

# Deliver Us from Our Protectors: Accountability for Violations Committed by Humanitarian Aid Staff Against Refugee Women and Children

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## Introduction

**REFUGEES**—OFTEN FORCED from their homes with nothing but the clothes on their back, then confined in camps and dependent on humanitarian aid—are among the most vulnerable groups in the world. According to the United Nations Office of the High Commissioner for Refugees (“UNHCR”), refugee populations increased from 9.9 to 11.4 million during the year 2007.<sup>1</sup> Women and children comprise the majority of this number and, because of their gender and age, are undoubtedly the most susceptible to exploitation by those in positions of money and power encountered during their flight.<sup>2</sup>

In 2002, this exploitation was confirmed in a study commissioned by UNHCR and Save the Children-UK (“SC-UK”)<sup>3</sup> that found sexual

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1. United Nations Office of the High Commissioner for Refugees (“UNHCR”), Division of Operational Services: Field Information and Coordination Support Selection, *2007 Global Trends: Refugees, Asylum-Seekers, Returnees, Internally Displaced and Stateless Persons*, 2 (June 2007) (Figures do not include Palestinian refugees or internally displaced persons).

2. See iVillage.co.uk, *The World of Refugee Women*, [http://www.ivillage.co.uk/news/pol/camp/refuge/articles/0,,186771\\_186926,00.html](http://www.ivillage.co.uk/news/pol/camp/refuge/articles/0,,186771_186926,00.html) (last visited Sept. 3, 2009) (An estimated seventy-five to eighty percent of refugees are women and children. Statistics were taken from REFUGEES magazine, published by UNHCR).

3. UNHCR and Save the Children-UK, *Note for Implementing and Operational Partners on Sexual Violence & Exploitation: The Experience of Refugee Children in Guinea, Liberia and Sierra*

exploitation of women and children was widespread throughout refugee camps in West Africa. To the shock of the international community, the report revealed that many of these violators were staff members of notable and large humanitarian agencies—the very people entrusted with the safety and protection of refugee rights. In Sierra Leone, Guinea, and Liberia alone, almost seventy aid workers from forty agencies were allegedly involved.<sup>4</sup>

In response to the UNHCR and SC-UK report, the United Nations (“UN”) appointed the Inter-Agency Standing Committee (“IASC”) Task Force to investigate the findings of the report, and then develop a plan to prevent and respond to the sexual abuse and sexual exploitation that occurs during times of humanitarian crises.<sup>5</sup> At the direction of the IASC Task Force, the Office of Internal Oversight Services (“OIOS”) assembled a team of professional investigators, lawyers, refugee protection and human rights specialists, translators, and a pediatric trauma specialist who conducted a year-long investigation.<sup>6</sup> The UN Secretary General’s Report (“OIOS Report”) on the investigation into violations by aid workers in West Africa agreed with the general findings by UNHCR and SC-UK, but it discredited many of the alleged cases discovered by UNHCR and SC-UK.<sup>7</sup> As a result of its findings, the UN recommended universal codification of appropriate behavior and punishment for humanitarian aid workers. Unfortunately, these measures either have proven ineffective or have not been implemented.

Fresh allegations of sexual misconduct, implicating aid workers, have once again arisen, illustrating the continued urgent need to enforce agreements and guidelines to protect refugees and hold perpetrators accountable. In 2006, SC-UK verified that conditions in Liberian refugee camps had not changed and the exploitation and

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*Leone*, Feb. 27, 2002, available at <http://www.unhcr.org/cgi-bin/texis/vtx/news/opendoc.pdf?id=3c7cf89a4&tbl=PARTNERS>.

4. Ruth Gidley, *UN Says Refugee Exploitation Is Serious, but Not Widespread*, ALERTNET, Oct. 25, 2002, <http://www.alertnet.org/thefacts/reliefresources/541377.htm> [hereinafter *Widespread*].

5. IASC Task Force on Protection from Sexual Exploitation and Sexual Abuse in Humanitarian Crises, *IASC Task Force Mission Report: Liberia and Sierra Leone*, 21–31 (Oct. 2002) [hereinafter *IASC Task Force*].

6. *Id.* at 3.

7. See The Secretary-General, *Investigation into Sexual Exploitation of Refugees by Aid Workers in West Africa*, 3, delivered to the General Assembly, U.N. Doc. A/57/465 (Oct. 11, 2002) [hereinafter *Investigation*].

abuse of children continued.<sup>8</sup> In 2008, SC-UK published a study detailing widespread sexual exploitation of children in southern Sudan, Cote d'Ivoire, and Haiti, and the media reported that Indian UN Peacekeepers deployed to the Democratic Republic of Congo "used children to hire Congolese girls for sex."<sup>9</sup>

Enforcing the recommendations set forth by UN agencies has proven problematic because there is no governing body yet identified to hold violators accountable. In order to both prevent exploitation and address violations, the international community requires stronger, stricter processes to change current practices, discipline perpetrators, and provide relief to victims. This Comment demonstrates the inadequacy of the current handling of sexual violence against refugee women and children by peacekeepers and aid workers, and proposes that measures of accountability and increased participation of women at all decision-making levels would aid in the prevention and relief of the sexually exploited.

For the purpose of this Comment, the term sexual exploitation refers specifically to "situations in which an international NGO [non-governmental organization], humanitarian or aid worker, in a position of power, uses that power to request sexual favors or benefits by trading food or services that refugees are entitled to receive free of charge via the distribution system of international aid."<sup>10</sup> This Comment will also address issues of sexual conduct exchanged for money.

## I. Sexual Exploitation by Humanitarian Aid Workers

Focusing on the West African countries of Liberia, Guinea, and Sierra Leone, the report commissioned by UNHCR and SC-UK in 2002 exposed the proliferation of transactional sex between women and children in refugee camps with humanitarian aid staff. The subsequent study performed in 2006 by SC-UK verified conditions had not changed in Liberian refugee camps.

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8. Save the Children-UK, *From Camp to Community: Liberia Study on Exploitation of Children*, May 8, 2006, available at [www.savethechildren.org/publications/liberia-exploitation-v4.pdf](http://www.savethechildren.org/publications/liberia-exploitation-v4.pdf) [hereinafter *Liberia*].

9. Save the Children, *No One to Turn To: The Under-reporting of Child Sexual Exploitation and Abuse by Aid Workers and Peacekeepers*, May 27, 2008, available at <http://www.unhcr.org/refworld/docid/483c2a822.html> [hereinafter *No One*]; Rahul Singh, *10 Indian Peacekeepers in Congo Sex Scandal*, HINDUSTAN TIMES, Oct. 12, 2008, <http://www.hindustantimes.com/News/india/Indian-peacekeepers-in-Congo-sex-scandal/Article1-344224.aspx>.

10. *Investigation*, *supra* note 7, at 3.

**A. The Abused**

Both reports found that the majority of children involved were girls twelve years of age and older; however, girls as young as eight were also involved.<sup>11</sup> The girls at highest risk of exploitation and abuse tended to be children under the age of fourteen, children living by themselves or heading households of younger siblings, children living with very old parents or with single mothers, children living in families that were very poor, and children living with step-parents, foster parents, or extended family members.<sup>12</sup>

Both studies identified several factors that can lead women and children to exchange sex for goods and services. The primary factor is severe economic deprivation in which insufficient rations and supplies force women and children to trade sex.<sup>13</sup> Frequently, incomplete rations and delayed delivery make food distribution unreliable.<sup>14</sup> When food is provided, rations are assumed to last for thirty days, but in reality last only ten days.<sup>15</sup> The time gap between when rations run out and when another distribution occurs is termed “zero week,” and is often the time when women and girls turn to trading sex as a “coping mechanism to make ends meet.”<sup>16</sup> When distributors have a surplus of supplies remaining, the male camp leaders heading supply distribution have unregulated discretionary power to control the ultimate disbursement of excess rations.<sup>17</sup>

The patriarchal hierarchy that plagues camp structures contributes to the desperation of women and children. Author Royce Bernstein Murray states, “Decisions about food assistance . . . and how to distribute the aid are generally made by international organizations and host countries in consultation with the male leaders of the camps, without including the effective participation of refugee women.”<sup>18</sup> In addition, men predominantly control the distribution process, with women remaining mere beneficiaries.<sup>19</sup> Women remain misinformed

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11. See *Liberia*, *supra* note 8, at 5; UNHCR and Save the Children-UK, *supra* note 3, at 3. R  
12. *Liberia*, *supra* note 8, at 11.  
13. See UNHCR and Save the Children-UK, *supra* note 3, at 8. R  
14. *Id.*  
15. *Id.* at 9.  
16. See *IASC Task Force*, *supra* note 5, at 4. R  
17. See *Investigation*, *supra* note 7, at 13. R  
18. Royce Bernstein Murray, *Sex for Food in a Refugee Economy: Human Rights Implications and Accountability*, 14 GEO. IMMIGR. L.J. 985, 991–92 (2000).  
19. *Id.* at 1021.

about how their entitlements and allocations are decided—ultimately leaving them powerless and distrustful of the process.<sup>20</sup>

In addition, women in the affected countries lack income-generating opportunities capable of sustaining long-term stability.<sup>21</sup> These countries of refuge often have “feeble economies” unable to provide adequate income.<sup>22</sup> Because very few women hold key positions in the camp, there are few opportunities for them to support themselves and their children.<sup>23</sup> NGOs and UNHCR occasionally hire refugees, but most of these opportunities involve day labor where mostly male refugees are hired.<sup>24</sup> Training programs for refugee women generally prove futile as there are virtually no jobs available to utilize learned skills nor are there sufficient funds to sustain small business attempts.<sup>25</sup>

The nature of conflict frequently destroys social norms by tearing apart traditional family structures and forcing women and children to become heads of their households.<sup>26</sup> This increases a woman’s or child’s willingness or need to engage in transactional sex.<sup>27</sup> When a girl returns home with money or supplies, her family does not ask how she earned it. Refugees told the UNHCR and SC-UK assessment team that the only way—the “easiest” way—to access money in the refugee community is to both sell their food rations and let their daughters enter into sexually exploitative relationships.<sup>28</sup> Although the community does not approve of such practices, they have come to accept it because of their weak position in camp life.<sup>29</sup>

**B. The Abusers**

Abusers come from a broad range of humanitarian occupations, including UN Peacekeepers, government officials, law enforcement, teachers, and camp leaders,<sup>30</sup> and are generally adult men between the ages of thirty and sixty.<sup>31</sup> Because humanitarian aid workers in

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20. See *id.* at 1021–22.  
21. See *IASC Task Force*, *supra* note 5, at 4. R  
22. *Id.* at 7.  
23. See *Investigation*, *supra* note 7, at 14. R  
24. *Id.*  
25. *Id.*  
26. Brent W. Hanson et al., *Refocusing and Prioritizing HIV Programmes in Conflict and Post-Conflict Settings: Funding Recommendations*, 22 AIDS S95, S100 (2008).  
27. *Id.*  
28. See UNHCR and Save the Children-UK, *supra* note 3, at 8. R  
29. See *Liberia*, *supra* note 8, at 13. R  
30. *Id.* at 11.  
31. *Id.*

Liberia, Guinea, and Sierra Leone have easy access to supplies and hold positions of power, they are often the perpetrators. National and international NGO and UN employees are perceived to be men of status because they are paid relatively well compared to other employees and often have access to transportation. Frequently they distribute food or material goods, which they use to entice girls. Other agency workers ask girls for sex in exchange for employment and then continue to demand sexual favors even after the girls are employed.<sup>32</sup> Findings also suggest it is common for international NGOs to enlist the help of local NGOs to solicit girls for sex.<sup>33</sup>

Citing legal concerns, fears about the safety of child victims still living in the refugee camps, and limitations of anecdotal information, UNHCR and SC-UK initially refused to furnish a complete list of NGOs implicated in the activities in its 2002 report.<sup>34</sup> Finally, after a number of closed-door meetings, the NGOs were furnished with the confidential information.<sup>35</sup> Although the eighty-four-page report is still unavailable to the public, notable NGOs listed among the perpetrators include: Doctors Without Borders, the American Refugee Committee, the International Federation of the Red Cross and Red Crescent Societies/Guinea Red Cross, Lutheran World Service/World Federation, Norwegian Refugee Council, Council of Churches—Sierra Leone, Germany's BMZ, Medical Relief International, and Family Empowerment Program.<sup>36</sup> Both UNHCR and SC-UK were also implicated in the report, as was UN-operated World Food Programme.<sup>37</sup>

### C. The Proliferation of Abuse

Overwhelmingly dependent on goods and services, refugees find themselves trapped because they are unable to challenge aid agencies without suffering debilitating repercussions.<sup>38</sup> Not only are the mechanisms and procedures in place for reporting abuses and safeguarding refugee health and confidentiality inadequate,<sup>39</sup> but also refugees are ignorant of their rights. Many refugees do not know where to report

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32. See UNHCR and Save the Children-UK, *supra* note 3, at 5.

33. See *Liberia*, *supra* note 8, at 12.

34. U.N. *Finally Forced to Probe Its Pedophilia Scandal*, United Press International, NEWS MAX.COM WIRES, May 7, 2002, <http://archive.newsmx.com/archives/articles/2002/5/6/151901.shtml>.

35. *Id.*

36. *Id.*

37. *Id.*

38. See UNHCR and Save the Children-UK, *supra* note 3, at 5.

39. *Id.*

cases of underage sex when members of camp management and leaders are themselves involved.<sup>40</sup> Moreover, with NGO workers held in such high regard and treated as important people by the community, refugees fear retaliation or withdrawal of the NGO's provisions if they make problems known.<sup>41</sup> The UNHCR and SC-UK report states:

Refugees complained that they have tried to send written complaints through other staff but that the information has been held back. Children complained that they are harassed or labeled or denied services when they tried to complain. Refugees spoke of trying to see senior staff but being stopped by security guards outside their offices.<sup>42</sup>

If a refugee reports or files a complaint, the refugee could be singled out and prevented from receiving further aid, or the NGO could simply move its operations.

It appears that the culture surrounding humanitarian aid organizations propagates impunity.<sup>43</sup> A "conspiracy of silence" exists among the agency workers, where staff will "not pass on information about a colleague involved in sexual exploitation for risk of being stigmatized and ostracized."<sup>44</sup> In addition, there is an "apparent pressure to conform within the humanitarian community, [leading] staff to also indulge in exploitive behavior."<sup>45</sup> OIOS found that the further a camp is from the UNHCR branch office, the less attention the camp's residents receive from international staff.<sup>46</sup>

Conditions in the camps are further exacerbated because staff members work under extremely difficult and minimally rewarding circumstances. Though there are members who are highly dedicated, others are fatigued by their environment and have varying commitments and interests towards refugees.<sup>47</sup> In addition, refugees refuse to report cases, viewing transactional sex as monetarily beneficial. Some refugees involved believed the exchange of sex for goods was valuable and advantageous.<sup>48</sup>

Furthermore, in many cases, the legal framework within a country places huge obstacles in the way for those willing to report claims. Lack of legal protection and law enforcement dissuades women and

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40. See *Liberia*, *supra* note 8, at 14.

41. *Id.*

42. See UNHCR and Save the Children-UK, *supra* note 3, at 6.

43. *Id.* at 4.

44. *Id.* at 5.

45. *Id.*

46. See *Investigation*, *supra* note 7, at 11.

47. *Id.*

48. See *Liberia*, *supra* note 8, at 14.

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children from pursuing complaints.<sup>49</sup> Other reasons refugees fail to seek redress include:

- lack of laws against sexual and gender-based violence;
- lack of trust in law enforcement authorities;
- application of customary and traditional laws and practices that enforce gender discrimination;
- lack of trust in law enforcement authorities;
- discriminatory practice in justice administration and law enforcement;
- lack of willingness to effectively prosecute all cases reported to authorities;
- low number of prosecutions obtained in proportion to the number of cases reported;
- police and courts inaccessible because of remote location of camps;
- absence of female law enforcement officers;
- lack of administrative resources and equipment by local courts and security officials; and
- laws or practices in the administration of justice that support gender.<sup>50</sup>

## II. Immediate International Attempts to Redress

When the British Broadcasting Company revealed the findings the UNHCR and SC-UK's 2002 report detailing aid worker violations, an international uproar ensued. The UN and international and local NGOs quickly attempted to implement new procedures to ensure proper measures were taken against violators, including awareness-raising in both the humanitarian and beneficiary community, development of investigative protocols and channels for recourse, and an increase in monitoring staff.<sup>51</sup> However, the UN-appointed IASC Task Force found that few NGOs successfully installed internal mechanisms to manage their own staff.<sup>52</sup> IASC also recognized that without a baseline survey of adequate monitoring and evaluation of initiatives, it was difficult to determine what measures might actually work.<sup>53</sup> The IASC stated, "[i]t has been impossible to determine if the incidence of sexual exploitation and abuse has increased or decreased."<sup>54</sup>

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49. UNHCR, *Sexual and Gender-Based Violence Against Refugees, Returnees and Internally Displaced Persons: Guidelines for Prevention and Response*, 22 (May 2003), available at <http://www.unhcr.org/refworld/docid/3edcd0661.html> [hereinafter *Guidelines*].

50. *Id.* at 22.

51. *See IASC Task Force*, *supra* note 5, at 9.

52. *Id.* at 3.

53. *Id.*

54. *Id.*



The UN, through OIOS, initiated its own investigation of UNHCR's and SC-UK's findings. As a result of this investigation, it acknowledged the existence of widespread sexual violence against refugee women and children in West Africa by humanitarian agency staff, yet still seemed to discredit the UNHCR's and SC-UK's initial findings. Seemingly embarrassed by the actions of some UNHCR staff and the international response to the UNHCR/SC-UK findings, the OIOS report stated, "[b]y reporting, with little or no evidence, that sexual exploitation is widespread, the consultants unfairly tarnished the reputation and credibility of the large majority of aid workers, national and international staff of United Nations agencies and NGOs and United Nations peacekeepers in West Africa."<sup>55</sup> The UN claims there is no firm evidence that the problem extends beyond West Africa, or that aid workers are regularly involved.<sup>56</sup>

However, other agencies, including SC-UK, disagree with the UN's position. SC-UK claims "few UN agencies and NGOs collect detailed information on the abuse of children by their own personnel, and even fewer make this information publicly available."<sup>57</sup> The OIOS's investigation was inherently problematic not only because it did not occur until one year later, but also because of the increasing difficulty in identifying the status of individuals in refugee camps still surrounded by armed conflict, such as in Liberia.<sup>58</sup> Refugees are inherently mobile—being repatriated to their home countries, moving to the urban centers, or simply disappearing—and camps are so densely populated and disorganized that people are difficult to locate. In addition, because UNHCR and SC-UK consultants purposely described those they interviewed with vagueness to maintain confidentiality, the OIOS team was unable to find all those interviewed. Thus, specific cases cited by UNHCR and SC-UK went unverified and, although possibly true, OIOS discredited them.

Although OIOS noted these inherent difficulties in corroborating claims made by a refugee community, it maintained that many of the cases reported in the UNHRC and SC-UK report did not justify the overwhelming reaction of the international community. OIOS concluded that because it could not confirm any of the specific stories detailed in the UNHRC and SC-UK report, the report was misleading. OIOS did confirm ten out of the forty-three cases identified in the

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55. See *Investigation*, *supra* note 7, at 15.

56. See *Widespread*, *supra* note 4.

57. See *No One*, *supra* note 9, at 10.

58. See *IASC Task Force*, *supra* note 5, at 3.

2002 Report, including those involving a forty-four-year-old UN volunteer's sexual relationship with a seventeen-year-old refugee, and the rape of a fourteen year-old refugee by a Sierra Leonean refugee and a Guinean NGO staff member.<sup>59</sup> Furthermore, the IASC stated, "[i]n setting up the Task Force, IASC recognized that the problem of sexual exploitation and abuse in humanitarian crises is not confined to West Africa but is a global problem."<sup>60</sup>

The OIOS investigation should not diminish the reality that violations are occurring at the hands of humanitarian aid workers. Even given the limited scope of victims and the failure of corroboration, the surfacing of similar stories in different countries reported by various organizations indicates a major problem facing the international community.

### III. The Duty to Redress

Although the UN initially contested widespread abuse, studies conducted since 2002 continue to pinpoint humanitarian aid workers as major perpetrators of sexual exploitation (beyond the camps) in Liberia, Guinea, and Sierra Leone.<sup>61</sup> With such numerous locations and humanitarian agencies involved, it is difficult to identify which method to employ in solving these problems or under which international law solutions could be implemented. Rules governing international conduct and accountability stem from two separate bodies of regulations—international humanitarian law and international human rights law.

#### A. International Humanitarian Law

As defined by the International Committee of the Red Cross ("ICRC"), international humanitarian law is a set of international rules established by treaty or custom specifically intended to solve humanitarian problems that directly arise from international or non-international armed conflicts.<sup>62</sup> It protects persons that are, or can potentially be, affected by an armed conflict and narrows the legal methods and means of warfare used by the parties to a conflict.<sup>63</sup> Im-

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59. See *Investigation*, *supra* note 7, at 9.

60. *Id.* at 20.

61. See *Liberia*, *supra* note 8; *No One*, *supra* note 9, at 10; Singh, *supra* note 9.

62. International Committee of the Red Cross, *What is International Humanitarian Law?* (July 13, 2004), available at <http://www.icrc.org/web/eng/siteeng0.nsf/htmlall/humanitarian-law-factsheet?opendocument> [hereinafter *ICRC: Humanitarian Law*].

63. *Id.* at 1–2.

portant provisions of humanitarian law specifically providing protection for women derive from the four Geneva Conventions. Liberia, Guinea, and Sierra Leone are among the countries that have ratified these Conventions.

Much like conventions, treaties, case law, and national law, international humanitarian law also derives from customary law, which is defined as the “general practice accepted as law.”<sup>64</sup> Such practice can be found in several places including official accounts of military operations, military manuals, national legislation, case law, and other official documents.<sup>65</sup> In order to provide a complete source of recognized customary international humanitarian laws, the ICRC undertook the enormous task of compiling existing laws and publishing the results. The advantage of customary law is that all parties involved in armed conflict are bound by these regulations. Customary law is not restricted to only those who have ratified a treaty, and it applies to all forms of conflict, whether international or non-international.<sup>66</sup>

One hundred sixty-one rules make up the ICRC’s list of customary international humanitarian law.<sup>67</sup> Rules 134–135 order specific protection, health, and assistance for women and children affected by armed conflict.<sup>68</sup> In both international and non-international armed conflicts, customary law taken from the Geneva Conventions either explicitly or implicitly calls for the respect of specific needs of women.<sup>69</sup> Similar terms address the special protection of children.<sup>70</sup>

The general opinion is that violations of international humanitarian law . . . stem from an unwillingness to respect the rules, from insufficient means to enforce them, from uncertainty as to their application in some circumstances and from a lack of awareness of them on the part of political leaders, commanders, combatants and the general public.<sup>71</sup>

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64. International Committee of the Red Cross, *Customary International Humanitarian Law: Questions and Answers* (Aug. 15, 2005), available at <http://www.icrc.org/web/eng/siteeng0.nsf/iwpList133/E02D32D1A4976030C1256FEB005007A1>.

65. *Id.*

66. *Id.* at vii–viii.

67. JEAN-MARIE HENCKAERTS & LOUISE DOSWALD-BECK, *CUSTOMARY INTERNATIONAL HUMANITARIAN LAW: VOLUME I: RULES* (Cambridge Univ. Press, 2005).

68. *Id.* at 475–82.

69. *Id.* at 475–76.

70. *Id.* at 479–81.

71. Jeanne-Marie Henckaerts, *Study on Customary International Humanitarian Law: A Contribution to the Understanding and Respect for the Rule of Law in Armed Conflict*, International Committee of the Red Cross, Vol. 87, No. 857 (Mar. 2005).

State accountability is ruled by international humanitarian law.<sup>72</sup> For the most part, only states involved in armed conflict, not individuals, are subject to international humanitarian law. These states remain hesitant in providing relief unless the UN officially recognizes refugee status. In addition, governments wish to reserve funds for their own people and are less likely to provide adequate safeguards for refugees because of financial constraint. And, because most camps are left in the control of appointed camp administrators or humanitarian agencies, government officials may have limited participation in the daily administration and workings of refugee camps.

Furthermore, international humanitarian law seemingly applies only to those involved in the conflict. A neutral country cannot technically be held to international humanitarian law because they are not parties to the conflict and may not be subject to the rules of war. Receiving countries not involved in the conflict have the same legitimate interests as other countries with refugees within their borders. However, with no threat of armed conflict, receiving countries may wish to be exempt from international humanitarian law in order to behave in less scrutinized ways. At some basic level, every government owes a duty to people within their borders to honor their fundamental human rights as provided by the Universal Declaration of Human Rights.<sup>73</sup> The problem then involves more than just preventive measures, but rather includes the judicial enforcement of law against the perpetrators.

Even if it were possible to address the problems with state accountability, the problem of identifying international standards governing individual responsibility remains. It is unclear whether those handling the basic day-to-day business within the camps, such as humanitarian agencies, refugee camp administrators, and others, are subject to international humanitarian law. As non-governmental bodies, they may not be required to abide by codified conduct under international humanitarian law. However, as participants in the aftermath of armed conflict, NGOs and camp administrators should have some accountability.

With the advent of the various international criminal tribunals—most importantly the International Criminal Court (“ICC”)—international humanitarian law is becoming more applicable to individuals. Although the ICC is a permanent judicial body whose jurisdiction is

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72. See ICRC: *Humanitarian Law*, *supra* note 62, at 1.

73. Universal Declaration of Human Rights, G.A. Res. 217A, at 71, U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. Doc. A/810 (Dec. 10, 1948).

not restricted by time or place, the ICC exercises jurisdiction only when national courts cannot or will not carry out the investigation or prosecution of a person accused of the most heinous of crimes such as genocide, crimes against humanity, war crimes, and crimes of aggression. The recent passage of Resolution 1820 finally confirmed that sexual violence is one of the disputes the ICC may adjudicate. Sexual violence is now qualified as a war crime, crime against humanity, or a constitutive act with respect to genocide. As such, perpetrators can now definitively be tried under the ICC in The Hague. Although undeniably a valuable gain for survivors, it remains to be seen whether this solution is an adequate or viable remedy. To date, ICC investigators sent to quickly gather information on specific sex crimes for immediate prosecution are finding that the narrowly tailored focus of their assignments limits the nature of victims' accounts and forces them to overlook other related atrocities.<sup>74</sup>

In order to institute comprehensive measures for investigation and prosecution, separate tribunals that specifically address gender-based violations during and after armed conflict should be created. This would serve to assist the current tribunal system of the ICC in producing judgments or enforcing international humanitarian law.

## **B. International Human Rights Law**

### **1. National and Regional Charters, Conventions, and Laws**

ICRC defines international human rights law as a set of international rules, established by treaty or custom, from which individuals and groups can expect and/or claim certain behavior or benefits from governments.<sup>75</sup> The Report of the Secretary-General suggests that the existing national and regional charters, conventions, and laws that can be classified under international human rights law should make up the legal framework for addressing sexual exploitation.<sup>76</sup> The report cites the Convention on the Rights of the Child, the African Charter on the Rights and Welfare of the Child, the penal laws of individual countries, and the codes of conduct of international organizations and NGOs. In addition, because this issue particularly affects women

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74. Katy Glassborow, *ICC Investigative Strategy on Sexual Violence Crimes Under Fire*, HUMAN RIGHTS TRIBUNE, Oct. 20, 2008, <http://www.humanrights-geneva.info/ICC-investigative-strategy-on>.

75. See INTERNATIONAL COMMITTEE OF THE RED CROSS, INTERNATIONAL HUMANITARIAN LAW AND INTERNATIONAL HUMAN RIGHTS LAW: SIMILARITIES AND DIFFERENCES I (Jan. 2003), [http://www.ehl.icrc.org/images/resources/pdf/ihl\\_and\\_ihrl.pdf](http://www.ehl.icrc.org/images/resources/pdf/ihl_and_ihrl.pdf).

76. See *Investigation*, *supra* note 7.

and girls, the Convention on the Elimination of All Forms of Discrimination Against Women and the Declaration on the Elimination of Violence Against Women (“CEDAW”) is also relevant. Those countries that acceded or ratified CEDAW are legally bound to implement and practice its provisions.<sup>77</sup> Ratifying Member States undertake several commitments including incorporating the principle of equality of men and women in their legal system; abolishing all discriminatory laws and adopting laws that prohibit discrimination against women; establishing tribunals to ensure effective protection of women; and ensuring elimination of discrimination against women by persons, organizations, or enterprises.<sup>78</sup> Under the Guinean Constitution, international treaties supersede national laws and can be invoked in courts without having been directly integrated into domestic law.<sup>79</sup> International human rights law is applicable at all times regardless of armed conflict.

All countries involved—the receiving country, the neutral country, and the sending country—are bound by the documents above if they have ratified those documents. As opposed to international humanitarian law, countries that are parties to the relevant treaties can be held accountable for violations of the relevant provisions. However, practical implementation is a problem. At the very basic level, governments of the receiving country should have the power to hold people accountable for their conduct. To date, it appears that governments of countries hosting refugee camps are not required to investigate sexual exploitation within those camps, possibly because the regulation of internal affairs is left to the country’s own legislation. At most, governments should be required to provide access to their legal systems and prosecute alleged offenders. If the government of the receiving country does not follow through and pursue prosecution, then who is to advocate for the victims of sexual exploitation by humanitarian aid workers? Can the agencies be trusted to report their own staff when it has already been determined that a conspiracy of silence exists among the staff on the ground and could possibly include the more senior ranks off-site? Even SC-UK admits that if one of their own staff is impli-

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77. See MAYA STEINITZ, *THE ROLE OF INTERNATIONAL LAW IN THE STRUGGLE AGAINST SEX-BASED AND GENDER-BASED VIOLENCE AGAINST REFUGEE WOMEN* 32 (2001).

78. *Id.*

79. Alice Farmer, *Refugee Responses, State-Like Behavior, and Accountability for Human Rights Violations: A Case Study of Sexual Violence in Guinea’s Refugee Camps*, 9 *YALE HUM. RTS. & DEV. L.J.* 44, 58–59 (2006).

cated, the allegation is immediately investigated and only referred to the police if necessary.<sup>80</sup>

If a refugee is repatriated or resettled, it is in the interest of both the host country and the sending country to protect those who were violated within their borders. Allowing countries to violate agreements they have ratified sends a message to the world that foreign policy and promises made at government levels mean nothing. If neither country chooses to use legal measures, then the UN can hold these governments accountable under existing resolutions and treaties.

## 2. UN Resolution 1325

In 2000, the UN passed Resolution 1325, an international human rights law that can hold states responsible for their failures.<sup>81</sup> Drafted primarily in response to sexual exploitation violations by UN Peacekeepers and for the purpose of increasing women's participation at various levels during times of armed conflict, certain terms of UN Resolution 1325 may ultimately prove applicable to sexual exploitation committed by humanitarian aid workers. Resolution 1325 states, in pertinent part:

The Security Council . . . *Reaffirming also* the need to implement fully international humanitarian and human rights law that protects the rights of women and girls during and after conflicts . . . .

9. *Calls* upon all parties to armed conflict to respect fully international law applicable to the rights and protection of women and girls, especially as civilians, in particular the obligations applicable to them under the Geneva Conventions of 1949 and the Additional Protocol thereto of 1977, the Refugee Convention of 1951 and the Protocol thereto of 1967, the Convention on the Elimination of All forms of Discrimination Against Women of 1979 and the Optional Protocol thereto of 1999 and the United Nations Convention on the Rights of the Child of 1989 and the Optional Protocols thereto of 25 May 2000, and to bear in mind the relevant provisions of the Rome Statute of the International Criminal Court;

10. *Calls* on all parties of armed conflict to take special measures to protect women and girls from gender-based violence, particularly rape and other forms of sexual abuse, and all other forms of violence in situations of armed conflict;

11. *Emphasizes* the responsibility of all States to put an end to impunity and to prosecute those responsible for genocide, crimes against humanity, and war crimes including those relating to sexual and other violence against women and girls, and in this regard

80. *See No One, supra* note 9, at 12.

81. S.C. Res. 1325, U.N. Doc. S/RES/1325 (Oct. 31, 2000).

stresses the need to exclude these crimes, where feasible from amnesty provisions.<sup>82</sup>

Resolution 1325 calls for the “equal participation of women in all peace processes, gender training in peace operations, the protection of women and girls and respect for their human rights, and gender mainstreaming in the reporting and implementation systems of the UN relating to conflict, peace and security.”<sup>83</sup> All parties, including member states and parties to armed conflict, are expected to comply and work towards implementation of the particular goals identified in the resolution.<sup>84</sup> Most importantly, individuals, human rights groups, and international institutions can hold member states and the UN accountable for failure to implement these provisions.<sup>85</sup>

The Secretary General’s report published four years after the resolution was passed indicated increased participation by women in the peace process.<sup>86</sup> However, few changes in the prevention and response to sexual exploitation and abuse by humanitarian and peacekeeping personnel have been made, even though many of the Resolution’s provisions are written broadly enough to encompass violations by humanitarian aid workers.<sup>87</sup>

In its own report analyzing the effectiveness of Resolution 1325, Amnesty International found that refugee camps continue to lack the security and consideration for women’s special needs that would be required to decrease incidents of exploitation.<sup>88</sup> Where the UN had implemented some of its goals, there appeared to be a lack of political will on the part of nearly all UN Member States and various UN bodies and agencies to apply the provisions of Resolution 1325 effectively.<sup>89</sup> In Liberia, neither the National Government of Liberia nor the international community have so far demonstrated a commitment to prosecute perpetrators of crimes against humanity, war crimes, and other serious crimes of international law, including rape and sexual

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82. *Id.* at 1, 13.

83. Connie de la Vega & Chelsea E. Haley Nelson, *The Role of Women in Peacekeeping and Peacemaking: Devising Solutions to the Demand Side of Trafficking*, 12 WM. & MARY J. WOMEN & L. 437, 443 (2006).

84. *Id.* at 443–44.

85. *Id.* at 444.

86. The Secretary-General, *Report of the Secretary-General on Women and Peace and Security, delivered to the Security Council*, U.N. Doc. S/2004/814 (Oct. 13, 2004).

87. *Id.* at 20–21.

88. Amnesty International, *Women, Peace and Security: Fourth Anniversary of Security Council Resolution 1325*, IOR 52/004/2004, 4 (Oct. 11, 2004).

89. *Id.* at 3.



violence.<sup>90</sup> In Sierra Leone, the government and the UN established the Special Court of Sierra Leone to “bring to justice those bearing the greatest responsibility for crimes against humanity, war crimes, and other serious crimes under international law.”<sup>91</sup> Also, “[w]here new or transitional governments have created legislation addressing violence against women, these bills were in some cases at a standstill in the legislative process and in others are passed, only to be rendered ineffective by a lack of implementation.”<sup>92</sup>

### 3. UN Resolution 1820

The passage of Resolution 1820 in 2008 gives renewed hope that the Security Council is fully committed to preventing sexual violence in conflict settings.<sup>93</sup> Not only does Resolution 1820 once again urge women’s increased participation, but also UN organizations are specifically requested to work with women-led NGOs in developing mechanisms in and around camps to protect refugees from sexual violence.<sup>94</sup> More importantly, the resolution states a “zero tolerance” policy of sexual abuse in peacekeeping operations, calling for Member States to immediately comply with their obligations by prosecuting persons responsible for such acts, removing armed forces personnel, and holding commanders responsible.<sup>95</sup> This provision supports the addition of an identical requirement for the disciplining of humanitarian aid staff. Governments may not wish to prosecute violators under their laws for fear they will be implicitly granting refugee legal status. Further, unless a refugee is given the UN’s official stamp of recognition by attaining refugee status, governments will remain hesitant in providing relief. In addition, governments are less likely to provide adequate safeguards for refugees for financial reasons since they would rather reserve funds for their own people. Further, as noted above, the absence of government officials within refugee camps leaves camp administrators and humanitarian agencies in control and perpetuates the lack of oversight. Resolution 1820 alleviates many of the concerns governments may have about protecting non-nationals. Finally, declaring that sexual violence is a war crime, crime against

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90. *Id.* at 9–10.

91. *Id.* at 10.

92. *Id.* at 8.

93. S.C. Res. 1820, U.N. Doc. S/RES/1820 (June 19, 2008).

94. *Id.*

95. *Id.*

humanity, or a constitutive act with respect to genocide, perpetrators can now definitively be tried under the ICC in The Hague.<sup>96</sup>

Criminal penalties for the sexual abuse of refugees are limited. The UN Organization Mission in Democratic Republic of Congo is the only mission where troops can be prosecuted for sex with prostitutes.<sup>97</sup> This also includes prosecution for sexual exploitation and abuse.<sup>98</sup> Otherwise, unless criminal penalties for abuse are incorporated into an individual country’s laws (either receiving or sending countries), peacekeepers and aid workers go virtually unpunished.

**IV. Recommendations for Enforcement and Accountability**

**A. Universal Code of Conduct**

Any solution undertaken must be implemented within a broader framework of generic human behavior standards with zero tolerance for violations.<sup>99</sup> The IASC in 2002 believed that any proffered solutions would “raise additional questions as to who should be responsible for enforcing standards of behavior, and whether that responsibility should be individual or collective and lie at the country, regional, or international level.”<sup>100</sup> In 2002, sexual exploitation at the hands of humanitarian aid workers was “dealt with on an ad hoc basis, from agency to agency,”<sup>101</sup> leading to conflicting standards. Save the Children UK, for instance, abides by their own internal Code of Conduct against which staff behavior is held.<sup>102</sup> However, in 2006, SC-UK’s report of the situation in Liberia showed little to no progress or relief for victims of sexual exploitation.<sup>103</sup> The general conclusion, in 2002 and today, is that appropriate and standard norms must be codified in a *universal* code of conduct that specifically prohibits sexual exploitation and imposes sanctions for code violations.<sup>104</sup>

OIOS suggests that the Office for the Coordination of Humanitarian Affairs (“OCHA”) take the lead in coordinating and harmonizing existing codes of conduct.<sup>105</sup> Unfortunately, OCHA is a UN agency,

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96. *Id.*  
97. Singh, *supra* note 9. R  
98. *Id.*  
99. *See Investigation, supra* note 7, at 22. R  
100. *Id.*  
101. *Id.*  
102. *See No One, supra* note 9, at 9. R  
103. *Cf. Liberia, supra* note 8 (SC-UK’s report details continued sexual exploitation at the hands of the same perpetrators enumerated in the initial findings with UNHCR). R  
104. *See Investigation, supra* note 7, at 17. R  
105. *Id.*

potentially constrained by a conflict of interest. Though its role may be limited to simply organizing and submitting the recommended universal guidelines, its perspective might be biased in favor of the UN. For example, OCHA may create guidelines that resist accountability at the UN level and rely exclusively on action by NGOs and other non-UN agencies.

UNHCR has developed its own code of conduct based on international legal standards, but it does not have the force of law.<sup>106</sup> The question then is whether the creation and implementation of a code of conduct is essential, or whether the enforcement of human rights norms and standards already in place can just as effectively achieve the desired results.

UNHCR, an organization formed in part for the protection of refugees, may be the appropriate agency to enforce compliance. Acting frequently as the primary resource for refugees and as the umbrella organization to which many NGOs must answer, UNHCR takes on state-like functions. However, UNHCR has failed to implement the policies detailed in several guidelines incorporating refugee women and children's rights, and "has yet to establish [an] oversight mechanism to provide accountability for the behavior of its staff and volunteers in the field."<sup>107</sup> In addition, it is particularly difficult for UNHCR to punish its own staff members when they are among the various perpetrators of the abuse.

In most recommendations, the humanitarian agencies are required to take administrative steps against violating staff who are perpetrators. Unfortunately, NGOs are confronted with a conflict of interest when punishing their own personnel. The agency might not be willing to admit any wrongdoing, might handle problems in silence to protect its own reputation, or might be too lenient on violators simply because they have no other means of discipline beyond dismissing the employee. For example, while SC-UK holds out its Code of Conduct as an effective framework for disciplining staff, there were fifteen allegations of misconduct towards children against SC-UK staff in 2007, an increase from eleven allegations made in 2006.<sup>108</sup> Of the fifteen claims, four merely led to dismissal and only one was referred to national authorities.<sup>109</sup> NGOs often face other extrinsic concerns. Alice Farmer claims, "[N]GOs rely on government funding far more

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106. See *Guidelines*, *supra* note 49, at 123.

107. See Farmer, *supra* note 79, at 66–67.

108. See *No One*, *supra* note 9, at 9.

109. *Id.*

now than they did a few decades ago. Therefore, aid has begun to mimic the political objectives of the donor government.”<sup>110</sup>

States have the ultimate decision to abide by a code of conduct, but incentives vary for each government. Compliance depends on the strength of the government to enforce the codes. “And while the main responsibility for safeguarding the rights of refugees lies with states, UNHCR’s statutory role is to assist governments to take the necessary measures” to protect those refugees.<sup>111</sup>

**B. Preventive Measures**

To achieve effective change, strong prevention programs that target socio-cultural norms and community attitudes, knowledge, and behavior must be implemented. The most dynamic change needs to occur in the perception of women’s roles within a community. By offering literacy programs, providing vocational training, developing income-generating projects, offering leadership training, and supporting women’s groups and associations, women can become empowered.<sup>112</sup> The UNHCR and SC-UK’s assessment “makes it very clear that sexual exploitation cannot be addressed without providing alternative means and opportunities for earning an income.”<sup>113</sup>

OIOS suggests that UNHCR and its implementing partners sensitize the refugee population on sexual exploitation.<sup>114</sup> Because of UNHCR’s pivotal role in refugee lives, it is important that UNHCR take the lead, even though there may be conflicts of interest if one of its own staff is implicated. Still, UNHCR is the ultimate authority for legal status and resettlement away from the camps and may have the most power in these situations.

UNHCR should involve women, including refugee women in the development of preventive measures. OIOS advances, “The involvement of women in the distribution process needs to be significantly enhanced. . . . UNHCR should take steps to ensure recruitment of refugees for jobs in the camps by aid agencies is equitably and transparently undertaken without any discrimination . . . .”<sup>115</sup> Humanitarian organizations, including UN agencies, must be aware of the

110. *Id.* at 69.

111. Executive Committee of the High Commissioner’s Programme, *Note on International Protection, delivered to the General Assembly*, U.N. Doc. A/AC.96/930 (July 7, 2000) [hereinafter *International Protection*].

112. *See Guidelines, supra* note 49, at 38.

113. *See UNHCR and Save the Children-UK, supra* note 3, at 8.

114. *See Guidelines, supra* note 49, at 35–36.

115. *See Investigation, supra* note 7, at 18.

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various factors within the specific refugee community including demographic composition, social and cultural norms, family structure, attitudes of persons in leadership, and available services and facilities.

To prevent sexual exploitation and abuse at the hands of humanitarian aid workers, it is important to assess each camp's opportunity for sexual violence. One such method of assessment is the "Opportunity Matrix," a chart that camp leaders can fill out to determine the possible victims, perpetrators, location, and other factors.<sup>116</sup> The chart identifies different activities, goods, or services in the refugee camp that traditionally provide opportunities for sexual exploitation.<sup>117</sup> The chart further reveals the time, place, manner and perpetrators: "Where" indicates where the activity takes place or where the good or service is obtained; "Who" indicates who is in charge of the activity or distributes the good or service; "How" indicates how the good or service is obtained, and "Who/With Whom" indicates who engages in the activity or obtains the good or service and with whom (if anyone).<sup>118</sup> This fairly simple method can also be separately filled out by the refugees, providing a richer perspective that humanitarian workers may not have.

In response to the UNHCR and SC-UK report, the Coordination Committee for the Prevention of Sexual Exploitation and Abuse ("CCSEA") was immediately tasked with creating a comprehensive training manual for humanitarian agencies and staff.<sup>119</sup> The manual provides various exercises and learning tools, breaks down the subjects in easily manageable ways, and includes relevant documents, such as the Standards of Accountability. These standards, which are also helpful in drafting and codifying a universal code of conduct, state the most basic responsibilities of humanitarian aid workers, such as never condoning or participating in corrupt activities.<sup>120</sup> However, IASC reports that awareness tools like the Standards of Accountability mean little unless there is a method of recourse or protective action that will take place in case of an allegation. As such, the training provided by the CCSEA must stress some viable relief to victims or those reporting ex-

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116. Julie Dugan, Carolyn J. Fowler & Paul A. Bolton, *Assessing the Opportunity for Sexual Violence Against Women and Children in Refugee Camps*, J. Humanitarian Assistance 3 (2000).

117. *Id.* at 3.

118. *Id.*

119. United Nations Office for the Coordination of Humanitarian Affairs ("OCHA"), Coordination Committee for the Prevention of Sexual Exploitation and Abuse, *Understanding Humanitarian Aid Worker Responsibilities: Sexual Exploitation and Abuse Prevention*, 3 (2003).

120. *Id.* at 47.

ploitation or abuse. Further, the training is designed to be covered in only one day, stating that if time permits, the training can be extended to a two-day period to allow for deeper discussion and to alleviate participant and facilitator fatigue.<sup>121</sup> Regardless if the training is held for one or two days, such a short time period is not enough to adequately train workers and instill the requisite gender sensitivity. Humanitarian aid workers, as well as UN peacekeepers, are not staffed in refugee camps for long periods of time; therefore, camps often experience high staff turnover. The manual does not address training for new staff entering camps where only two-and-a-half hours is allowed to discuss key concepts of gender/sex, violence, power, and informed consent. The training must be expanded to increase its impact on the trainees and allow for more time to adequately understand key concepts and reflect on them. The training should also be mandatory to all new staff and facilitated by a senior official to stress its importance.

Also, refugee communities must be educated and informed about their rights. They must be engaged fully in order to maintain and further a sustainable system by which all refugees continue to protect the interests and safety of women and children. Asylum Access, a non-profit providing legal aid and advocacy to refugees, and the University of Capetown developed the Sustained Advocacy for Empowered Refugees (“SAFER”)<sup>122</sup> project in response to xenophobic violence against refugees. SAFER provides a good model for educating the refugee community. Through it, refugee community leaders—designated by the community and not necessarily holding administrative positions within the camps—are taught their rights and legal recourse. Theoretically, these refugee leaders go back to their communities and teach another group of refugees, who in turn teach their own groups of refugees, and so on. It might be most effective to create an all-encompassing training for refugee leaders and the rest of the community. In addition, as one of the elements of this training, facilitators can include a more expansive and in-depth training procedure adopted from the CCSEA regarding sexual exploitation. Classes can be taught to refugees over a couple of months with the CCSEA training covering at least a week.

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121. *Id.* at 5.

122. Asylum Access, available at <http://www.asylumaccess.org/2006/12/> (last visited Sept. 7, 2009).

### C. Reporting and Monitoring

Reporting procedures are a vital step in achieving appropriate relief, but they straddle a fine line; if the victim reports an incident and there is no remedy or care is not provided in a timely, compassionate, and confidential manner, then her trust in the services is destroyed and subsequent victims will fail to report.<sup>123</sup> There must be a designated place and person for all claims to go, and these claims must be responded to immediately since corroboration within a refugee community is fraught with time-sensitive problems.

OIOS recommends that UNHCR take the lead, coordinating with other aid agencies and NGOs, to develop the methods by which refugees can quickly report exploitation in confidence and anonymously.<sup>124</sup> It also recommends that UNHCR appoint a person to set up an independent reporting system that reaches into the refugee camps and communities,<sup>125</sup> who would oversee and monitor all reported cases from the nearest UNHCR branch.<sup>126</sup>

However, the limitations associated with UNHCR also prevent the application of OIOS's proposals. Not only are some UNHCR offices far-removed from camp settings, UNHCR accessibility to camps is restricted in armed conflict-affected regions because of the volatile security of the situation and the inability to access the camps.<sup>127</sup> UNHCR is also limited by its double mandate—simultaneously protecting refugees from repression and facilitating state policies towards refugees—duties that often conflict.<sup>128</sup> Despite the proposed “independence” of this reporting agency under UNHCR, a conflict of interest can be inferred if reports implicate UNHCR's own personnel. UNHCR cannot be both the protector of refugees and the prosecutor of its employees or agents. It is thus imperative that the agency envisioned by OIOS be substantially separate from UN and NGO prejudicial interests. In addition, sending all reports to UNHCR creates a huge workload that is likely to stress UN funds and overwhelm agency employees. As a result, international NGOs would be entrusted with periodically auditing themselves, rendering an independent agency useless. This measure is questionable if the independent agency is not

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123. See *Guidelines*, *supra* note 49, at 56.

124. See *Investigation*, *supra* note 7, at 17.

125. *Id.*

126. *Id.*

127. See Farmer, *supra* note 79, at 78.

128. *Id.*

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solely responsible for receiving data and enforcing failures in compliance.

Consequently, the best system is to designate a neutral working group to handle reports so that an immediate response and a thorough, unbiased review can occur. Developing recommendations to install an ombudsman system,<sup>129</sup> UNHCR and NGOs should, together, appoint the members of this working group and collectively construct appropriate and effective procedures. Funding for such a system may prove the most problematic for implementation. UNHCR receives funding through governmental, intergovernmental, and non-governmental donors.<sup>130</sup> However, UNHCR funds are stretched over the world through several programs, and a working group may be low on its list of priorities. Additionally, UNHCR faces various funding crises for other equally important projects. For example, in 2005, the voluntary repatriation of Burundi refugees was reduced due to lack of funds, and UNHCR was forced to supplement \$33 million dollars by delving into its emergency fund from its operational reserve.<sup>131</sup> Unlike massive programs such as the Burundian repatriation, funding for the working group might be minimal in comparison. Separate funding could be secured solely for administrative processes and might be provided by private donors, NGOs, or other agencies.

As for monitoring, OIOS recommends UNHCR and NGOs have a “more visible presence in the camps, increasing the number of field staff working inside the refugee camps so as to better monitor camp activities and ensure that refugees are indeed receiving the services to which they are entitled.”<sup>132</sup> However, it is unclear whether a larger NGO presence would do anything to deter those NGOs involved in the abuse since a conspiracy of silence and implicit acquiescence currently exists. UN agencies presume that senior international staff will be able to effectively monitor and report sexual exploitation, but a neutral committee made up of different people—lawyers, consultants, and psychologists—from different humanitarian agencies or NGOs should be the designated monitoring body. A small group hailing from different backgrounds can judge the situations impartially.

Both reporting and monitoring groups may be most effective if located in one central place, but there must be similar sub-groups on

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129. *Id.* at 83.

130. UNHCR, *UNHCR Global Report 2005: Funding UNHCR's Programmes*, 1 (2005).

131. Press Release, UNHCR, *Funding Crisis Threatens Return Hopes of Thousands of Burundian Refugees* (Oct. 28, 2005).

132. *See Investigation*, *supra* note 7, at 18.



the ground to easily access the various refugee camps throughout the world.

#### **D. Investigation**

It is imperative that UNHCR and other agencies implement clear, mandatory procedures and guidelines for the investigation of sexual exploitation of refugees and other related conduct.<sup>133</sup> In investigating claims, the safety of the victim and her family, as well her confidentiality must be secured. Without exception, interviews must be conducted in private settings. As recommended by the UNHCR Guidelines, only a few pieces of necessary information should be shared outside the survivor's confidence. Any written information must be maintained in a secure, locked area.<sup>134</sup> The interviewers should be highly skilled and well trained, able to deal with the overwhelming emotion of the situation, especially in interviews with children. They should also be neutral or, at the very least, if a humanitarian agency worker is accused, the interviewers should have no connection to that agency. It is preferable for any party involved in the interview process to be of the same sex, making it easier to establish trust. Unnecessary parties should be excluded from these meetings, but if third parties, such as translators, are required, they should come from outside the community and should be provided established terms of reference for their work.

#### **E. Legal Redress**

Many cases reported by UNHCR and SC-UK were handled by the respective NGO's administrative procedures, and the alleged perpetrators were either fired or suspended. The IASC Task Force notes the loss of financial benefit that comes from being fired or suspended is not sufficient nor is it "appropriate punishment for sexual abuse and exploitation of women and children."<sup>135</sup> Although NGOs should take an initial lead in dealing with the violators on their staff, there must be legal ramifications—possibly incarceration, monetary remedy, or public non-violent shame—to incentivize staff members to follow international rules of conduct. In addition, there must be adequate punishment to encourage victims to come forward and proceed through the court system. Otherwise, under-reporting will encourage acquies-

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133. *See id.* at 17.

134. *See Guidelines, supra* note 49, at 29.

135. *See IASC Task Force, supra* note 5, at 2.

cence and further the perpetuation of violence. The UNHCR Guidelines reports:

Community attitudes of blaming the victim/survivor are often reflected in the courts. Many sexual and gender-based crimes are dismissed or guilty perpetrators are given light sentences. In some countries, the punishment meted out to perpetrators constitutes another violation of the victim's/survivor's rights and freedoms, such as in cases of forced marriage to the perpetrator.<sup>136</sup>

Stigma and social disgrace magnifies the emotional trauma suffered by victims/survivors and implies that the perpetrator is not the one at fault.

Because of the nature of refugees—people forced to flee with no legal recourse in their home country for violations occurring in the host country—governments receiving refugees should take responsibility and punish or provide relief to victims under their laws. Though they should be willing to prosecute or advocate for prosecution, it is impractical for these countries to advocate for the refugees' interest in a judicial system that prioritizes nationals. Thus, national laws lacking adequate safeguards, perpetuating discriminatory practices, and excluding refugees from its protections permits gender-based violence to continue with impunity.<sup>137</sup>

In determining the capacity of a government to undertake enforcement of refugee rights, political economist Francis Fukuyama states “that it is necessary to measure both the scope of the state's functions and the strength of the state's institutional capacities.”<sup>138</sup> Even if countries sympathetic to the refugee plight pursue an ambitious plan to provide for victims, if implemented ineptly, measures are useless and possibly exacerbate the situation by revealing the emptiness of the government's promises.<sup>139</sup> In Sierra Leone and Liberia, for example, IASC reports that the legal and justice systems are weak, challenged by “[i]nadequate legislation and ineffective and corrupt police forces and barely functioning court systems.”<sup>140</sup> In order to combat this problem, one of the most basic legal foundations—effective counsel—must be provided. Legislative advocacy focused on the best interests of the survivor, e.g., human rights and gender equality,

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136. See *Guidelines*, *supra* note 49, at 24.

137. *Id.*

138. See Farmer, *supra* note 79, at 73.

139. *Id.* at 74.

140. See *IASC Task Force*, *supra* note 5, at 10.

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not only aids and regulates judicial systems, but also can ensure country-wide change.<sup>141</sup>

It is of vital importance to hold perpetrators accountable and provide due process of law to the victims. Governments, like Sierra Leone and Liberia, have the power to review their current laws, add or amend them as needed, and appropriately penalize persons regardless of their status (official or aid worker) to prevent sexual violence and exploitation of all people within their borders. Legislation and best practices, as designated by the UN or other international community body, should be implemented within a short period of time by all governments that are party to the Universal Declaration of Human Rights, Resolution 1325, or Resolution 1820.<sup>142</sup> Whether directed through Resolution 1325 or general international humanitarian or customary law, governments must provide adequate legal redress. It is important to establish proper legal responses to victims' claims. There should be stable legal procedures with sufficient training for police, government officials/administrators, and attorneys. Unlike many other general crimes, sexual violence requires special attention because of its complex nature. It is recommended that police undergo the same training provided for humanitarian workers and refugee communities. And, in cases involving children, there must be child-friendly judicial procedures.

Many governments will continue to be unwilling to recognize refugees within their borders. In such a case, the UN must hold the government accountable for its failure to abide by international human rights law. If the OIOS acknowledges that security in the camps is the responsibility of the government, then it follows that the protection of the people within the camps be upheld in a government's judicial system. Should the government fail or refuse to comply, the UN has various options: imposing sanctions, providing help (technical or otherwise) for enforcement, or publicizing the country's failings, thereby shaming the government.

### 1. Legal Aid Clinics

Legal aid clinics are a vital source for legal redress for refugee women and children. Refugees are often not adequately informed of their legal rights and usually lack funds to seek legal aid. They need affordable or pro bono advocates.

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141. *Id.* at 8.

142. *See Liberia, supra* note 8, at 19.

American Refugee Committee International (“ARC”) implemented two legal aid clinics in Guinea to specifically work with refugee survivors of gender-based violence from Liberia and Sierra Leone.<sup>143</sup> The clinics provide three primary services: (1) education on the legal rights of women and children; (2) confidential advice to women and children regarding their legal rights and options under the law; and (3) legal representation of women and children whose rights have been violated. The clinics also lobby the government for refugee protection and provide counseling to survivors, believing that emotional and social support is essential for survivors pursuing the long and difficult process of legal justice.<sup>144</sup> ARC itself “did not embark on legal aid until the minimum [gender-based violence] prevention and response services were in place and trust was gained from the community.”<sup>145</sup> Legal aid, according to ARC, is a “critical and necessary element to ensure an adequate and multi-sectoral approach.”<sup>146</sup> UNHCR likewise recognizes the need for legal assistance, funding lawyers’ networks and legal clinics in several countries to provide legal assistance, counseling, and advice to asylum-seekers and refugees, particularly refugee women.<sup>147</sup> However, the obstacles deriving from legislation, the sensitive nature of the subject area, and the potential threats require organizations to be careful and selective in implementing legal aid. If not instituted at the appropriate time and as part of a larger, comprehensive scheme, legal aid can be just as ineffective as weakly administered laws.<sup>148</sup>

## 2. Resolutions 1325 and 1820

A universal law that binds all perpetrators is imperative. However, both Resolutions 1325 and 1820 are not legally binding; they strongly encourage governments to abide by their provisions.<sup>149</sup> In addition, while Resolution 1325’s effectiveness is subject to debate, the newly enacted Resolution 1820’s influence has yet to be determined. Despite this, both resolutions have the potential to effectuate change, even if it is small change. The Resolutions should be expressly expanded to include all perpetrators of sexual exploitation against women and

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143. See ARC Int’l, *Gender-Based Violence: Legal Aspects of Violence Against Refugee Women in Kissidougou Town and Albadariah Camps*, 7-18 (2005).

144. *Id.* at 8.

145. *Id.*

146. *Id.*

147. See *International Protection*, *supra* note 111, at 6.

148. *Id.*

149. See Amnesty International, *supra* note 88, at 2.

girls who are victims of armed conflict. Provisions should include specific references to abuse and exploitation by humanitarian aid workers.

Since the passing of Resolution 1325, the participation of women at decision-making levels has increased. In 2003, for example, Liberian women formed the Mano River Women Peace Network, which participated in Liberia peace talks.<sup>150</sup> Provisions should specifically include women in power positions at the camp level. Women should be included at every level of these recommendations, from internal audit procedures within each individual NGO to reporting and monitoring situations. At the day-to-day camp level, the involvement of women in the distribution process and in overall camp administration needs to be significantly enhanced.<sup>151</sup> The host country should be responsible for handling violations, but if any of the provisions are violated, the UN must force governments to prosecute or repair the situations. If governments fail to do so, the UN must punish violators either through sanctions or public international shaming.

### Conclusion

The issue of sexual exploitation and abuse by humanitarian aid workers is complex and inherently problematic. For any of the above recommendations to be implemented and for more participants to be included, funding must be provided to the NGOs and UNHCR, but funding is scarce. Without adequate funding, these agencies cannot implement the procedures that are vital in minimizing sexual exploitation, even when the abuse is so close to home. Consequently, the UN must implement stringent safeguards and closely monitor agencies at all levels to ensure proper remedies exist and perpetrators are prosecuted. Both governments and humanitarian agencies look to the UN for guiding principles, and the UN should respond with the appropriate disciplinary actions. Many of the recommendations adopted and amended here are based on the UN's own suggestions, and, thus, indicate that the UN knows it is a key player in affecting change. It is important that it—as the governing body of international human rights law—promote the welfare of refugee women and children who are victims of sexual exploitation.

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150. *Id.* at 18.

151. *See Investigation, supra* note 7, at 18.

