UNITED NATIONS

DEPARTMENT OF POLITICAL AFFAIRS

GUIDANCE FOR MEDIATORS

Addressing Conflict-Related Sexual Violence in Ceasefire and Peace Agreements

DPA

POLICY AND MEDIATION DIVISION

MEDIATION SUPPORT UNIT

[blank inside cover]

GUIDANCE FOR MEDIATORS

Addressing Conflict-Related Sexual Violence in Ceasefire and Peace Agreements

United Nations
Department of Political Affairs
New York, 2012

Development of this guidance for mediators benefited from material generated during the United Nations Inter-Agency High-Level Colloquium "Conflict-Related Sexual Violence and Peace Negotiations: Implementing Security Council Resolution 1820" in June 2009. The Colloquium was organized by the United Nations Development Fund for Women (now part of UN Women), Department of Political Affairs, Department of Peacekeeping Operations, United Nations Development Programme, and Office for the Coordination of Humanitarian Affairs on behalf of UN Action Against Sexual Violence in Conflict and in partnership with the Centre for Humanitarian Dialogue. The Department of Political Affairs is grateful for the contributions of these partners and for the financial support provided through UN Action Against Sexual Violence in Conflict.

Part I.
Global Overview 3

Legal Norms 5

When is Sexual Violence Conflict-Related? 5

When is Sexual Violence an International Crime? 5

Key Principles 6

Part II.
Addressing Conflict-Related Sexual Violence During Ongoing Hostilities and Ceasefire Agreements 13

Principles 14

Implementation Guidance for the Mediator 16

Knowledge Gathering, Knowledge Sharing and Strategic Communication 16

Information and Outreach 19

Pre-ceasefire Commitments 19

Inclusion of Language on Conflict-Related Sexual Violence in Ceasefire Agreements 20

Examples of Language Prohibiting Sexual Violence in the Definition of Ceasefire 21

Monitoring Sexual Violence 22

Education and Information Campaigns 23

Mediator's Checklist 25

Part III.
Addressing Conflict-Related Sexual Violence in Security Arrangements 29

Principles 29

Implementation Guidance for the Mediator 32

Conflict Analysis 32

Inclusion of Language in Ceasefire and Peace Agreements 32

Monitoring 34

Control of Weapons 34

Demobilization and Reintegration 35

Examples of Existing Language 36

Mediator's Checklist 37

Part IV.
Addressing Conflict-Related Sexual Violence in Framing Provisions for Post-Conflict Justice and Reparations 41

Principles 42

Considerations and Challenges 44

Implementation Guidance for the Mediator 45

Amnesty 45

Transitional Justice 46

Comprehensive Reparations 47

Mediator's Checklist 48

Part I.
Global Overview

Part I.
Global Overview

In attempting to broker durable and comprehensive agreements, the mediator and his/her team face significant demands to include a number of elements. This guidance offers advice to aid the mediator and his/her team in addressing a frequently used method and tactic of warfare: conflict-related sexual violence. It provides strategies for including this security and peacebuilding concern within ceasefire and security arrangements and in framing provisions for post-conflict justice and reparations. This guidance emerged from a United Nations[1] High-Level Colloquium on Conflict-Related Sexual Violence[2] and close consultation with eminent mediators, mediation support staff and subject experts.

In today's violent conflicts, civilians are increasingly caught on the front line. One of the most devastating forms of extreme hostility waged against civilians is conflict-related sexual violence.[3] While women and girls are often primary targets, conflict-related sexual violence is also strategically perpetrated against men and boys.

---

1 Organized by DPA, DPKO, UNDP, UNIFEM and OCHA on behalf of UN Action Against Sexual Violence in Conflict and in partnership with the Centre for Humanitarian Dialogue (HDC).

2 Five guidance notes were drafted by working groups consisting of international subject experts and gender advocates. Development of the drafts into guidance occurred in consultation with eminent mediators, mediation support staff and subject experts. DPA is grateful to Mr. Ahmedou Ould Abdallah for his vital contribution to the framing and development of this guidance, and to UN Action Against Sexual Violence in Conflict for their support for the organization of the Colloquium and finalization of this guidance.

3 Conflict-related sexual violence is not specific to any era, culture or continent. Between 20,000 and 50,000 women were raped during the war in Bosnia in the early 1990s; in Sierra Leone, between 50,000 and 64,000 internally displaced women suffered sexual assault at the hands of combatants; the Rwandan genocide memorial notes that 500,000 women were raped during 100 days of conflict. In 2008 and 2009, the reported cases of sexual violence in the Democratic Republic of the Congo totaled 15,314 and 15,297, respectively. In 2010, the volume of cases reported monthly remained constant. See "Report of the Secretary-General on the implementation of Security Council resolutions 820 (2008) and 1889 (2009)" (S/2010/604).

Arguably more powerful and less expensive than a gun, it is used to provoke displacement of populations in order to increase territorial control or access to resources (as in the Democratic Republic of Congo, Myanmar, Bougainville, Colombia and Darfur); affect reproduction and ethnicity (as in the former Yugoslavia and Rwanda); promote troop cohesion (as among forcibly recruited Revolutionary United Front fighters in Sierra Leone) and undermine social and community cohesion.

Highly effective, its use humiliates, dominates, instills fear, breaks identity and creates enduring ethnic, family and community divides. Yet, to date, few ceasefire or peace agreements have made provisions for addressing conflict-related sexual violence. Only three ceasefire agreements (Nuba Mountains, Burundi and Lusaka) specifically include sexual violence, for instance, as part of the definition of ceasefire.

Addressing conflict-related sexual violence at the outset of the mediation strategy can increase the durability of peace by mitigating security fears and improving transparency, accountability and confidence among parties.

If left unaddressed, it can be used as a means to continue acts of war outside the purview of agreements and monitoring teams, which can trigger cycles of vengeance and vigilantism, and risk undermining confidence in agreements and possibly the mediation process itself.

Legal Norms[4]

When is Sexual Violence Conflict-Related?

The United Nations Security Council considers that "*sexual violence, when used or commissioned as a tactic of war in order to deliberately target civilians or as a part of a widespread or systematic attack against civilian populations, can significantly exacerbate situations of armed conflict and may impede the restoration of international peace and security*".[5] Three Security Council resolutions specifically oblige the UN system to address conflict-related sexual violence.[6]

Sexual violence as a "tactic of war" refers to acts of sexual violence that are linked with military/political objectives and that serve (or intend to serve) a strategic aim related to the conflict. Sexual violence, however, does not need to be explicitly orchestrated for military gain to be considered relevant to the Security Council's remit. The Council also considers sexual violence conflict-related when it is "*committed against civilians*", committed "*in and around UN managed refugee and internally displaced persons camps*", or committed during "*disarmament, demobilization and reintegration processes*".

When is Sexual Violence an International Crime?

Depending on the circumstances of the offense, sexual violence can constitute a war crime, crime against humanity, act of torture or

---

4 See "Analytical and conceptual framing of conflict-related sexual violence", UN Action Against Sexual Violence in Conflict.

5 Security Council resolution 1820 (2008).

6 Security Council resolution 1820 (2008), Security Council resolution 1888 (2009) and Security Council resolution 1960 (2010), among their provisions, prohibit amnesty for conflict-related sexual violence; require the UN system to develop mediation methods to address conflict-related sexual violence; and provide the accountability architecture to list and de-list perpetrators, as well as to report on patterns and trends in conflict-related sexual violence.

constituent act of genocide. The definition of sexual violence under international law encompasses rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, trafficking and any other form of sexual violence of comparable gravity, which may, depending on the circumstances, include situations of indecent assault, trafficking, inappropriate medical examinations and strip searches.[7]

Key Principles

The United Nations recognizes the complex and difficult task mediators face in reaching agreements that are not only comprehensive, but can also be effectively and realistically implemented.

In situations where conflict-related sexual violence has been used, or may have been used, UN mediators are obligated to introduce the subject in discussions with parties. At a minimum, sexual violence should be included within the definition of the ceasefire, and detailed or annexed in provisions for ceasefire monitoring. It is important that agreements, where necessary and appropriate, recognize conflict-related sexual violence as a method or tactic of warfare and include it in the framing of security and justice-related provisions. To this end, addressing conflict-related sexual violence can be seen as part of a continuum: from facilitating security, to dealing with the past, to breaking the cycle of impunity and ensuring reconciliation and rehabilitation.

[7] See, for example, statutes and the case law of the International Criminal Tribunal for the Former Yugoslavia, International Criminal Tribunal for Rwanda, the Special Court for Sierra Leone and the Elements of Crimes of the International Criminal Court.

In order to fulfill specific Security Council mandates[8] on the issue, the mediator and his/her team can draw on the following checklist (and the more detailed guidance that accompanies it) for addressing conflict-related sexual violence as part of the overall mediation strategy.

During Ongoing Hostilities and at the Beginning of a Mediation Process:

- Assess whether there are credible reports of conflict-related sexual violence that may be occurring, or may have occurred.
- Actively seek to engage parties to discuss the immediate termination of conflict-related sexual violence, in discussion of other violations of human rights and international humanitarian law.
- Ensure consultation with and inclusion of women and gender experts in the process and as part of the mediation team.

Drafting and Negotiating Ceasefire and Peace Agreements:

Essential Agreement Provisions should ensure:

- Sexual violence is included as a prohibited act, especially in the definition or principles of ceasefire.
- Monitoring for sexual violence is included in ceasefire agreements, including in relevant annexes.
- Recognition of sexual violence used in conflict as a method and tactic of warfare, as applicable.
- Amnesties for crimes under international law are prohibited, and arrangements for transitional justice are included, particularly prosecution, reparations and truth-seeking bodies.

---

8 See Security Council resolution 1888 (2009).

Provisions for Security Arrangements should ensure:

- Command and control structures and codes of conduct for security actors prohibit conflict-related sexual violence and punish misconduct.
- Individuals credibly suspected of committing or being responsible for conflict-related sexual violence are excluded from participation or integration into government and the national security system, including armed forces, police, intelligence services and national guard, as well as civilian oversight and control mechanisms and other similar entities.
- Early, voluntary release and/or registration of those abducted, coerced or forcibly recruited[9] from within the ranks of armed forces or groups.
- Security sector institutions are mandated to combat conflict-related sexual violence and training is provided to develop military and law enforcement capabilities to respond to it, including for military police.

Provisions for Justice and Reparations should ensure:

- Amnesties for crimes under international law are prohibited.
- Provisions for transitional justice processes address issues of conflict-related sexual violence with equal priority to other international crimes.
- Provisions for transitional justice mechanisms incorporate specific reference to conflict-related sexual violence; include

[9] Forced recruits include forcibly recruited female and male combatants, forcibly recruited women and children associated with armed forces and groups, including forced wives and dependants, and domestic support.

measures to protect the security and dignity of victims and witnesses; and include women and gender experts in its design and oversight.

- Provisions for reparations and relief, including for victims of conflict-related sexual violence.

Part II. Addressing Conflict-Related Sexual Violence During Ongoing Hostilities and Ceasefire Agreements

Part II. Addressing Conflict-Related Sexual Violence During Ongoing Hostilities and Ceasefire Agreements

This guidance note provides principles and strategies for mediators and their teams for addressing conflict-related sexual violence during ongoing hostilities and in the immediate, early framing of ceasefire.

At the earliest point of the mediation process, particularly during **ongoing hostilities**[10] and in **ceasefire agreements**, the mediator and his/her team are advised to consider three key areas when addressing conflict-related sexual violence: (1) preparing the ground and confidence-building measures; (2) prohibiting sexual violence and promoting command responsibility; and (3) ensuring robust monitoring arrangements.[11]

---

10 During ongoing hostilities, precursors to a ceasefire agreement can include temporary pauses in fighting, cessation of hostilities and letters of commitment, which can act as confidence-building measures.

11 See "United Nations guidance notes for mediators on addressing conflict-related sexual violence": security arrangements; and justice and reparations.

Principles

Principle 1: Assess whether conflict-related sexual violence may be occurring, or may have occurred.

At the outset of a mediation process, a mediator and his/her team are advised to obtain information on conflict-related sexual violence that may be occurring or may have occurred. In some cases, conflict-related sexual violence may be widespread, but not widely known, discussed or documented. In others, incidences may be reported by the media that have yet to be verified.

Principle 2: Actively seek to engage parties to discuss the immediate termination of conflict-related sexual violence in discussion of other violations of human rights and international humanitarian law.

United Nations envoys are required to raise conflict-related sexual violence issues in dialogue with parties to armed conflict. Mediators may convene parties to ensure a common level of understanding regarding the mediation and peace process. Early discussions on command responsibility can help to ensure that parties understand the risks and legal, political, economic and personal consequences for the use of conflict-related sexual violence. Parties may, thereby, want to avoid being perceived as perpetrating it. Such leverage can be used to achieve pre-ceasefire commitments to cease acts of conflict-related sexual violence, such as “letters of commitments” and other confidence-building measures.

Principle 3: Include sexual violence as a prohibited act.

In situations where conflict-related sexual violence may have occurred, sexual violence should be included as a prohibited act (as part of the definition or principles of ceasefire) which would breach the agreement. Its inclusion signals the seriousness of the issue to parties, victims and the public at large. It also serves as a reminder that such acts are also prohibited under international law, including the Law of Armed Conflict/International Humanitarian Law.

Principle 4: Ensure monitoring for sexual violence is included in ceasefire agreements, including in relevant annexes.

Provisions for monitoring should also include monitoring for conflict-related sexual violence. Such provisions help ensure that monitors (including the Department of Peacekeeping Operations) have an explicit mandate to monitor for conflict-related sexual violence.

Principle 5: Ensure inclusion of and consultation with women and gender experts.

Women with knowledge of the conflict, influential national and local female leaders, female monitors and gender experts can help mediators and their teams in gaining information and knowledge on conflict-related sexual violence. Such women and experts, particularly those that speak the local language, should be included in planning processes, negotiations, monitoring and investigations/inquiries to ensure that conflict-related sexual violence is effectively addressed throughout.

Implementation Guidance for the Mediator

Timing and staging are key to carefully creating a receptive environment and avoiding unnecessary delays or additional problems. A mediator may face challenges in approaching parties with the issue of conflict-related sexual violence in a way that is not perceived as an affront. Groundwork in advance of the discussion, including initiatives by civil society, including women's groups, can help the mediator to advance discussions on the issue positively.

Knowledge Gathering, Knowledge Sharing and Strategic Communication

- In order to assess whether conflict-related sexual violence may be occurring, or may have occurred, particularly during ongoing hostilities, proactive outreach and coordination efforts by the mediation team is advised with the Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict, humanitarian actors or a humanitarian liaison,[12] protection clusters,[13] other UN actors, women's groups and networks,[14] victims of conflict-related sexual violence and their communities, police, former soldiers, and religious and political leaders, as appropriate. Such actors can also encourage and empower local communities to monitor, document and report on conflict-related sexual violence early on.

---

12 The mediation team could enlist the support of a humanitarian liaison in order to gather knowledge needed from the local level.

13 Protection clusters in mission settings bring together different UN entities and expertise with the goal of promoting protection and human rights.

14 As mandated by Security Council resolutions on women, peace and security.

- Due to the highly sensitive nature of conflict-related sexual violence, a range of ethical and safety issues must be considered before commencing any inquiry, in order to protect individuals participating as well as their families and communities. Researchers/interviewers must make every effort to avoid re-victimization, while fulfilling their objective to collect reliable data. Any data collected on sexual violence must respect established ethical and safety principles, such as security, confidentiality, anonymity, informed consent, safety and protection from retribution, and protection of the data itself.[15]
- Mediators and their teams may consider encouraging civil society, including women's groups, to **convene a public forum(s)** to discuss security and peacebuilding issues, including conflict-related sexual violence. Outcomes of such discussions can be fed back to the mediation team and used in discussion with the parties.
- Mediators may invite leaders and members of their negotiation teams, with the support of key actors and supportive governments or embassies, for **information sessions** on security concerns and important aspects of peace processes, and as an entry point for raising conflict-related sexual violence. Information on conflict-related sexual violence obtained from consultations, including outcomes of civil society forums, can be used to raise the issue in discussion with parties.
- Mediators should seek to make parties aware that sexual violence used as a tactic of conflict against civilians is a violation

[15] See "Summary of ethical and safety recommendations for researching, documenting and monitoring sexual violence in emergencies", UN Action Against Sexual Violence in Conflict. See also "Reporting and interpreting data on sexual violence from conflict-affected countries: dos and don'ts", UN Action Against Sexual Violence in Conflict.

of international law and potential war crime or crime against humanity. Mediators may also point out that the perpetration of sexual violence in conflict elicits command responsibility on the part of leaders who fail to prevent and to punish violations by their subordinates, regardless of whether or not they were directly involved.[16] **Dialogue on the consequences** of conflict-related sexual violence may persuade parties to curtail acts that invite the scrutiny of the international community, the United Nations Security Council, international justice mechanisms and domestic constituencies.

- Mediators may remind parties to conflict that it is in their interest to prohibit, prevent and halt sexual violence for many reasons:
  - » Sexual violence during, and in the wake of, conflict weakens the legitimacy of actors (including non-state actors) who are seeking political recognition from the international community and local constituencies.
  - » Sexual violence undermines a state's authority and can expose leaders to criticism for their failure to protect civilians, and can erode public trust and popular support.

[16] The International Criminal Court, as well as the International Criminal Tribunal for the Former Yugoslavia, the International Criminal Tribunal for Rwanda and the Special Court for Sierra Leone, have indicted military and political leaders for conflict-related sexual violence.

» Under Security Council resolution 1960, such actions may lead to targeted sanctions against armed groups credibly suspected of committing patterns of conflict-related sexual violence and possible International Criminal Court referrals.

- Enlisting the support of gender expertise can help ensure a coordinated, systematic approach to addressing conflict-related sexual violence (and other gender issues) in planning and analysis.

Information and Outreach:

- The mediation team can convene and communicate with radio professionals to support **radio** programming for peace, including on conflict-related sexual violence.
- Mediators can **share relevant information**, as appropriate, on conflict-related sexual violence with the media as well as information on legal norms prohibiting and criminalizing it and international indictments for such crimes.
- Mediators can encourage the organization of **social gatherings** (such as joint prayers or sports events, as appropriate) which can present an opportunity to discuss key issues (such as conflict-related sexual violence) and bring together diverse groups including women, youth, elders, soldiers, etc.

Pre-ceasefire Commitments:

Importantly, pre-ceasefire commitments can act as **confidence-building measures** which can be built upon in subsequent ceasefire and peace agreements. Such measures can include temporary cessation of hostilities, **letters of commitment** by armed

groups and **human rights agreements**,[17] which should contain commitments to cease and prohibit sexual violence. In addition, **humanitarian access agreements**,[18] while necessarily separate from political processes, can help build complementary commitments to halt and prevent conflict-related sexual violence.

Inclusion of Language on Conflict-Related Sexual Violence in Ceasefire Agreements

Language prohibiting conflict-related sexual violence in ceasefire agreements can be included in the following sections:

- The preamble;
- **Definitions or principles of ceasefire**;
- Provisions regarding the occupation of new ground positions or the movement of armed forces and resources from one area to another;
- Sections regarding freedom of movement;
- Provisions for monitoring; and
- Annexes which establish and define monitoring.

---

17 Human rights agreements, which have been signed in relatively few instances (such as the 1994 Guatemala Global Human Rights Agreement), have been incorporated into facilitated negotiations between parties to an ongoing conflict. Some agreements include protection of civilian commitments, in which the parties affirm their respect for international humanitarian law (IHL).

18 Humanitarian access agreements are most commonly negotiated between humanitarian actors and parties to a conflict and have sometimes been signed concurrently with two or more parties to a conflict. This type of agreement tends to focus on facilitating access by humanitarian actors to the civilian population for the monitoring and delivery of assistance, as well as facilitating the civilian population's access to that assistance.

Examples of Language Prohibiting Sexual Violence in the Definition of Ceasefire

- **Nuba Mountains Ceasefire Agreement (2000):** Article II, Principles of Ceasefire: "(d.) All acts of violence against or other abuse of the civilian population, e.g., summary executions, torture, harassment, arbitrary detention and persecution of civilians on the basis of ethnic origin, religion, or political affiliations, incitement of ethnic hatred, aiming civilians, use of child soldiers, **sexual violence**, training of terrorists, genocide and bombing of the civilian population."

- **Lusaka Agreement (1999):** Article 1 (3) "The Ceasefire shall entail the cessation of: all acts of violence against the civilian population by respecting and protecting human rights. The acts of violence include summary executions, torture, harassment, detention and execution of civilians based on their ethnic origin; propaganda inciting ethnic and tribal hatred; arming civilians; recruitment and use of child soldiers; **sexual violence**; training and use of terrorists; massacres; downing of civilian aircraft; and bombing the civilian population."

- **Ceasefire Agreement between the Government of the Republic of Burundi and the Palipehutu — FNL (2006):** Article II "(1.) Ceasefire Agreement shall imply: … (1.1.5) Cessation of all acts of violence against the civilian population: acts of vengeance; summary executions; torture; harassment; detention and persecution of civilians on the basis of ethnic origin; religious beliefs; and or political affiliation; arming of civilians; use of child soldiers; **sexual violence**; sponsoring or promotion of terrorist or genocide ideologies."

Monitoring Sexual Violence

Ceasefire agreements should contain language that provides for the monitoring of sexual violence, taking into account:

- **Establishing commissions to verify and monitor the ceasefire agreement:** Where there has been significant violence against the civilian population, a ceasefire commission may include a distinct human rights monitoring unit, tasked with the ability to receive complaints, track incidents, including incidents of conflict-related sexual violence, and ensure follow-up.

- **Establishing a ceasefire observer modality, comprised of a civil society or NGO non-violent "peace force"[19] with expertise in conflict-related sexual violence:** Where belligerents are dispersed in many areas, among the population and without clearly defined zones, the mix of United Nations peacekeepers and a civilian force could monitor the positioning, movements and actions of belligerents, including incidents of conflict-related sexual violence.

- **Identification and reporting of sexual violence used as a method or tactic of war:** Conflict-related sexual violence can take many forms. Monitoring teams should be aware of the ***context*** of the sexual violence (is it part of a series of sexual attacks, or a broader attack against the civilian population?), the ***identity*** of the attackers (are they current

[19] Such as in Sri Lanka and Mindanao where third country civilian observers were "interpositioned" between belligerents, or the establishment of a coalition of NGO and civil society actors serving as a neutral civilian monitoring mechanism as in the 1996 ceasefire agreement in Mindanao.

or former soldiers, militia or armed volunteers?) and the ***patterns*** (was the attack similar to other types of attacks in timing or nature?). Monitoring teams may establish regular information-sharing meetings with civil society groups who may be aware of conflict-related sexual violence that may be occurring or may have occurred.

- **Team composition for sexual violence monitoring:** While the responsibility to monitor conflict-related sexual violence should be shared by the entire monitoring structure, the team should include female members, particularly those that speak the local language, and be tasked to document, investigate and report on conflict-related sexual violence incidents. The presence of female monitors can help to ensure access to and interaction with female victims. It can also help in speaking with male victims, who may be less reluctant to speak about incidences with female monitors.

Education and Information Campaigns

- Agreements can call for education and information campaigns which can increase government transparency and public confidence[20] and can educate and inform combatants (rank and file), those associated with armed groups and the wider public of the contents, implications and expectations of the agreement, including those relating to conflict-related sexual violence.

[20] See "Security and Demilitarization: Peace Agreement Drafter's Handbook", Public International Law and Policy Group.

- **Bougainville Peace Agreement** (Bougainville, 2001) called for "*an active joint programme to promote public awareness, understanding and support of weapons disposal*". As a result, Bougainville DDR monitors held public meetings in villages where they read the peace agreement and DDR provisions, and distributed material on the DDR process. They also organized sports and cultural activities to create forums where general communication could take place between the monitoring forces and communities.

Mediator's Checklist

- ❑ Have there been credible reports of conflict-related sexual violence? If so, which parties to the conflict may be suspected or accused of using the tactic?
- ❑ Which actors at the local level have knowledge and information on conflict-related sexual violence (e.g., UNHRC, OHCHR, OCHA, local women's groups, etc.)? Is this knowledge being gathered, documented and saved (and by whom)? Are various knowledge gathering efforts being coordinated (and by whom)?
- ❑ Do the mediator and his/her team have the information they need to determine whether conflict-related sexual violence may be occurring or may have occurred? Has the mediation team ensured that information is being channeled to them regarding the number and types of victims, chain of command, and patterns of rape and other forms of conflict-related sexual violence occurring?
- ❑ Have gender experts been consulted for technical advice to the agreement and included in monitoring?
- ❑ Have gender experts, women with knowledge of the conflict, including influential national and local female leaders (including from women's organizations and networks), been identified and engaged in the process?
- ❑ Is outreach being conducted with all parties to conflict to bring them together to enhance their knowledge and to ensure a common level of understanding of aspects of a peace process and

international law, including in regard to sexual violence? For instance, are parties aware that military/political leaders have been indicted for conflict-related sexual violence?

- ❑ Have parties to conflict been brought together to make specific and time-bound commitments to ceasing all acts of sexual violence, such as "the issuance of clear orders through chains of command prohibiting sexual violence" as called for by the UN Secretary-General? [21]

- ❑ In drafting an agreement, has sexual violence been included in the definition or principles of ceasefire? Has language been included on monitoring conflict-related sexual violence, including within annexes defining ceasefire monitoring?

- ❑ In situations with a current or possible UN peacekeeping presence, does the language provide the Department of Peacekeeping Operations with a mandate to monitor conflict-related sexual violence as part of its activities?

---

[21] "Report of the Secretary-General on the implementation of Security Council resolutions 1820 (2008) and 1888 (2009)" (S/2010/604).

Part III. Addressing Conflict-Related Sexual Violence in Security Arrangements

Part III. Addressing Conflict-Related Sexual Violence in Security Arrangements

This guidance note provides principles and strategies for mediators and their teams for addressing conflict-related sexual violence in security-related provisions of ceasefire and peace agreements.

Addressing conflict-related sexual violence in security arrangements can help to protect against and prevent future occurrences and build effective, responsive security institutions. The mediator and his/her team are advised to consider three key areas in addressing sexual violence in security arrangements: (1) command responsibility and accountability of armed forces and groups; (2) community security; and (3) military and law-enforcement capability.

Principles

Principle 1: Recognize sexual violence used in conflict as a method and tactic of warfare.

Sexual violence, when used as a method or tactic of warfare, should be treated as such in relevant provisions of ceasefire and peace agreements, including those which define disengagement and set the rules and responsibilities for demilitarized zones, buffer zones and DDR-related assembly areas/points.

Principle 2: Ensure provisions for the early, voluntary release and/or registration of those abducted, coerced or forcibly recruited[22] from within the ranks of armed forces or groups.

Those who have been abducted, coerced or forcibly recruited from within the ranks of an armed force or group are often subject to high levels of sexual violence. It is important for agreements to contain provisions that specifically call for their early and voluntary release. Such provisions can also act as a confidence-building measure.

Principle 3: Exclude individuals credibly suspected of committing or being responsible for conflict-related sexual violence from participation in or integration into government and the national security system, including armed forces, police, intelligence services and national guard, as well as civilian oversight and control mechanisms, etc.

In efforts to prevent continued perpetration of conflict-related sexual violence in post-conflict environments, it is important to include provisions that call for the exclusion of individuals credibly suspected of committing or being responsible for conflict-related sexual violence from integration into armed forces, police and national guard, as well as civilian oversight and control mechanisms, etc. Provisions should also recommend the referral of such individuals to appropriate investigatory and prosecutory bodies, as well as placement in rehabilitation programmes.

---

22 Forced recruits include forcibly recruited female and male combatants, forcibly recruited women and children associated with armed forces and groups, including forced wives and dependants, and domestic support.

Principle 4: Ensure that command and control structures and codes of conduct for security actors prohibit sexual violence and punish misconduct.

It is imperative that sexual violence is addressed in the discipline, mandates and roles of armed groups and transitional security forces. This can have a critical impact on the sustainability of security and peace.

Principle 5: Mandate security sector institutions to combat conflict-related sexual violence and include provisions for training aimed at developing military and law enforcement capabilities to respond to sexual violence, including for military police.

Post-conflict security arrangements and security sector institutions should be mandated and resourced to provide protection against conflict-related sexual violence. Security actors (such as military and police) need specific mandates to address conflict-related sexual violence, particularly targeting vulnerable communities (internally displaced persons (IDPs), refugees). Security forces engaged in transitional security arrangements must also possess the resources, partnerships and integrated structures to combat conflict-related sexual violence effectively.

Implementation Guidance for the Mediator

Conflict Analysis

In the earliest stages of conflict analysis and assessment, sexual violence used as a method or tactic of conflict should be considered as a relevant conflict factor that may contribute to the resurgence of violent conflict over the short and longer term. Such analysis can help to build comprehensive security plans and threat assessments that include measures to prevent and respond to conflict-related sexual violence.

Inclusion of Language on Sexual Violence in Provisions for Security Arrangements in Ceasefire and Peace Agreements

Where possible, provisions for security arrangements in ceasefire and peace agreements should include sexual violence. Importantly, annexes often elaborate on security arrangements, and can offer practical entry points for specifically addressing it.

- **Language can be integrated into agreements and their annexes which provide for, inter alia:**
  - » **Dismantling:** In provisions requiring command responsibility in the dismantling of troops and armed groups operating alongside parties' troops, or on territory under parties' control,[23] parties can be called upon to take all necessary measures to prevent, respond to and punish sexual violence by those under their command.

[23] See Nuba Mountains Ceasefire Agreement (2002), Article 3.3. While this example does not contain language on sexual violence, it is referenced here as an example of where such language could be included.

- **Disengagement:**[24] Provisions for disengagement, particularly definitional clauses,[25] should prohibit the use of sexual violence as a method or tactic of warfare.
- **Withdrawal of Foreign Forces:** In inter-state conflicts, where provisions are made for the withdrawal of foreign forces, force commanders should be called upon to prevent, respond to and punish acts of sexual violence by those under their command.
- **Release of Hostages and Exchange of Prisoners:** Such sections should include and specify the early, voluntary release of those abducted, coerced or forcibly recruited from within the ranks of an armed force or group.
- **Rules of and Responsibilities in Relation to Demilitarized and Buffer Zones:** Provisions for the separation of forces should ensure monitoring of buffer zones by military observers and deployment of special police forces around vulnerable communities, cantonments and IDP and refugee camps. Rules for demilitarized and buffer zones should include provisions for prohibiting sexual violence and for ensuring special protection against it.

24 In situations where disengagement does not apply, definitions of the cessation of hostilities should specifically prohibit the use of sexual violence. See "United Nations Guidance Note for Mediators: Addressing Conflict-Related Sexual Violence during Ongoing Hostilities and Ceasefire Agreements".

25 See Nuba Mountains Ceasefire Agreement (2002), Article 3.1; Lusaka Ceasefire Agreement (1999), Annex A, 2.1; Article 5, Peace Agreement between the Government of Liberia, the Liberians United for Reconciliation and Democracy, the Movement for Democracy in Liberia and the political parties (2003). While these examples do not contain language on sexual violence, they are referenced here as examples of where such language could be included.

- » **Integration of Former Combatants into Security and Other State Institutions:** Such sections should specifically require vetting of those with a history or association with conflict-related sexual violence.
- » **Plans for Security and Policing:** Such provisions should address the consequences of conflict-related sexual violence in a post-conflict environment and require training to develop military and law-enforcement capabilities to prevent and respond to conflict-related sexual violence.

Monitoring

- Provisions for monitoring and monitoring mechanisms, including joint military commissions (JMCs) and international stabilization forces, established to assist in and monitor the disengagement and redeployment of combatants should include, inter alia:
  - » Verification of disengagement of sexual violence used as a method and tactic of conflict.
  - » Monitoring and reporting on incidences of conflict-related sexual violence, including identification of parties credibly suspected of the tactical use of sexual violence.
  - » Representation of women and gender experts in monitoring structures to help ensure access to and interaction with female victims, as well as monitor for conflict-related sexual violence.

Control of Weapons

Discussions on collection, documentation, control and disposal of small arms and light and heavy weapons of combatants and of the

civilian population can contribute to preventing conflict-related sexual violence. For instance, it is estimated that 90 per cent of the cases of conflict-related sexual violence in Eastern Democratic Republic of Congo have been perpetrated by men with guns, outside the purview of existing ceasefire and peace agreements. The engagement of women's groups and networks can help with eventual disarmament processes.

Demobilization and Reintegration

Provisions that list categories of people to be demobilized should specifically include those abducted, coerced or forcibly recruited, particularly women and girls, from within the ranks of armed forces or groups. Consideration should be made for delays in the identification and listing of such groups. Provisions should also take into consideration the need to extend time frames and set aside necessary services and financial resources in DDR programmes.

It is also important to consider and include provisions for assistance, health care and counseling services for victims of conflict-related sexual violence who are eligible for the DDR programme. Those who have experienced rape (especially repeated rapes) and sexual abuse sustain damage to internal and reproductive organs and other physical health problems, which often results in physical and psychological disability.

DDR-related provisions in agreements should also recognize the need for gender-responsive reconciliation and public safety programmes for communities receiving large numbers of ex-combatants.

For those with a history of or an association with conflict-related sexual violence, provisions should ensure that such individuals are vetted from entry into security institutions and are brought to

justice. Considerations should also be made for counseling and rehabilitation services.

Examples of Existing Language

- **The Agreement on Disarmament, Demobilization and Reintegration between the Government of Uganda and the Lord's Resistance Army/Movement** (2008) addresses sexual violence in provisions for Demobilization by requiring, in Article 5.4 (c), "Protection from sexual violence or abuse, appropriate services for pregnant women and lactating mothers, and adequate presence of female staff."

- **Darfur Peace Agreement** (2006), Article 26, para. 278: "AMIS Civilian Police together with GoS Police, and Movements' Police Liaison Officers in their respective areas of control, shall establish separate police counters for the reporting of crimes committed against women, and women police personnel should staff these counters."

- **Darfur Peace Agreement** (2006), Article 26, para. 279: "A significant number of GoS Police, Movements' Police Liaison Officers and AMIS Civilian Police officers shall be women; they shall have specialist gender units to work with women and children; and all their investigations and monitoring shall include at least one woman."

Mediator's Checklist

- ❑ Do security-related provisions in the agreement include, inter alia:
  - Command responsibility to condone, prevent, respond to and punish acts of conflict-related sexual violence, for instance, in dismantling, disengagement and the withdrawal of forces?
  - Early, voluntary release of those abducted, coerced or forcibly recruited from within the ranks of armed forces or groups?
  - Prohibition of the use of sexual violence as a method or tactic of conflict?
  - Monitoring of the use of sexual violence as a method or tactic of conflict?
- ❑ Are transitional security arrangements mandated to combat conflict-related sexual violence through police and military responses?
- ❑ Have provisions been included to vet former combatants with a history or association with conflict-related sexual violence from entry into security institutions?
- ❑ Have plans been included for the development and funding of training for military and law enforcement capabilities to prevent and respond to conflict-related sexual violence?
- ❑ Are there plans for information and education campaigns on the content, implications and expectations of the agreement, including those relating to conflict-related sexual violence?

Part IV. Addressing Conflict-Related Sexual Violence in Framing Provisions for Post-Conflict Justice and Reparations

Part IV. Addressing Conflict-Related Sexual Violence in Framing Provisions for Post-Conflict Justice and Reparations

This guidance note provides principles and strategies for mediators and their teams for ensuring that provisions for justice and reparations address conflict-related sexual violence.[26]

While an increasing number of peace agreements provide for a range of justice mechanisms to ensure accountability for war-time violations, most peace agreements have been silent on questions of accountability for conflict-related sexual violence, and redress for its victims.[27] Effective transitional justice and reconciliation mechanisms[28] and domestic courts are vital to the prosecution of conflict-related sexual violence and ensuring reparations.

---

26 Security Council resolution 1820 (2008) calls for justice for victims of conflict-related sexual violence, and places the onus on those seeking to resolve conflict to ensure that this is addressed during mediation and in peace agreements.

27 According to research conducted by UN Women, since the end of the cold war, only the Sun City Agreement for Democratic Republic of Congo in 2003 and the Agreement on Accountability and Reconciliation (and its annex) between the Government of Uganda and the Lord's Resistance Army in 2008 include language mentioning sexual violence in relation with questions of accountability. See UN Women (2010), "Women's participation in peace negotiations: connections between presence and influence".

28 Transitional justice mechanisms can include truth and reconciliation commissions, hybrid tribunals, local customs and rituals.

Mediators can help to lay the groundwork for transitional justice mechanisms that strengthen national legal and institutional environments in which agreements are implemented.

The mediator and his/her team are advised to consider three key areas in addressing conflict-related sexual violence in framing provisions for post-conflict justice and reparations in peace agreements: (1) accountability for those with a history or association with conflict-related sexual violence; (2) protection and participation of victims and witnesses engaged in pursuit of justice and reparations; and (3) reparations for victims of conflict-related sexual violence.

Principles

Principle 1: Justice processes should address issues of conflict-related sexual violence with equal priority to other international crimes.

Conflict-related sexual violence is a constitutive element of several international crimes, and can amount to a war crime, crime against humanity, constituent act of genocide or gross violation of human rights.

Principle 2: Amnesties for crimes under international law are prohibited.

It is the position of the United Nations that the peace agreements it endorses can never promise amnesties for genocide, war crimes and crimes against humanity or gross violations of human rights (which

sexual violence, under international law, can amount to).[29] Security Council resolution 1820 (2008) reinforces this position by calling for the exclusion of sexual violence crimes from amnesty provisions.[30]

Principle 3: Ensure provisions for transitional justice mechanisms incorporate specific reference to conflict-related sexual violence; include measures to protect the security and dignity of victims and witnesses; and include women and gender experts in its design and oversight.

Transitional justice mechanisms should include a mix of approaches, from criminal accountability, to truth seeking, and reparations and redress. The mix of mechanisms should be carefully tailored to meet the demands of the specific context, ensuring that cultural issues, resource constraints and statutes of limitations do not bar justice, truth and comprehensive reparations for sexual violence.

It is important to keep in mind that victims seeking accountability and redress for conflict-related sexual violence often face multiple challenges including social ostracism, physical threats and institutional barriers. It is important for transitional justice mechanisms to provide for strategies to protect victims and witnesses, including victim/witness protection programmes, provisions for in camera hearings, support counselors, etc.

29 S/2004/616, para. 10.

30 Under Security Council resolution 1820 (2008), Member States are also under obligation to prosecute persons responsible for conflict-related sexual violence, and to ensure that victims, particularly women and girls, have equal protection under the law and equal access to justice.

Principle 4: Ensure there are provisions which call for reparations, including for victims of conflict-related sexual violence.

Reparations can assist in mitigating the impacts of harm suffered. Reparations have particular importance for victims of conflict-related sexual violence who suffer not just the physical and mental injuries resulting from the crime, but frequently also the added harm of ostracization and related risks of vulnerability and destitution. Reparations programmes hold the potential to deliver targeted resources to an otherwise marginalized population, providing a vehicle for recovery and contributing to sustainable livelihoods.[31]

Considerations and Challenges

While international humanitarian and criminal law codifies sexual violence in conflict as a war crime, crime against humanity or constituent act of genocide, negotiating justice and accountability for sexual violence crimes requires taking a number of elements into consideration, including:

Truth-Seeking Mechanisms: Many peace agreements provide for a truth-seeking mechanism as a first step to uncovering war-time violations or as a parallel mechanism to criminal prosecutions. Yet, victims seeking accountability for sexual violence crimes face multiple challenges including social ostracism, physical threats (backlash attacks by perpetrators) and institutional barriers when seeking to address transitional justice mechanisms. Unless special measures

[31] Rashida Manjoo (2010), "Thematic report on reparations for women" (Special rapporteur on violence against women).

are provided for in the agreement to protect the dignity and safety of victims, they are at risk of exclusion or re-traumatization.

Criminal Justice: While some peace agreements provide for the establishment of war crime tribunals or chambers, the majority of wartime abuses tend to be referred to the domestic justice system with a strong emphasis on traditional/informal justice processes. Most agreements do not address how these processes can effectively prosecute conflict-related or protect the dignity and safety of survivors of sexual violence. Prosecutions through these mechanisms often focus on the senior-most perpetrators, while "de facto" amnesty continues to exist for the "rank and file". This has an impact on perceived impunity and redress for victims.

Reparations and Relief: The multidimensional impact of violations on victims' physical and psychological health, as well as wider socio-political and economic consequences, resulting from social ostracism once crimes are reported, requires multiple forms of redress and rehabilitation — which need to be taken into account in reparation, relief and compensation programmes.

Implementation Guidance for the Mediator

Amnesty Provisions:

Conflict-related sexual violence is a constitutive element of several international crimes, and can amount to a war crime, crime against humanity, constituent act of genocide or gross violation of human rights. The Roadmap for ending the Crisis in Madagascar (2011):

article 3.18 ensures the exclusion of such international crimes from amnesty:

Article 3.18: "The granting of a blanket amnesty for all political events which happened between 2002 and 2009, except for crimes against humanity, war crimes, crimes of genocide and other serious violations of human rights and fundamental freedoms. The amnesty law shall be ratified by the Transitional Parliament, and no election shall take place to the ratification."

Provisions that address transitional justice mechanisms should incorporate specific reference to conflict-related sexual violence and include measures to protect the security and dignity of victims and witnesses, taking into consideration, inter alia:

- Mechanisms for judicial treatment of conflict-related sexual violence should include criminal accountability, truth seeking and reparations, among others. One mechanism on its own may not be sufficient to address sexual violence after the conflict.
- A transitional justice plan should include an oversight mechanism to ensure that conflict-related sexual violence is effectively addressed. This could take the shape of a national human rights body, established by a peace agreement, and given a mandate over the monitoring and reporting of human rights violations, as well as the establishment of transitional justice processes. Establishment of such a body within the framework of a peace agreement could lead to a harmonized approach to conflict-related sexual violence cases through transitional justice measures.

- The need to strengthen domestic law, institutions and enforcement capacity in order to ensure the proper implementation of a transitional justice strategy, and to guard against future abuses and impunity. Given common gender biases in national law and institutions, legal reforms are of particular importance in addressing conflict-related sexual violence.
- Mediators should be aware of the limitations of informal justice mechanisms, and agreements should help to ensure that criminal accountability and other formal justice processes are not circumvented.

Comprehensive Reparations:

Agreements that contain provisions for reparations, and adequate funding for them, is vital. In Sierra Leone, for instance, the Truth and Reconciliation Commission recommended that the Government establish pensions for certain categories of beneficiaries, including women affected by the conflict, and that the size of these pensions be determined in relation to ex-combatant pensions and demobilization packages.

Mediator's Checklist:

- ❑ Is outreach being conducted with all parties to conflict to bring them together to enhance their knowledge and to ensure a common level of understanding of aspects of peace processes and international law, including in regard to sexual violence? For instance, are parties aware that sexual violence used as a tactic of war is a violation of international law which may reduce legitimacy before the international community? Are parties aware that military/political leaders have been indicted for conflict-related sexual violence, and that amnesties for crimes under international law are prohibited?
- ❑ Have gender experts and legal experts been consulted for additional technical advice?
- ❑ Do provisions for transitional justice mechanisms address conflict-related sexual violence and call for the inclusion of women and gender experts in their design?
- ❑ Are measures in place to ensure that justice mechanisms facilitate the protection and participation of witnesses and victims of conflict-related sexual violence?
- ❑ Does the agreement contain provisions for reparations?

In today's violent conflicts, civilians are increasingly caught on the front line. One of the most devastating forms of extreme hostility waged against civilians is conflict-related sexual violence. Arguably more powerful and less expensive than a gun, it is used strategically to provoke displacement of populations, affect reproduction and ethnicity, promote troop cohesion and undermine community cohesion. Highly effective, its use humiliates, dominates, instills fear, breaks identity and creates enduring ethnic, family and community divides.

The United Nations requires its mediators to address conflict-related sexual violence. This guidance offers mediators and their teams principles and strategies for including this critical peacebuilding and security concern in ceasefire and peace agreements.

www.un.org/depts/dpa

www.un.org/peacemaker

Designed by the United Nations Outreach / DPI

Printed at the United Nations, New York
12-20362—January 2012—1M