditions of detention, etc. The duration of a particular situation can have a more serious impact on children than on adults, leading to more severe violations of their rights.
- ✓ In light of the increased risk of lasting negative consequences for children and society posed by child rights violations, the assessment, monitoring, reporting and intervention to address these violations is particularly urgent.

### **c. Using the CRC reporting guidelines as a support for monitoring and analysis**

79. The CRC reporting guidelines were defined by the Committee on the Rights of the Child for the purpose of assisting States Parties to the CRC in reporting accurately on the Convention's implementation. The reporting guidelines divide the Convention into 8 broad "clusters" of rights. Under each of the 8 headings the guidelines provide in significant detail the sort of information that should be provided in State Party reports. These headings and further details provide a very useful list of possible criteria for child rights monitoring; Human rights officers could focus on 5 to 20 key issues of particular relevance to the country of operations. Reference should be made to UNICEF's "Implementation Handbook for the Convention on the Rights of the Child". The following list includes the main 8 headings from the reporting guidelines, with some subheadings (the articles refer to provisions of the CRC):

**I. GENERAL MEASURES OF IMPLEMENTATION****(arts. 4; 42 and 44, paragraph 6 of the Convention)**

- A. Status of the Convention in domestic law, new legislation and law enforcement
- B. Coordination, monitoring, existing and new institutions
- C. Implementation of article 4 of the Convention
- D. Involvement of civil society
- E. Measures taken to make the principles and provisions of the Convention widely known

**II. DEFINITION OF THE CHILD (art. 1)****III. GENERAL PRINCIPLES (arts. 2; 3; 6 and 12)**

- A. Non-discrimination (art. 2)
- B. Best interests of the child (art. 3)
- C. The right to life, survival and development (art. 6)
- D. Respect for the views of the child (art. 12)

**IV. CIVIL RIGHTS AND FREEDOMS (arts. 7; 8; 13-17 and 37 (a))**

- A. Name and nationality (art. 7)
- B. Preservation of identity (art. 8)
- C. Freedom of expression (art. 13)
- D. Freedom of thought, conscience and religion (art. 14)
- E. Freedom of association and peaceful assembly (art. 15)
- F. Protection of privacy (art. 16)
- G. Access to appropriate information (art. 17)
- H. The right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment (art. 37 (a))

**V. FAMILY ENVIRONMENT AND ALTERNATIVE CARE****(arts. 5; 18, paras. 1 and 2; 9-11; 19-21; 25; 27, para. 4; and 39)**

- A. Parental guidance (art. 5)
- B. Parental responsibilities (art. 18 paras. 1 and 2)
- C. Separation from parents (art. 9)
- D. Family reunification (art. 10)
- E. Illicit transfer and non-return (art. 11)
- F. Recovery of maintenance for the child (art. 27, para. 4)
- G. Children deprived of their family environment (art. 20)
- H. Adoption (art. 21)
- I. Periodic review of placement (art. 25)
- J. Abuse and neglect (art. 19), including physical and psychological recovery and social reintegration (art. 39)

**VI. BASIC HEALTH AND WELFARE****(arts. 6; 18, para. 3; 23; 24; 26; 27, paras 1-3)**

- A. Disabled children (art. 23)
- B. Health and health services (art. 24)
- C. Social security and child care services and facilities (arts. 26 and 18, para. 3)
- D. Standard of living (art. 27, paras. 1-3)

**VII. EDUCATION, LEISURE AND CULTURAL ACTIVITIES  
(arts. 28; 29 and 31)**

- A. Education, including vocational training and guidance (art. 28)
- B. Aims of education (art. 29)
- C. Leisure, recreation and cultural activities (art. 31)

**VIII. SPECIAL PROTECTION MEASURES  
(arts. 22; 38; 39; 40; 37 (b)-(d); 32-36)**

- A. Children in situations of emergency
  - 1. Refugee children (art. 22)
  - 2. Children in armed conflicts (art. 38), including physical and psychological recovery and social reintegration (art. 39)
- B. Children involved with the system of administration of juvenile justice
  - 1. The administration of juvenile justice (art. 40)
  - 2. Children deprived of their liberty, including any form of detention, imprisonment or placement in custodial settings (art. 37 (b)-(d))
  - 3. The sentencing of children, with particular reference to the prohibition of capital punishment and life imprisonment (art. 37 (a))
  - 4. Physical and psychological recovery and social reintegration of the child (art. 39)
- C. Children in situations of exploitation, including physical and psychological recovery and social reintegration
  - 1. Economic exploitation of children, including child labour (art. 32)
  - 2. Drug abuse (art. 33)
  - 3. Sexual exploitation and sexual abuse (art. 34)
  - 4. Sale, trafficking and abduction (art. 35)
  - 5. Other forms of exploitation (art. 36)
- D. Children belonging to a minority or an indigenous group (art. 30)

## 2. Reporting on respect for children's rights

80. Ideally, a human rights operation's monthly report will have a specific section on children's rights. The child rights section would include:

- ✓ information on key civil, cultural, economic, political and social rights criteria;
- ✓ some information on the situation of families and of parents, essential to providing a complete understanding of respect for children's rights.
- ✓ It should be emphasized that other sections of the report — for example, on the killing of civilians, on IDPs and refugees — may also include information on children. There may be some overlapping within the report with cross-referencing where needed.

## F. Working with children<sup>3</sup>

81. In the course of their human rights work, including — but not exclusive to — child rights work, human rights officers will work directly with children. Some of this human rights work may involve interviewing a child to gather information on possible human rights violations. Other aspects may involve trying to provide a child with assistance. The guidelines provided in this section are intended as a brief introduction to some important points to be taken into consideration. Perhaps above all, human rights officers should be aware of the “Do no harm” principle of human rights work. Human rights officers should also understand and endeavour to respect the principles contained in the Convention on the Rights of the Child regarding “respect for the views of the child” and the “best interests of the child”:

- ✓ taking into account the age and capacities of the child, human rights officers should ensure that children have the opportunity to express their views in any decisions being made on their behalf by the officer or the human rights operation, and that those views are given due consideration;
- ✓ human rights officers should ensure that in all actions they take with regard to a child, the child’s “best interests” are a primary consideration.

### 1. How is communicating with children different from communicating with adults?

82. Children have needs and abilities which are significantly different from those of adults. Communicating with children has some particular requirements which include the following:

- ✓ the ability to feel comfortable with children and to engage with them in whatever style of communication suits the individual — e.g. by sitting on the ground, through play, etc., and to be able to tolerate expressions of distress, aggression etc.;
- ✓ the ability to use language and concepts appropriate to the child’s age and stage of development and culture;
- ✓ an acceptance that children who have had distressing experiences may find it extremely difficult to trust an unfamiliar adult. It may take a great deal of time and patience before the child can feel sufficient trust to communicate openly;
- ✓ an ability to appreciate that children may view their situation in ways distinctively different from that of adults: children may fantasize, invent explanations for unfamiliar or frightening events, express themselves in symbolic ways, emphasize issues which may seem unimportant to adults, and so on.

<sup>3</sup>Text drawn primarily from ARC and Save the children material.

## 2. Cultural issues in communicating with children

83. Different cultures have different norms about inter-personal communication. In many societies there are rules about what topics can be discussed with particular adults — for example, girls in some cultures may only discuss sexual topics with aunts or grandmothers and may be even be forbidden from having contact with anyone outside of the family. Professionals who need to communicate with children need to understand the cultural norms for expressing feelings and emotions: in some societies, for example, it would be a source of great shame for children — especially boys — to cry. It is important that those trying to help children do not make matters worse by encouraging them to talk and express feelings in a way which contravenes such norms. There are also cultural norms about what forms of expression are appropriate — the use of physical touch, or eye contact, for example, will vary between cultures, while the degree of formality and social distance between adults and children may, in some societies, limit the exchange of personal information and feelings.

## 3. Language and the use of interpreters

84. There are obvious advantages in communicating in the child's mother tongue: where the adult is not from the same culture as the child, it may be more difficult to interpret the child's gestures and body language which are very important as another way to get information from the child, and to grasp the nuances of words and expressions. The interviewer's language must be appropriate to the age of the child. Where possible, staff should also be familiar with local terminology, including slang.

85. Where the use of an interpreter is unavoidable, it is vital for the interpreter to be fluent in both languages, to understand any specialist terminology and to be able to use words which the child can understand. He or she needs to be acceptable within the community and be seen as impartial. It is vital to ensure that the interpreter has good skills in communicating with children, can cope with any emotions being expressed and does not influence the conversation by wrongly translating, summarizing or omitting selected sections of what is said.

## 4. Communication in the context of displacement

86. Very often effective communication is impeded in situations of population displacement by an atmosphere of mistrust and suspicion. There may be real fears regarding the way in which information might be used, especially when the interviewer is perceived as a public or authority figure. Moreover, some children will have had experiences (such as some form of exploitation) which will have demonstrated that adults are not always reliable or trustworthy: hiding information, or revealing incomplete or inaccurate information may have been used as a survival strategy. Opening an effective and transparent line of communication with a child may take a great deal of time and trust-building.

## 5. Providing an appropriate location and environment

87. Selecting an appropriate location for interviewing children, or having an informal conversation, can have an important bearing on the effectiveness of the communication. For most young people, a quiet space with comfortable and culturally appropriate seating may be the ideal choice, though for others going for a walk, or playing or working together may provide the best opportunity for communication.

- ✓ **Privacy** can be important, especially when the interview relates to personal or potentially painful information. Equally, some children may prefer to be accompanied by a trusted adult or friend.
- ✓ **A non-distracting environment** can also be important — especially if the child has been exposed to an environment of uncertainty, change and anxiety.
- ✓ **A comfortable environment** chosen with the child will help the child to feel relaxed.

## 6. Attitude and approach

88. Communicating effectively with children requires a particular approach, and although some techniques will vary from culture to culture, a vital objective is to facilitate children's self-expression. In general, the following guidelines should be followed:

- ✓ **Introductions** are important so that the child knows who the interviewer is, what role he or she has, and what is the purpose of the meeting with the child. When planning to interview children, it sometimes helps to get to know them among a group before talking to them individually.
- ✓ **Confidentiality** should be respected, but it is also important to explain carefully why information is being collected, who will know about it and how it will be used.
- ✓ **Simple language** should be used, which the child can readily understand. If there is a suspicion that the child has not understood something you have said, it can be helpful to ask the child to **repeat or paraphrase** the concept.
- ✓ Keep **direct questions to a minimum** and bring in some general conversation so that the child does not feel that he or she is being cross-examined.
- ✓ A **friendly, informal and relaxed approach** will help the child to feel at ease.
- ✓ **Adequate time needs to be given** to help the child to feel relaxed, to develop mutual trust and to enable the child to feel that he/she is being taken seriously. Time for playing together may be helpful in developing a rapport, and conversation about neutral issues (school, games etc.) may be appropriate before more personal or painful topics are discussed.
- ✓ It is important to **allow for children's limited concentration span**: a series of shorter meetings may be more effective than a few longer ones.
- ✓ A **non-judgemental attitude** which conveys acceptance of the child, whatever he or she has or has not done, is essential. It is important to convey respect for his or her beliefs, feelings, etc. and not to judge his or her behaviour — for example in the case of former child soldiers.

- ✓ **Taking notes** during the interview may be distracting for the child and raise questions and uncertainties about confidentiality. If it is necessary to take notes, it is important to explain the reason and seek the child's permission first.
- ✓ **Ending the interview or conversation** appropriately is also important: providing the child with an opportunity to ask questions, say anything else which he or she would like to say, etc and summarizing what has been said or agreed upon may help the child feel that he or she has been taken seriously. It is also advisable to finish the interview on a positive note particularly where the child has been recounting traumatic events.
- ✓ After the interview, it is important to **make sure that there is follow-up support available to the child**, especially if painful and difficult issues have been discussed.

## 7. Helping children to express themselves

89. Sometimes children may be willing to talk but find it difficult to do so. Making the conversation less personal can help. One child was reluctant to give his name to an HRO interviewing him. The HRO made up a story about a bird and gave the bird a name. In the story, the bird asked the name of the child and the child gave it. He was able to talk much more freely within the context of the story. Other ways of helping children to express themselves include drawing, playing games and singing. Children with a physical disability may need extra help: for instance, a child who is unable to speak and too young to write may be able to convey information through play or drawings.

90. There are various techniques which may help the child to express himself or herself:

- ✓ A **quiet tone of voice** can help the child to feel safe, and shows that the adult is being sympathetic.
- ✓ **Gestures** such as nods of the head (or whatever is appropriate within the particular culture) can encourage the child to continue to talk.
- ✓ An **appropriate degree of eye contact** also helps the child: again this will vary with culture.
- ✓ **Listening attentively and demonstrating that you have heard the child** — e.g. by summarizing what has been said, seeking clarification, etc. confirms to the child that you are actively listening.
- ✓ **Showing respect for the child's feelings** is also important — e.g. by reflecting the feelings (“that must have made you feel very sad/angry”, etc.). This helps to convey empathy — the capacity to identify with the child's situation and feelings.
- ✓ **Avoid interrupting the child.**
- ✓ **Asking open questions** will generally encourage the child to explain something in his/her own way: for example, an open question such as “tell me about life in your village” may elicit a more free response than a closed question such as “where did you live?”. It is usually best to avoid leading questions, i.e. those which suggest an answer to the child, such as “You like school, don't you?”

## 8. When children become distressed

91. Look out for signs of distress in children and do not pressurize them if they are upset. Their distress should not be ignored, and they must be supported and comforted in a way that is appropriate. What is appropriate will depend on the child and the circumstances, and again you should take a lead from the child.

92. Other children can be enlisted to comfort a child in distress. If you know that your interviewee has a friend, ask him or her to talk to the child so that the interview can be finished. Above all, children should be given time, even when there is a lot to do. Give them a break, time to play games or have a drink. Work should be prioritized so that staff are able to give time to the children who need it. Children may become upset after an interview, so if possible the person caring for them should be available.

## Appendix 1 to Chapter XII

# Sources of further information

- ✓ ARC (Action for the Rights of Children), A Rights Based Capacity Building and Training Initiative (joint training initiative by UNHCR, Save the Children Alliance, UNICEF and OHCHR) (available on UNHCR's web site, and will be made available on CD Rom and/or paper).
- ✓ Children's rights: turning principles into practice, Save the Children, Sweden, UNICEF, 2000.
- ✓ Hodgkin, Rachel and Peter Newell, Implementation Handbook for the Convention on the Rights of the Child, UNICEF, Geneva.1997.

## A small selection of useful web sites

- ✓ <http://untreaty.un.org/>  
A new branch of the UN's web site, focusing on treaties and related information. A second database, the United Nations Treaty Series (UNTS) is a collection of treaties and international agreements in their original language(s), along with translations into English and French.
- ✓ <http://www.unsystem.org/>  
A web site through which a search can be conducted across all UN web sites and which provides links to individual sites and to the sites of States with UN missions.
- ✓ [www.unicef.org](http://www.unicef.org)
- ✓ [www.unicef-icdi.it](http://www.unicef-icdi.it)
- ✓ [www.unhcr.ch](http://www.unhcr.ch)  
Including access to the Action for the Rights of Children (ARC).
- ✓ [www.ilo.org](http://www.ilo.org) or  
<http://ilolex.ilo.ch:1567/public/english/50normes/infleg/iloeng/index.htm>
- ✓ <http://www.hri.ca/>  
Human Rights Internet.
- ✓ [www.crin.org](http://www.crin.org)  
Includes links to a wide range of international organizations working on children's rights.
- ✓ [www.unhchr.ch](http://www.unhchr.ch)
- ✓ [www.child-soldiers.org](http://www.child-soldiers.org)  
Includes links to a wide range of international organizations working on children's rights
- ✓ [www.un.org/special-rep/children-armed-conflict](http://www.un.org/special-rep/children-armed-conflict)
- ✓ [www.icrc.org](http://www.icrc.org)