



Concept Note

Strengthening Women's Security and Access to Justice

**Implementing UNDP's Eight-Point Agenda for
Women's Empowerment and Gender Equality
in Crisis Prevention and Recovery**

Bureau for Crisis Prevention and Recovery

2010

TABLE OF CONTENTS

1.	INTRODUCTION	2
2.	BACKGROUND	2
3.	UNDP'S APPROACH	5
4.	ACTIVITIES	6
5.	EXAMPLES OF COUNTRY PROGRAMMES	8
6.	PARTNERSHIP	10
7.	SCOPE AND TIME-FRAME	11
8.	BASIC REFRENCE DOCUMENTS	12

INTRODUCTION

This paper sets forth UNDP's policy on its work with women's security and access to justice in conflict/post-conflict countries and its contribution to the United Nation's greater goal to '*eliminate all forms of violence against women and girls, including by ending impunity and by ensuring the protection of civilians, in particular women and girls.*'¹ Security Council Resolutions 1325 (2000) and 1889 (2009) on women, peace and security and 1820 (2008) and 1888 (2009) on sexual violence in armed conflict have laid the foundation for the efforts of the United Nations (UN) community to improve protection of women and girls within a framework of rule of law and respect for human rights. Based on the *UNDP Global Programme on Strengthening the Rule of Law in Conflict/Post-Conflict Situations 2008-2011*², this concept paper, outlines UNDP's contribution to these efforts through a focus on justice and security for women and girls affected by armed conflict.

BACKGROUND

Forms of Gender Based Violence (GBV) vary across countries and cultures, encompassing physical, sexual and psychological harm perpetrated against women and girls.³ Examples include: sexual violence, including sexual exploitation/abuse and forced prostitution; domestic violence; human trafficking; forced/early marriage; harmful traditional practices such as female genital mutilation; honor killings; and widow inheritance, among others. Often rooted in discriminatory attitudes or cultural practices, GBV in the form of sexual violence is now known to be used as a means of warfare and terror in armed conflict and has manifested itself through systematic and widespread rape and sexual assault, especially of women and girls, in a number of crisis countries (e.g. the former Yugoslavia, Rwanda, Democratic Republic of Congo, Darfur and Sudan). The crime of rape and other forms of sexual violence attack the integrity and dignity of individuals, tear apart the social fabric of communities, and hinder human development.

During conflict, women and girls are particularly vulnerable to violence due to the breakdown of law and order and the loss of community protection. GBV is common at security checkpoints, detention facilities, and IDP and refugee camps. In these highly insecure situations many women opt not to report cases of violence to the authorities or community leaders. In the absence of adequate legal mechanisms for redress and punishment of perpetrators, women fear being ostracized, stigmatized, or being victims of reprisals in a climate of indifference or tacit acceptance of sexual violence. In addition, most women lack knowledge about their rights and legal options, or how to obtain support in accessing justice

¹ UN Security Council Resolution 1820, 19 June 2008.

² *The Global UNDP Rule of Law Programme for Conflict/Post-Conflict Situations 2008-2011* is managed by the Rule of Law, Justice & Security team of UNDP's Bureau for Crisis Prevention & Recovery (BCPR).

³ UN General Assembly Declaration A/RES/48/104, 20 December 1993, 85th plenary meeting, Art.1.

and other forms of essential support, such as medical, psycho-social services, and socio-economic assistance.

Legal prohibitions on sexual violence in armed conflict

Due to the seriousness and magnitude of rape and sexual violence in conflict, in 1998, international jurisprudence recognised rape as a war crime⁴ and a crime against humanity⁵ in case law before the International Criminal Tribunals for the Former Yugoslavia and Rwanda, respectively.

The 1998 Rome Statute of the International Criminal Court also criminalized sexual violence as a war crime in international and internal armed conflict.⁶ Sexual violence is defined as including: '*rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization or any other form of sexual violence of comparable gravity*'. This means that a single act of rape committed by a combatant during an armed conflict constitutes a war crime. If rape is part of a widespread and systematic attack on civilians (or if sexual violence is tolerated by, or part of, government policy) then it also constitutes a crime against humanity under Article 7 of the 1998 Rome Statute. Crimes against humanity do not require a connection with an armed conflict in order to be prosecuted or proven.⁷

In addition, in 2005, the International Committee of the Red Cross (ICRC) published a study on customary International Humanitarian Law, which concludes that all forms of sexual violence are prohibited in situations of international and internal armed conflict.⁸ This customary law prohibition is universally binding on all parties to armed conflict, in addition to their treaty obligations.

⁴ *Prosecutor v. Furundzija*, ICTY, Judgment of 10 December 1998.

(Found a commander of a special military unit of the HVO guilty on two counts for 'Violation[s] of the Laws or Customs of War' for the rape and torture of a civilian woman in hopes of obtaining certain political information). See also cases of *Kunarac, Kovac and Vukovic*, 2001.

⁵ *Prosecutor v. Akayesu*, ICTR, Judgment of 2 September 1998, available at

<http://www.un.org/ictr/english/judgements/akayesu.html> (Found that the accused guilty of a crime against humanity based on his knowledge of widespread rape and sexual abuse that took place in the community in which the accused, as bourgmestre, was charged with maintaining order).

⁶ 1998 Rome Statute of the International Criminal Court, *Rome Statute*, Art 8(2)(b)(xxii) & (vi), available at <http://untreaty.un.org/cod/icc/statute/romefra.htm>.

⁷ See also ICTR *Prosecutor v Akayesu* (see note 4 above) and ICTY cases: *Prosecutor v Tadic*, 1997 and cases of *Kunarac, Kovac and Vukovic*, 2001.

⁸ Jean-Marie Henckaerts and Louise Doswald-Beck, *ICRC Study on Customary Rules of International Humanitarian Law, Vol. I Rules, Vol. II Practice*, Cambridge University Press, March 2005: Rule 93: Rape and other forms of sexual violence are prohibited in international and non-international armed conflicts.

Security Council Resolutions on Women, Peace & Security and Sexual Violence in Armed Conflict

Against this legal background, the international community has recognized the urgent need to prevent and bring an end to GBV, especially sexual violence. As a result, the UN Security Council adopted Resolutions 1325 and 1889 on women, peace and security, and Resolutions 1820 and 1888 on sexual violence in armed conflict. These four Resolutions taken together demonstrate a strong, collective commitment to: empower women through inclusion in peace processes; enhance the physical and legal protection of women and girls; ensure access to justice; and put an end to impunity through strengthening the rule of law. In addition, they urge Member States to make resources available to this end. Crucially, Security Council Resolution 1820 represents a unanimous agreement that sexual violence in the context of armed conflict has significant implications for international peace and security, thereby bringing cases of conflict-related sexual violence directly within the remit of the Security Council.

Security Council Resolutions 1325 and 1889 have several emphases: ending impunity for violence against women in armed conflicts; the protection of women in armed conflict situations; and the active involvement of women in peace negotiations and peace-building processes. Resolution 1889 reinforces these commitments and adds a strong emphasis on the funding of these activities as well as the effective monitoring of, and reporting on, women's human rights and their participation in peace and peace-building processes.

By recognizing sexual violence as an issue that has implications for international peace and security, Security Council Resolutions 1820 and 1888 give the issue a new strategic dimension in the UN system. Resolution 1820 demands the protection of '*civilians, including women and girls, from all forms of sexual violence*', and affirms that '*rape and other forms of sexual violence can constitute a war crime, a crime against humanity or a constitutive act with respect to genocide*'.⁹ Both Resolutions demand action at international and national levels to end impunity for sexual violence. Security Council Resolution 1888 emphasizes the need for practical action in strengthening the rule of law, such building the capacity of the judiciary and law enforcement; engaging traditional and religious leaders to combat sexual violence, countering marginalization and stigmatization of victims; and ensuring access to justice for survivors.¹⁰

Importantly for UNDP, Resolution 1820 urges UN entities to support '*the need for development and strengthening of the capacities of national institutions*'.¹¹ To that end, Resolution 1888 requests the Secretary-General to appoint a Special Representative on Sexual Violence in Armed Conflict, to ensure that Teams of UN Experts are available to support national efforts to strengthen the rule of law in contexts where sexual violence is prevalent, and that Women Protection Advisers are deployed in peacekeeping missions.¹²

⁹ Para 4

¹⁰ Assigned by UN ACTION in 2009, UNDP, OHCHR and DPKO serve co-leads for the conceptual framework and establishment of Expert Team to support the SRSG on Sexual Violence in Armed Conflict (SC Resolution 1888, Operative Paragraph 8).

¹¹ Para 13

¹² Paras 4 & 8, 12 of UN SC Res 1888 (2009).

Hence, these Security Council Resolutions represent both a political and programmatic framework for collective action to prevent and respond to GBV, especially sexual violence, through strengthening the rule of law.

UNDP'S APPROACH

Women's security and access to justice is a key pillar of UNDP's Global Programme on Strengthening the Rule of Law in Conflict and Post-Conflict Situations 2008-2011, which is managed by UNDP's Bureau for Crisis Prevention & Recovery. The programme places particular emphasis on operationalizing UNDP's Eight Point Agenda for Women's Empowerment and Gender Equality through ensuring access to justice for women and girl victims of GBV, especially sexual and domestic violence, and the promotion of women's security through the rule of law. UNDP's Eight Point Agenda outlines eight fundamental goals for '*practical, positive outcomes for girls and women in crisis.*' The programme focuses, in particular, on point 1: strengthening women's security in crisis and point 2: advancing gender justice – both of which conclude that the law must protect women's rights, women must know their rights, and those rights should never be violated under the guise of custom, tradition or religious beliefs.¹³

In the spirit of the UN Security Council Resolutions, the chief objective of UNDP is to provide systematic support to UNDP Country Offices in managing and expanding security and justice for women and girls in crisis, while also strengthening partnerships across the UN system and beyond. This is implemented in ongoing conflict situations and post-conflict situations, responding to immediate local needs through building the capacity of national civil society organizations and justice institutions, thereby laying the building blocks for sustainable reform. Based on precedent and best practices of concrete and immediate assistance to GBV survivors in Darfur, UNDP seeks to ensure that women and girls have access to legal aid, while also empowering judiciary institutions to ascertain accountability, establish justice and combat impunity. As a development agency, UNDP's response aims to empower the victims of GBV to reclaim their rights and enhance the local capacity of rule of law institutions to shoulder their responsibilities under international law and Security Council Resolutions 1325/1889 and 1820/1888.

¹³ *The Eight Point Agenda: Practical, positive outcomes for girls and women in crisis*, UNDP, available at http://www.undp.org/cpr/we_do/8_pa.shtml

ACTIVITIES

In order to implement the Global Programme's commitment to strengthening women's security and access to justice, the following interventions and approaches are being implemented in a mutually reinforcing manner:

- 1. Empowerment of communities**, including displaced populations. The objective is to build the capacity and confidence of community members by: training them as paralegals and managers of Legal Aid Centres; allowing them to serve their own communities as 'agents of change' and advocates for women's rights; empowering displaced populations to claim their rights and raise awareness in their communities in a non-violent manner; and by referring GBV cases to lawyers.
- 2. Supporting the provision of legal aid and strengthening representation of GBV survivors in court**, while at the same time empowering the justice system to become more effective and responsive. This involves expanding the provision of legal services and support to victim advocacy without a fee in order to enhance access to justice for such persons who cannot afford to pay for legal services. Such assistance is relevant for both civil and criminal cases and involves representation in formal court proceedings as well as providing advice and assistance concerning administrative and procedural matters.
- 3. Capacity building support to lawyers' networks and bar associations, and support to social workers** to provide legal representation and psycho-social support to GBV victims. Trainings are organized for legal aid lawyers to upgrade their technical skills, allowing them to provide professional legal advice and represent GBV survivors in a manner that is consistent with national and international human rights standards and norms. Through their association with UNDP, these local networks are provided with a degree of protection. The legal aid lawyers not only support individual people who are in need of legal assistance and representation, but also fight impunity by strengthening the justice system from within.
- 4. Capacity building and training of criminal justice actors** (police officers, prosecutors, judges, lawyers, paralegals, and prison officers) is carried out to ensure a parallel engagement with justice and security institutions – before which cases are heard. Criminal justice systems must be well equipped to investigate and adjudicate cases in a fair and impartial manner for all involved – the accused, the witnesses, and the victims. The recruitment and advancement of women in the judicial system is an important objective in itself, and is necessary to advance the issue of gender equality in the judicial sector.
- 5. Legal and procedural reform.** A legal system that can offer justice for victims of sexual violence should include legislation that ensures the recognition and punishment of sexual violence in all its forms. There may be a need to incorporate victims' and witnesses' rights into police and criminal justice procedure, e.g. by providing court witness protection measures, the possibility to make

compensation/civil claims against the accused, or the right of the victim to be represented in proceedings. There may also be a need for special operating procedures for all actors in the penal chain as to how to respond to complaints of sexual violence and to ensure that these are investigated in a manner that protects the rights of the victims as well as ensuring the safe referral of the survivor to the specialist services which s/he may need – in some cases urgently (e.g. medical, psycho-social, or shelter). Special guidelines should be in place to provide police institutions with basic policing skills necessary to deal with GBV; to train police forces on codes of conduct, international human rights standards, gender justice and GBV, and to establish accountability mechanisms to prevent and deal with police misconduct.

- 6. Establishment of Legal Information and Awareness Centres** to provide access to legal information, including human rights and domestic law, as well as to provide a space for debate and discussion between the rights-holders (displaced populations, vulnerable groups and communities) and the duty-bearers (government authorities and rule of law institutions).
- 7. Confidence building measures, including awareness-raising and policy dialogue** with local government officials, including police, civil authorities, army, militia and rebel groups, so as to: maintain and secure operational space; diffuse conflict; and build bridges between the protagonists of the conflict and the civilian population. The objective is also to sensitize local communities and increase the understanding of how to deal with GBV, in particular amongst community leaders who are regularly consulted by survivors and their families. As such, regular forums and discussions can be conducted in an attempt to change mindsets, and to reduce the social stigma attached to GBV.
- 8. Access to justice as a pillar of multi-sectoral support for survivors of GBV.** All proposed activities are undertaken within an integrated approach, which acknowledges the need for multi-sectoral support for survivors of GBV (medical, psycho-social, and socio-economic support) and the establishment of an effective, safe and confidential referral pathway. Efforts are made to ensure that UNDP supports government or non-governmental suppliers of these complementary services for survivors, or alternatively, develops collaborative relationships with other UN and/or international agencies that are ensuring this provision is made.
- 9. ‘One UN’ and national ownership–coordination and coherence on prevention and response to GBV.** All GBV interventions should be effectively coordinated with nationally led responses to the problem. They should also be embedded in UN frameworks (e.g. where there is a peacekeeping or integrated mission) and should be developed in partnership and coordination with the Inter-Agency Standing Committee protection cluster or GBV sub-working groups where they have been initiated.

EXAMPLES OF COUNTRY PROGRAMME

The following country programmes highlight UNDP's ongoing work on women's security and access to justice in crisis and post-crisis situations.

DRC

In DRC, statistics reveal that about 1,100 cases of sexual violence are documented each month, which amounts to on average 36 victims a day. The most affected population is comprised of girls aged between 10 and 17, although 10% of the victims are less than 10 years old. With support from BCPR, the UNDP Country Office in DRC works to strengthen protection and response to sexual violence is concentrated in 2 areas – rule of law and support to socio-economic reintegration of victims. Since April 2009, UNDP has embarked on a specific programme focusing on access to justice for victims of sexual violence in North and South Kivu. This project is now handling 24 cases of rape through legal aid clinics. 10 have led to convictions ranging from 5-20 years imprisonment, while others are pending trial. The numbers may not yet be big, but it is a significant step forward considering the starting point of almost impunity for sexual violence. It appears from field reports that each time a legal aid clinic is opened, victims are quickly coming forward. What makes UNDP's approach different is that support is provided throughout the whole process (legal aid, reporting, transport, representation in hearings) and is implemented in close coordination with national partners (the Territorial Commissions for the Fight against Sexual Violence and the Congolese police and judicial police) and other partners, such as MONUC and the American Bar Association, where each have an added value. UNDP is also working with the Faculty of Law in Goma, to sensitize populations in the most rural and hard to reach areas on the laws on sexual violence. Students are assigned according to the territory of origin and communication between students and their own parents and friends is excellent. The message is well received if it is transmitted by the "son" of the village.

As a pilot UNDP is also about to start provision of paralegal services in a medical center of a women's NGO (Uvira, South Kivu) and the Medical Center of the PNC in Goma, North Kivu. This is with the aim of enhancing access to legal services and protecting women who frequently need to walk long distances for services.

UNDP also focuses on supporting the socio-economic reintegration of women with a focus on recovering communities who have been seriously affected by sexual violence. The project aims to fill an identified gap in the work of the international community in Eastern DRC in combating and responding to Sexual Violence in a comprehensive and multi-sectoral manner. The project will reinforce the work of the international community by supporting the National Strategy to Combat Sexual Violence ("multi-sectoral" pillar) and has been broadly consulted with national, international and NGO actors on the ground. The interventions will target communities in a way which builds on UNDP efforts on poverty reduction in Eastern DRC and complements ongoing UNDP projects on governance and rule of law. By adding a

component to support local governance structures to enhance women's security there is a direct connection between this project and the Access to Justice project.

Sudan

Since the outbreak of the conflict in early 2003, civilians have been subjected to systematic violations of international human rights and humanitarian law, resulting in 2 million displaced persons and close to 4 million people dependant on humanitarian aid. GBV is one of the hallmarks of the conflict, where rape is an integral part of the pattern of violence inflicted upon targeted communities. The Darfur Peace Agreement (DPA), signed on 5 May 2006, remains contested and has not yielded results.

UNDP's GBV work in Sudan focused on providing capacity building support to formal and informal justice systems, ensuring that survivors would be supported in their attempts to seek legal redress through the legal aid centers and the legal aid network. It also raised awareness of GBV amongst local communities and tribal leaders in order to facilitate a fundamental change of attitude regarding such crimes.

Between 2004 and 2007, UNDP and its partners established 12 legal aid centers and paralegal groups across the Three Areas, Darfur and Kassala. These are open for all members of the community to seek legal advice and assistance, with particular attention being placed on raising awareness of GBV issues. Each centre has a women's paralegal group that focuses on dealing with GBV issues and there are women only legal advice sessions. In 2007, legal aid lawyers took on an additional 550 cases and despite many obstacles, achieved some major successes, including numerous rape and murder convictions, acquittals of women charged with adultery (zina) and the release of people held in arbitrary detention. One third of the legal aid cases were GBV related. Slowly but surely, attitudes and mindsets are changing.

Sierra Leone

In the period preceding the 11-year protracted civil war, Sierra Leonean society was characterized by a dysfunctional judicial system, whereby most Sierra Leoneans, particularly those residing in the provinces, had limited access to justice. This, coupled with weak rule of law, a perception of a lack of independence of the judiciary, and unpunished human rights violations, resulted in poor overall governance and was one of the root causes of the hostilities.

The administration of justice and access to justice for the poor and vulnerable (especially women and girls) is weak, and there is great reliance on traditional dispute resolution methods, i.e. through the paramount chiefs. This dual system of justice adversely affects the rights and status of women in terms of access to resources, inheritance and marital rights. Thus, their representation at the local and national levels is poor, as is their participation in the economic and social arenas.

During the civil war, violence again women and girls was rampant, with rape being used as a weapon of war. The violence was indiscriminate and brutal. While the war has been brought to an end, violence against women continues unabated. Government and international efforts to address the problem have had little impact.

UNDP is undertaking a two-pronged approach to addressing sexual and gender based violence (SGBV) in Sierra Leone: by supporting the legal system and women's organizations in the enacting and implementation of the Gender Acts; and building the capacity of the Family Support Units within the Sierra Leone Police to deal effectively with cases of GBV, especially sexual violence. Specific activities include: increasing convictions for SGBV cases in Freetown, Bo and Makeni by supporting courts, prosecution and the police with technical and logistical assistance; supporting women's organizations (through grants) to provide legal assistance, as well as transportation, medical services, and shelter facilities for victims and their families; promoting awareness of the Gender Laws, as well as SGBV and domestic violence, among the paramount, section and town chiefs in Sierra Leone, ensuring that the components of the Gender Acts are contextualized with linkages to traditional law and culture; and providing the Family Support Units with training, as well as equipment, to enhance their administration and management.

PARTNERSHIP

The Global Programme places a high premium on building effective partnerships and on contributing actively to inter-agency fora. Thus, programmes are often developed in collaboration or partnership with other UN Agencies such as the United Nations Development Fund for Women (UNIFEM), the United Nations Population Fund (UNFPA), the Office of the High Commissioner for Human Rights (OHCHR), and the Department of Peacekeeping Operations (DPKO). This collaboration takes the form of the joint conceptualisation and development of programmes, joint missions, and/or joint or complementary implementation of activities on the ground.

Examples of on-going global level inter-agency collaborations include:

United Nations Action against Sexual Violence in Conflict (UN Action): UNDP, with OHCHR, has committed to work on the rule of law and justice elements of the UN Action Strategic Framework. To that end, in June 2008, UNDP and UNIFEM, in collaboration with DPKO and the Department of Political Affairs (DPA), held a high-level Colloquium on *Conflict Related Sexual Violence and Peace Negotiations: Implementing SCR 1820*.

Inter-Agency Standing Committee Protection Cluster – GBV Working Group: As part of the IASC humanitarian reform process, UNFPA, UNICEF and International Rescue Committee co-lead this inter-agency group. The group has an annual work-plan and is accountable to the IASC through the Protection Cluster. Activities relating to effective

cluster response, predictability of leadership, standard setting and support to the field are coordinated through this group. UNDP is represented through the active participation of its Bureau for Crisis Prevention and Recovery (BCPR) and contributes to joint activities such as contributing substantively on the justice aspects of GBV response.

UNIFEM: UNDP has concluded a Memorandum of Understanding with UNIFEM on seven priority countries for Women's Security and Access to Justice – a project which will be implemented by UNIFEM.

UNFPA: Regular bilateral communication between UNDP and UNFPA humanitarian section regarding programmatic activities relating to women's security and access to justice, within the UNDP Global Programme on Rule of Law in Crisis/Post-Crisis.

Partners for Gender Justice: As part of UNDP's commitment to promoting gender equality and addressing the many challenges faced by women, particularly in countries affected by violent conflict, UNDP co-organized the Partners for Gender Justice Conference in Accra, Ghana, from 19 to 21 November 2008. Hosted by the Honourable Lady Chief Justice Georgina Wood and the Judiciary of Ghana, the conference brought together senior representatives from the judiciaries of 24 African countries to discuss the role of the judiciary in promoting gender justice across the region. The Unit is now working on operationalizing the recommendations of the Conference, especially in the West Africa region.

DPKO: UNDP has worked closely with DPKO to ensure joint programming with integrated missions in Southern Sudan, Chad, and DRC.

SCOPE AND TIME-FRAME

The **Women's Security and Access to Justice Initiative** constitutes a central component of the strategy of *UNDP's Global Programme on Strengthening the Rule of Law in Conflict/Post-Conflict Countries 2008-2011*. The programme has been under implementation since 2008, with a focus on 20 countries, in line with the BCPR Strategy and UNDP Strategic Plan. It will draw on precedents and best practices, and take into account joint planning and priority roll-out countries within the broader IASC Protection Cluster and Early Recovery Cluster.

BASIC REFERENCE DOCUMENTS

International legal documents

- Universal Declaration on Human Rights
- United Nation Convention on the Elimination of All Forms of Discrimination against Women
- Security Council Resolutions 1325 (2001), 1820 (2008), 1888 (2009), 1889 (2009)
- United Nation Declaration of Basic Principles of Justice for Victims of Crime
- United Nation Declaration on the Elimination of Violence Against Women

UNDP documents

- BCPR Strategy 2007–2011
- UNDP Primer: Gender Equality and justice programming. Equitable Access to Justice for Women, 2007
- UNDP Eight Point Agenda for Women’s Empowerment and Gender Equality
- UNDP Gender Equality Strategy 2008–2011
- UNDP Global Programme on Strengthening the Rule of Law in Conflict and Post-Conflict Situations

Other United Nation Policy documents

- IASC Guidelines for Gender-based Interventions in Humanitarian Settings
- WHO Ethical and safety recommendations for researching, documenting and monitoring sexual violence in emergencies