



gender justice and accountability in peace support operations



Pam Spees • FEBRUARY 2004

closing the gaps





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**A Policy Briefing Paper
by International Alert**

**Pam Spees
FEBRUARY 2004**



INTERNATIONAL ALER T

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Executive Summary

The goal of this policy briefing is to provide a focused look at the challenges and obstacles to ensuring gender justice and accountability in the context of international peace support operations¹ (PSOs) and to provide recommendations for UN and regional peacekeeping bodies (AU, ECOWAS, EU, NATO, OSCE) officials, responsible for peacekeeping in terms of setting policy standards and practice guidelines, as well as those directly involved as military or civilian peacekeepers. It approaches the issue of gender justice (see definition in section (iv)) in PSOs from three angles:

- (1) the manner in which PSOs can foster a culture of gender justice and accountability
- (2) strengthening the capacity and mandates for PSOs to respect, protect and promote the human rights of civilians, especially women
- (3) how to better address violations committed by UN civilian or military peacekeepers and the lack of accountability that has surrounded such incidents to date.

Gender justice is fundamental to fostering gender equality and gender mainstreaming. It incorporates the gender equitable promotion and protection of civil, political, economic and social rights. This necessitates gender-awareness and gender analysis of the rights themselves as well as the obstacles to the enjoyment of these rights.

The perspectives and recommendations contained in this briefing paper are based on consultations with international legal experts and gender justice advocates, interviews with peace support personnel, and members of ‘beneficiary’ communities where PSOs have operated, as well as other primary and secondary sources of information. The briefing builds on previous documents relating to broader aspects of gender mainstreaming in PSOs and was undertaken as part of IA’s ongoing work to support the implementation of Security Council Resolution 1325 and related instruments. Many aspects of gender mainstreaming and gender justice overlap and interlink, this briefing focuses on rule of law mechanisms (see definition in section (iv)) and practical accountability mechanisms linked to these.

Structure of the Briefing Paper

Section I: International Standards Relating to Gender-based Violence sets out key concepts such as gender mainstreaming with gender justice as a cornerstone and discusses the significance of these concepts in the context of conflict and post-conflict situations. It also identifies overarching international legal standards relating to accountability for sexual and gender-based violence as an important aspect of gender justice in the context of armed conflict and international peacebuilding initiatives.

Section II: Building a Culture of Gender Justice and Accountability through PSOs: Examples from East Timor and Kosovo/a examines key aspects of ensuring gender justice in complex nation-building PSOs with a focus on experiences in East Timor and Kosovo/a and some of the successes and challenges of gender mainstreaming in the establishment of rule of law mechanisms.

Section III: The Responsibility of PSOs to Ensure Protection of Human Rights of Civilians in Local Communities examines the duty of PSOs to support protection and promotion of human rights in situations where they are deployed, especially in operations where the PSO also serves a civilian police function. This section examines the duty to protect against gender-based violence in ‘post-conflict’ contexts; cooperation with international justice mechanisms, such as

the International Criminal Court (ICC); the protection of evidence relating to the commission of war crimes, genocide and crimes against humanity and efforts focusing on HIV/AIDS awareness and prevention.

Section IV: Accountability for Violations Committed by Peacekeepers: Closing the Gaps

discusses the ongoing dilemma of impunity for violations committed by peacekeeping personnel, both military and civilian, and examines the barriers to accountability from political, legal and administrative perspectives and channels for address.

The briefing provides a series of recommendations International Alert considers necessary to ensure the credibility and success of PSOs, as well as fostering a culture of gender justice and accountability in ways that can be sustained after a PSO has been dismantled. It places emphasis on the full implementation of Security Council Resolution 1325. Recommendations are aimed at the UN Secretariat, agencies, departments, Member States, and other international and regional bodies involved in peacekeeping, such as the African Union (AU), Economic Community of West African States (ECOWAS), North Atlantic Treaty Organisation (NATO), Organisation for Security and Cooperation in Europe (OSCE) and European Union (EU), as well as local peace activists in conflict situations supported by an international PSO.

Summary of Key Recommendations

International Standards Relating to Gender-based Violence

1. The UN Secretary General, the Security Council and regional peacekeeping bodies should ensure that gender considerations are explicitly included as a priority in the mandates established for all PSOs.
2. International bodies responsible for PSO initiatives should ensure that the international legal standards relating to sexual and gender-based violence are included in standard interim criminal codes for use by transitional authorities providing civilian police functions and protection of the local population.
3. UN departments, agencies and peacekeeper contributing states should ensure that all peacekeepers receive mandatory training in human rights and the protection of civilians, in particular the specific protection needs of women from gender-based violence.

Building a Culture of Gender Justice through Peace Support Operations

1. Gender justice should be integrated as a criteria for best PSO practice both in the PSO's work in the community it is supporting and in its internal organisation and management.
2. Recruitment policy standards and practice for PSOs should include emphasis on gender-aware expertise and leadership.
3. The UN Secretary General, the UN Security Council and other regional peacekeeping bodies should ensure that gender mainstreaming and the participation of women are included as priorities from the early planning and drafting stages for all PSOs.
4. All PSO mandates should include provisions requiring the prevention of violence against women and the protection and promotion of women's human rights as detailed in CEDAW with reference also to the Beijing Platform for Action.
5. PSOs should be mandated to focus on securing women's civil, political, economic and social rights as an integral part of security sector reform in the development of governance mechanisms and rule of law developments.

Protection of Human Rights

1. As part of re-establishing and building the capacity of local law enforcement agencies and the judiciary, PSOs should ensure local police forces, judges and prosecutors are trained in gender-sensitive measures for the investigation, prosecution and trial of crimes of sexual and gender-based violence.
2. PSOs should apply gender sensitive local employment practices that support women's autonomy and render them less vulnerable to violence and exploitation.
3. PSOs should be allocated the capacity and resources to effectively support the host government to protect and promote human rights of women, men, boys and girls.

Accountability for Violations by Peace Support Operation Personnel

1. All PSOs should be mandated to establish and make public effective gender-sensitive accountability mechanisms, complaint procedures and disciplinary actions for peacekeepers, who commit violations against and exploit local citizens.
2. The UN should include provisions in SOFAs to ensure the establishment in all PSOs of a mechanism to help determine paternity and child support in situations where children have been conceived by PSO personnel while serving on mission.
3. There should be increased protection for 'whistleblowers', defenders and victims including resources for witnesses, job protection as well as gender-sensitive protection from harassment and intimidation.
4. Peacekeeping bodies and involved Member States must address the gaps in follow-through that have allowed impunity for violations by PSO personnel, particularly with respect to rape and other forms of sexual violence and exploitation.

Description of Terms

Gender Related Terminology

Gender “refers to the socially constructed roles played by women and men that are ascribed to them on the basis of their sex... These roles are usually specific to a given area and time that is, since gender roles are contingent on the social and economic context, they can vary according to the specific context and can change over time. In terms of the use of language the word ‘sex’ is used to refer to physical and biological characteristics of women and men, while gender is used to refer to the explanations for observed differences between women and men based on socially assigned roles.” (Report of UN Secretary General 1996 on the Implementation of the Outcome of the Fourth World Conference on Women, September 3, 1996, U.N. Doc. A/51/322)

Gender Justice refers to the protection and promotion of civil, political, economic and social rights on the basis of gender equality. It necessitates taking a gender perspective on the rights themselves, as well as the assessment of access and obstacles to the enjoyment of these rights for both women, men, girls and boys and adopting gender-sensitive strategies for protecting and promoting them.

Gender Mainstreaming refers to the “process of assessing the implications for women and men of any planned action, including legislations, policies or programmes in all areas and at all levels. It is a strategy for making women’s as well as men’s concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and societal spheres so that women and men benefit equally and inequality is not perpetuated.” (ECOSOC 1997).

Gender-based Violence refers to violence targeting women or men, girls or boys on the basis of their gender or sexual orientation. It includes, but is not limited to, sexual violence, which is often used as an instrument of terror and torture in armed conflict situations. Other forms of gender-based violence include the forced conscription primarily of boys into armed groups or militaries or the killing of men and boys as potential combatants. Women and girls have been targeted on the basis of their sex for forced marriage or sexual slavery in addition to forced pregnancy; even as channels for spreading HIV/AIDS to the ‘enemy’.

International Legal Standards and Related Terminology

International Criminal Law refers to an area of international law in which individuals, both state and non-state actors, can be held criminally responsible for the perpetration of certain crimes, such as genocide, war crimes and crimes against humanity, defined in customary international law as well as in treaties. It encompasses violations of international humanitarian law as well as some acts that also amount to serious human rights violations. This is in contrast to international human rights law in which the ‘state’, not an individual, bears the responsibility for the adherence to and respect for human rights, as well as due diligence in the protection of human rights.

International Human Rights Law refers, largely today, to the power and responsibilities of the state vis-à-vis individuals. Chief sources are the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Cultural and Social Rights, the Convention on the Elimination of All Forms of Discrimination Against Women and the Convention on the Rights of the Child. Enforcement mechanisms include international and regional treaty bodies, which clarify rules and make determinations about state policies or actions in the light of human rights obligations. Some human rights

violations also amount to crimes for which individuals can be prosecuted in domestic or international tribunals.

International Humanitarian Law (IHL) refers to customary international law and treaty rules governing the conduct of armed conflict. The Hague Convention of 1907 and the Geneva Conventions of 1949 and Additional Protocols of 1977 form the core of this body of law. The Hague Convention provides rules for how armed conflict is to be conducted (the law of war) while the Geneva Conventions provide rules relating to the protection and treatment of prisoners of war, the sick and wounded as well as civilians. IHL requires the parties to a conflict to adhere to and enforce its norms.

Rule of Law, as used in this paper, means adherence to and enforcement of just legal principles, without discrimination and on the basis of equality before the law. Rule of law institutions include law enforcement agencies, independent judiciaries and other mechanisms put in place to protect and fulfil human rights obligations of states.

Trafficking in Persons “shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others, or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.” (Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against transnational Organised Crime (2000), Article 3(a).)

Universal Jurisdiction refers to criminal jurisdiction based solely on the nature of the crime, without regard to where the crime was committed, the nationality of the alleged or convicted perpetrator, the nationality of the victim, or any other connection to the state exercising such jurisdiction. Universal jurisdiction may be exercised by a competent and ordinary judicial body of any state in order to try a person duly accused of committing serious crimes under international law. (Princeton Principles on Universal Jurisdiction)

Sexual Violence has been defined by the International Criminal Tribunal for Rwanda as “any act of a sexual nature committed on a person under circumstances, which are coercive.” According to the ICTR, sexual violence includes rape as well as acts, which may not involve penetration or even physical contact, such as forced nudity. (*Prosecutor v. Akayesu*, ICTR, 1999)

Violence Against Women refers to “any act of gender-based violence that results in, or is likely to result, in physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.” (Declaration on the Elimination of Violence Against Women, 1993)

Peacekeeping Related Terms

Peace Support Operation (PSO) is used generically in this briefing to encompass UN and regional peacekeeping body operations of any kind, including observer missions, peacekeeping and peacebuilding missions authorised under Chapter VI as well as peace enforcement missions authorised under Chapter VII. When there is a need to distinguish a certain type of operation, this is done in the text.

PSO Personnel in this briefing is used to refer to any personnel involved in a UN or regional operation whether military or civilian. When there is a need to distinguish between types of personnel, the terms ‘military’ and ‘civilian’ personnel are used as appropriate.



I. International Standards Relating to Gender-based Violence

In its comprehensive review of UN peacekeeping, the Panel on United Nations Peace Operations (hereinafter ‘the Brahimi Report’) described peacebuilding as including, but not limited to, “*reintegrating former combatants into civilian society, strengthening the rule of law (for example, through training and restructuring of local police and judicial and penal reform); improving respect for human rights through the monitoring, education and investigation of past and existing abuses; providing technical assistance for democratic development (including electoral assistance and support for free media); and promoting conflict resolution and reconciliation techniques.*”²

With the adoption of Resolution 1325 (2000) on Women, Peace and Security, the United Nations Security Council recognised and affirmed the importance of mainstreaming gender perspectives into all aspects of peacebuilding. Gender justice is a key pillar supporting the implementation of this resolution.

The gestation, onset and aftermath of armed conflict generally result in greater tolerance of violence in affected communities, leading to escalating violence against women.³ Cases from the *ad hoc* tribunals for the former Yugoslavia (ICTY) and Rwanda (ICTR) have recognised rape as a ‘war crime’ and the particular vulnerability of women and girls to such violence in situations of armed conflict.⁴

The gender mainstreaming mandated by Resolution 1325 and the UN Charter fundamental principle of non-discrimination, require that PSOs plan and implement strategies to ensure the protection and promotion of human rights for all and that such plans and strategies take into account the different situations women face during and after armed conflict. This includes ensuring women’s equal access to food, aid and means of economic subsistence, in addition to justice mechanisms and means of political participation.

International Standards Relating to Crimes of Sexual and Gender-based Violence

Accountability for sexual and gender-based violence is an important aspect of gender justice, particularly in the context of armed conflict. Sexual and gender-based violence are associated with violent conflict either as incidental to or as an instrument of armed conflict. In light of the likely prevalence of sexual violence in situations of armed conflict, PSOs must be prepared to address fully such violations in ways that are sensitive to the needs of victims as well as to prevent the further use of sexual and gender-based violence.⁵ In doing so, they must be guided by international norms relating to the prevention, investigation, prosecution and punishment of the crimes.

Crimes of sexual and gender-based violence are recognised as among the most serious of concern to the international community, as stated in the Rome Statute of the International Criminal Court and in the developing jurisprudence of the ICTY and ICTR.^{6,7} These reinforce and further advance previous prohibitions in international humanitarian law regarding violence against women contained in the Hague Convention of 1907, the Geneva Conventions of 1949 and Additional Protocols of 1977.

The approaches of the Rome Statute and the international tribunals affirm that acts of rape and other sexual violence can amount to serious international crimes, which give rise to international jurisdiction, meaning any state, which is signatory to the Rome Statute has the right and obligation to investigate.⁸ These developments are a part of a growing body of international criminal law, which entails individual criminal responsibility for those who commit, aid or abet violations, as well as for those in a position of command or superior responsibility, who do not take steps to prevent or punish violations.⁹ In some circumstances the crimes may be subject to trial in an international criminal tribunal, such as the International Criminal Court (ICC).

HIV/AIDS Prevention

Situations of armed conflict often provide enabling conditions for the spread of HIV/AIDS and other diseases. The Brahimi Report considered the problem so serious in the context of peacekeeping that it identified the need for HIV/AIDS education and control as an “*essential complement to effective peacebuilding*.”¹⁰ The spread of HIV/AIDS has been attributed to the presence of PSOs in some communities with a previously lower rate of infection, such as Sierra Leone, Cambodia and Mozambique.¹¹ Further, with regard to the UN Transitional Authority for Cambodia, it was predicted that substantially more peacekeepers would die from HIV/AIDS-related causes than from mission-related activities.¹² The problem was considered serious to the extent that in 2000, the UN Security Council adopted resolution 1308, recognising HIV/AIDS as a threat to international security and the need to incorporate HIV/AIDS prevention awareness skills training into DPKO’s training for personnel. Security Council Resolution 1325 reiterated the importance of preventing the spread of HIV/AIDS, from the perspective of protecting local populations, and called for continued training, education and prevention efforts.¹³

Exploitation and Trafficking

Trafficking in persons is considered to be among the most serious international crimes, codified as a form of enslavement and a crime against humanity under the Rome Statute.¹⁴ It exists among those rules of international law known as *jus cogens*, that is peremptory norms or prohibitions from which States or entities cannot derogate under any circumstances.¹⁵ In customary international law, enslavement and trafficking are considered so serious that violations of these norms entail universal jurisdiction, that is the right and obligation of all states to investigate and prosecute the crimes no matter where they are committed or by whom.¹⁶

Victims of sexual violence, exploitation and trafficking often face being ostracised by their communities on the basis of the stigma attached to rape and other forms of sexual violence. Victims often fear retaliation by the perpetrators, especially if the perpetrator(s) is affiliated with the state or an international organisation. Moreover, victims of some crimes, such as sexual slavery, enforced prostitution, trafficking, and rape, often fear being prosecuted along with the perpetrators as a result of the way some national-level criminal laws approach the crimes of prostitution and rape.

Recognising the often complex and highly-sensitive situation of victims of sexual and gender-based violence, the Rome Statute contains several provisions intended to protect the “safety, physical and psychological well-being, dignity and privacy” of victims. The statute requires the establishment of a Victims and Witnesses Unit to assist with security arrangements, protective measures, counselling and other assistance.¹⁸ Victims are also entitled to reparations and to participate in the legal processes of the ICC.

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000) also contains comprehensive mandates for states to follow in responding to the needs of victims of trafficking, such as:

- the protection of the privacy and identity of victims, including confidential legal proceedings
- participation at appropriate stages of legal or administrative proceedings
- measures to provide for the medical, psychological and material assistance; employment, educational and training opportunities¹⁹
- to consider adopting legislative or other appropriate measures that permit victims of trafficking to remain in their territory.²⁰

The Rome Statute and Trafficking Protocol are examples of the increasing awareness of the types of mechanisms needed to help ensure the participation of victims in the investigation and prosecution of crimes of sexual and gender-based violence. They can be regarded as an international standard by PSOs when setting up rule of law institutions in a host state, as well as in efforts to ensure accountability for past and ongoing violations.

Recommendations

- 1. International bodies responsible for PSO initiatives should ensure that the international legal standards relating to sexual and gender-based violence are included in standard interim criminal codes for use by transitional authorities providing civilian police functions and protection of the local population.**
- 2. UN departments, agencies and peacekeeper contributing states should ensure that all peacekeepers receive mandatory training in human rights and the protection of civilians from gender-based violence, in particular the specific protection needs of women.**
- 3. With regard to training:**
 - a) UN DPKO and Member States should ensure that existing gender-awareness training programmes for peacekeepers should be more systematic, accommodating the usual six month rotation of peacekeepers and integrating context based gender-awareness.**
 - b) Peacekeeper contributing states, UN in mission agencies and departments, should ensure that all personnel and communities in host states receive HIV/AIDS education and prevention training.**
 - c) All training should be linked to systematic monitoring and evaluation of its application.**



2. Building a Culture of Gender Justice and Accountability through Peace Support Operations: Examples from East Timor and Kosovo/a

“I was against the creation of a Gender Affairs Unit for the UN’s Transitional Authority in East Timor. I did not think a Gender Unit would help rebuild institutions from the ashes of what the militia left. I was wrong.”²¹

[SERGIO VIEIRA DE MELLO

SPECIAL REPRESENTATIVE FOR THE SECRETARY GENERAL, UNTAET 1999-2002

UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS, 2002-2003]

When PSOs are mandated to help strengthen or rebuild rule of law institutions in a host state and to establish administrative, legislative and judicial infrastructures, this creates significant opportunities to mainstream gender. Resolution 1325 calls for all actors to adopt a gender perspective when negotiating and implementing peace agreements by developing “*measures that ensure the protection of and respect for human rights of women and girls, particularly as they relate to the constitution, the electoral system, the police and the judiciary*” and “*...measures that involve women in all of the implementation mechanisms of the peace agreements.*”²² These mandates need to be built into action plan objectives, backed with sufficient financial support to move the implementation beyond rhetoric and into routine.

The Brahimi report’s concern about the need for speedy establishment of judicial and legal infrastructures is borne out by the experiences in East Timor and Kosovo/a. In East Timor UNTAET faced daunting challenges as the judicial infrastructure in both countries had been virtually destroyed. In Kosovo/a, UNMIK officials opted to establish the Emergency Judicial System, which was comprised of four District Courts, an Office of Public Prosecutor and an *ad hoc* Court of Final Appeal. As part of the division of labor in Kosovo/a, the Organisation for Security and Cooperation in Europe (OSCE) was overseeing the work of legal working groups and the development of key priorities in terms of sexual violence, domestic violence and juvenile justice. It has been noted that in the aftermath of the conflict with the courts functioning at low capacity, women were not likely to receive favorable decisions in custody and domestic violence cases as well as in property disputes.²³

The PSO in East Timor (UNTAET) was characterised by close interaction with the local population and especially women’s groups. Local women successfully lobbied for the Gender

Unit when UN financial backing to set it up was not initially allocated.²⁴ Once in place, the Gender Unit organised consultations, workshops and trainings with women's groups and incorporated the Women's Platform for Action adopted by women's groups after the end of the conflict as part of its work plan. The unit worked to help women gain a foothold and supported their involvement in the drafting of key policy documents, legislative and electoral processes using the framework of CEDAW and the Beijing Platform for Action and later Security Council Resolution 1325. The unit became the National Department for Women, once governance was officially handed over to the East Timorese government.

Constitutional and Legal Reform

East Timor's constitution is evidence of the degree of women's advocacy and political participation in the drafting process. The constitution sets out non-discrimination on the basis of gender as a fundamental principle. It stipulates that a fundamental objective of the State is to "promote and guarantee the effective equality of opportunities between women and men".²⁵ It further elaborates that "*women and men shall have the same rights and duties in all areas of family and political, economic, social, cultural life.*"²⁶

The gender-sensitive provisions in the Constitution grew out of women's advocacy, which involved the formation of a Women and the Constitution Working Group. In association with the Gender Affairs Unit, the Working Group held consultations throughout East Timor on basic issues of concern to women. The process yielded a Women's Charter of Rights.

UNTAET was characterised by close and constructive interaction and consultation with women's groups in civil society. In contrast, UNMIK was widely criticised by women's groups for marginalising women's voices. Women's groups reported that several UN officials were referring to *Leke Dukagjini*, a 16th century customary law,²⁷ for guidance in implementing their mandate in Kosovo/a.²⁸ This law made it difficult for women to own and inherit property and characterised children as the property of the father and his birth family. This was in direct contravention to CEDAW and other international and regional human rights instruments. In one incident a UN official reportedly argued with women advocates that Kosovo/a wasn't ready to recognise women's rights.²⁹

Economic and Social Justice

In East Timor, women's groups advocating for a gender perspective in the new constitution and a Women's Charter of Rights affirmed the interdependence and indivisibility of social and political rights.³⁰ In Kosovo/a, a study conducted by the OSCE revealed that healthcare and education were the top two priorities respectively for women in the post-conflict scenario.³¹ The emphasis of women in local populations on access to healthcare, education and work, at the same time as the need for equal political participation, underscores the interconnectedness of civil, political, economic and social rights.

Domestic Violence

A critical area that was a focus of efforts in both East Timor and Kosovo/a was domestic violence. In East Timor, women's groups worked with members of UNTAET to develop training programmes on domestic violence and violence against women for the judiciary and law enforcement officials. There was a nation-wide public outreach campaign and local women's groups helped provide counseling assistance and developing strategies for information-sharing. The Gender Affairs Unit of UNTAET also worked with regional experts and civil society to draft domestic violence legislation.

In Kosovo/a, UNMIK ensured the placement of regional domestic violence coordinators in all regional police headquarters with mandated procedures for responding to incidents of domestic violence. Training in domestic violence was provided by UNMIK to local police trainees. However, criticism focused on the fact that the legal framework developed only included severe battering and not all forms of domestic violence.³² UNMIK and other international actors involved in Kosovo/a were also criticised for not systematically seeking out and reporting on information about violence against women. The focus of these reports was on other types of violence, such as inter-ethnic violence³³, despite the fact that police reports revealed a very high rate of violence against women.³⁴

Recommendations

- 1. Recruitment policy standards and practice for PSOs should include emphasis on gender aware expertise and leadership.**
- 2. The UN Secretary General, the UN Security Council and regional peacekeeping bodies should ensure that gender mainstreaming and the participation of women are included as priorities from the early planning and drafting stages for all PSOs.**
- 3. All PSO mandates should include provisions requiring the prevention of violence against women and the protection and promotion of women's human rights as detailed in CEDAW with reference also to the Beijing Platform for Action.**
- 4. DPKO, DPA, OCHA and relevant regional peacekeeping bodies, should ensure that PSOs adopt an inclusive approach with more systematic consultation and interaction with formal and informal sectors of local populations as standard practice when developing programmes.**
- 5. PSOs should be mandated to focus on securing women's civil, political, economic and social rights as an integral part of security sector reform in the development of governance mechanisms and rule of law developments.**
- 6. CivPol and other relevant components of PSOs should be trained in and prepared to work in accordance with any host government and international justice mechanisms in the documentation and investigation of war crimes, crimes against humanity and genocide.**



3. Responsibility of Peace Support Operations to Ensure the Protection of Human Rights of Civilians in Local Communities

“The correlation between domestic violence and violence during war has concerned many scholars and activists in conflict-ridden areas... Unfortunately many of the peace agreements and the processes of reconstruction after the conflict do not take note of these considerations.”

[RADHIKA COOMERASWAMY

SPECIAL RAPPORTEUR ON VIOLENCE AGAINST WOMEN, 2003]

Domestic Violence and Socio-economic Factors of Gender Justice

In ‘post-conflict’ scenarios, there is often an escalation in certain forms of violence against women, including domestic violence, rape, and trafficking into forced prostitution.

At the same time, there is often greater potential for economic and political marginalisation of women, in the shifting power struggles and the scramble for scarce resources, especially where there is easy access to small arms and light weapons.³⁵ PSOs must take these factors into account at the earliest stages of their planning in order to be able to better protect and promote human rights. Responding to the links between micro and macro-level violence, prevents the resurgence of conflict.

One gender-aware strategy enabling women to claim and receive food and other necessities as heads of households has been the hiring of local women as distributors and translators. This also avoids reinforcing the male gender bias with regard to access to resources. Gender sensitive local employment practices can support women’s autonomy and render them less vulnerable to violence and exploitation.

Accountability and Supporting Re-establishment of Rule of Law

With respect to sexual and gender-based violence, Resolution 1325 calls for “*special measures to protect women and girls*”.³⁶ The Brahimi report also asserted that military or civilian personnel serving in PSOs should be “*presumed to be authorized*” to stop violence against civilians as this is in support of basic United Nations principles.³⁷ When a PSO is specifically mandated to re-establish rule of law institutions, including law enforcement agencies, the obligation to prevent human rights violations is even clearer. To assist in the early

preparedness, the report called for the development of an “interim criminal code” for use by civilian police and transitional administrations of PSOs.³⁸

Standards reflected in the treaty provisions of the Rome Statute, the Trafficking Protocol, as well as jurisprudence from the *ad hoc* tribunals, should be fully incorporated into any interim model or *ad hoc* criminal codes. Gender experts in rape and criminal procedure, preferably from the local community, should serve on the panels convened to discuss, develop and implement such codes.

Cooperation and Assistance with Judicial Accountability Mechanisms

With the deployment of a PSO into a conflict affected situation, it is highly probable that military and/or civilian police contingents of PSOs will encounter evidence of crimes of international concern. Expertise and capacity to handle and channel such evidence is required in all PSOs. Personnel should be briefed on how to cooperate with appropriate legal authorities, such as the ICC or other relevant international or domestic authorities.

Critics of the international criminal tribunals for the Former Yugoslavia (ICTY) and Rwanda (ICTR) expressed concern about culturally inappropriate investigative methods and process failures that put victims and witnesses at risk. There have been further complaints that alleged perpetrators of the genocide in Rwanda are residing in the relative comfort of prisons and jails meeting international standards and receiving medical care and treatment for HIV/AIDS and other illnesses, while victims of the genocide are suffering from the disease without the benefit of such treatment. Thus, it is important that post-conflict justice mechanisms, as well as aid agencies operating in the area provide resources and funding for witnesses and victims such as advice, protection, treatment for rape victims, counselling support, family mediation travel costs and proper legal representation.

More recently, hybrid tribunals have been established in Sierra Leone and Cambodia that bring together both international and local judges and lawyers to apply a combination of international and local law.³⁹ The gender justice implications of this combination of international legal standards with appropriate local law, require further investigation and monitoring.

The ICC Statute contains important provisions regarding the participation and protection of victims and witnesses, which the ICTY and ICTR initially lacked. The ICC and other courts that will address crimes such as genocide, war crimes and crimes against humanity will need to heed the lessons learned from previous efforts in international justice relating to the protection and needs of victims and witnesses.

Recommendations

1. **Senior officials within PSOs should ensure that in the absence of a functioning legal authority, the military and CivPol component of a mission bear initial responsibility for protecting civilians against violence, with particular regard to sexual and gender-based violence.**
2. **The drafting of the interim criminal codes that will be used by PSOs should include the participation of gender experts in consultation with local women’s groups at the earliest planning stages.**
3. **Interim model or *ad hoc* codes should reflect the international standards relating to violence against women, including the recent codification of crimes of sexual and gender-based violence in the Rome Statute, Trafficking Protocol and jurisprudence from the ICTY and ICTR.**

4. **Efforts aimed at addressing sexual or gender-based violations must incorporate gender-sensitive measures for the investigation and prosecution of such acts.**
5. **As part of re-establishing and building the capacity of local law enforcement agencies and the judiciary, PSOs should ensure local police forces, judges and prosecutors are trained in gender-sensitive measures for the investigation, prosecution and trial of crimes of sexual and gender-based violence.**
6. **PSOs should apply gender sensitive local employment practices that support women's autonomy and render them less vulnerable to violence and exploitation.**
7. **PSOs should be allocated the capacity and resources to effectively support the host government to protect and promote human rights of women, men, boys and girls.**
8. **The General Assembly and Secretary General and regional peacekeeping bodies should ensure close cooperation with the ICC.**



4. Accountability for Violations Committed by Peacekeepers: Closing the Gaps

“Although there is evidence of a small number of women being brought into Bosnia and Herzegovina for the purpose of sexual exploitation before 1995, it has now been accepted that the real problem started with the arrival of peacekeepers at the end of 1995.”

[HEAD OF UN COMMISSION ON HUMAN RIGHTS IN SARAJEVO, BOSNIA AND HERZEGOVINA]

“In October 2001, a UNHCR/Save the Children assessment team visiting Guinea, Liberia and Sierra Leone unexpectedly came across allegations of abuse by humanitarian workers during the course of a broader sociological study on sexual violence and exploitation of refugee children... The team confidentially noted allegations concerning 67 perpetrators, 42 agencies, 40 child victims, and 80 separate sources, plus additional cases involving unnamed peacekeepers. Young girls reported exchanging sex for desperately-needed humanitarian assistance – biscuits, soap, medicines – or meager sums of money.”⁴⁰

[ASMITA NAIK

INDEPENDENT EXPERT ON HUMAN RIGHTS AND HUMANITARIAN ISSUES]

The arrival of a PSO is often seen by many in a community as the last hope and the expression of the international community’s concern for the humanity of those who have suffered in violent situations. In such precarious situations, when peace support personnel engage in acts that amount to serious violations of human rights and/or international humanitarian law, the harm to the direct victims, the local community, the mission and the body it is mandated by is extremely severe. When such abuses do not get appropriate attention and redress from UN or responsible regional body officials and relevant Member States, the harm from such systemic impunity further heightens the damage done. Justice is intrinsic to sustainable peacebuilding. It must be implemented in ways that are sensitive to the needs of the victims and the affected community. For the work of any PSO to be credible, it must adhere to its own principles and rules and maintain the highest international standards.

Documentation of Cases of Abuse by Peacekeepers

There has been increasing documentation of ‘peacekeeper’ and humanitarian worker violations by journalists, NGOs and human rights advocates around the world. Reported violations include murder, torture, rape, sexual slavery, trafficking and other forms of exploitation. Among the earliest and most startling accounts were those that surfaced with respect to widespread violence against the local population by international peacekeepers in Somalia. This included accounts of murder, torture, rape, other sexual violence and exploitation. However, it has become increasingly clear that these were not isolated incidents especially as regards sexual exploitation:

- In 1996, the Graça Machel report on children in armed conflict noted a “rapid rise” in child prostitution with the arrival of peacekeeping forces;⁴¹
- In 2000, human rights advocates and local women’s organisations noted that with the arrival of international operations, Kosovo/a became a destination for trafficking rings, rather than a route;⁴²
- In 2001, an employee of a U.S-based private security company was fired for reporting allegations that UN personnel had frequented brothels and sex clubs where women were held against their will;⁴³
- In 2002, a study conducted by Save the Children Fund UK and UNHCR uncovered and documented allegations of widespread sexual exploitation and abuse by aid workers, including UN agency personnel serving in PSOs in West Africa (Liberia, Sierra Leone and Guinea), which became known as the “food for sex” scandal.⁴⁴

National, Regional and International Accountability

The multi-national character of UN and regional PSOs and criss-crossing of jurisdictional responsibilities has produced situations where allegations of misconduct and even criminal behavior often fall through the cracks. Military and CivPol personnel are subject to the exclusive jurisdiction of their sending state under the current standard agreements between the UN, troop contributing states and host countries. In instances where local authorities might have jurisdiction over other personnel, such as civilian staff of UN agencies or departments or staff of non-governmental aid agencies, the legal system may be non-existent or ineffective as a result of the conflict. In cases where the local system is functioning, these authorities may feel too intimidated to exercise jurisdiction over the staff of agencies and organisations, which are providing assistance.

In an attempt to address the severity of the problem of violence against civilians and sexual exploitation on the part of personnel serving under a UN peacekeeping mandate, the UN Secretary General issued an Executive Order in 1999. This order made certain aspects of humanitarian law applicable to UN missions engaged in peace enforcement actions as combatants or in operations in which the use of force is permitted in self-defense.⁴⁵ The order stipulated that women should be especially protected against any form of sexual assault, and prohibited at all times “*rape, enforced prostitution; any form of sexual assault*” as well as enslavement and a series of other serious violations.⁴⁶ Programmes have been developed, which make some attempt to address trafficking, such as the Special Trafficking Operations Programme (STOP) in Bosnia (UNMIBH) and the Trafficking and Prostitution Investigation Unit in Kosovo/a.⁴⁷

UN Accountability Response Mechanisms

In response to allegations of widespread abuse in humanitarian situations in early 2002, the Inter-Agency Standing Committee (IASC) established the Task Force on Protection from Sexual Exploitation and Abuse in Humanitarian Crises, which consists of UN agencies and departments as well as other inter-governmental and non-governmental aid agencies. The purpose of the Task Force was to develop recommendations aimed at eliminating sexual abuse and exploitation by humanitarian personnel. The Task Force developed a Plan of Action, which was adopted by the IASC, that focused on three areas of concern:

- development of common codes of conduct and standards of behavior for humanitarian workers
- mechanisms and capacity for protection against sexual exploitation and abuse
- improved mechanisms for delivering assistance.

Until now, codes of conduct have largely conflated consensual sexual relations and more serious sexual exploitation. In this way acts, which might amount to serious crimes are in danger of being trivialised. The UN *Peacekeepers Code of Conduct* provides that personnel not “*indulge in immoral acts of sexual, physical or psychological abuse or exploitation of the local population or United Nations staff, especially women and children.*”⁴⁸ In the *Peacekeeping Handbook for Junior Ranks*, troops are “*forewarned of facing long sexual abstinence*”.⁴⁹ The handbook further advises: “*Do not involve yourself in any sexual relationship, which may create long-lasting complications for you and others. Do not involve yourself with a sexual affair with any member of the local population.*” Both the Code of Conduct and the Handbook lack guidance or warnings as to the serious administrative or legal consequences of conduct with regard to the serious administrative or legal consequences of conduct, which may amount to a serious crime such as sexual exploitation or rape. Neither do they detail the legal responsibility stemming from consensual sexual relations.

Some UN agencies and departments have incorporated the Task Force’s core principles into their codes of conduct. Some donor agencies are also incorporating the Task Force’s core principles into agreements with operational partners.⁵⁰ While advocates welcome the more robust language in codes of conduct and mandates, concern remains over the continuing shortfalls in enforcement to vigorously address the problem of sexual abuse and exploitation.⁵¹ Some advocates believe that the UN, as well as other aid agencies, will never be able to police themselves effectively and cite the need for a fully independent oversight mechanism to ensure accountability.⁵² Such a humanitarian watchdog would bring the sector into line with other areas of public life, which already have government and corporate monitors.⁵³

Gender-awareness and human rights training packages have been developed by the UN DPKO and are being used in some PSOs. This needs to be integrated systematically into all PSOs and adapted to the various different operational country contexts. It is also important that the training continues during deployment and that practice is monitored as part of performance standards for peacekeepers.

Member State Accountability

Military and CivPol personnel are governed by a set of agreements concluded between their country (the contributing state), the UN and the host state (country where the PSO is to be deployed). The agreement between the UN and the contributing state is known as a ‘Contribution Agreement’ (CA). The agreement between the UN and the host state is referred to as a Status-of-Forces Agreement (SOFA). Both are based on model agreements, which

provide a starting point whenever the UN assembles a PSO. The Convention on the Privileges and Immunities of the United Nations is also applicable to both civilian and military personnel serving in a UN mission. Currently, the CA and SOFA model agreements provide the contributing states with exclusive jurisdiction over their nationals. This exclusivity can result in problematic jurisdictional gaps especially for cases of abuse against host country civilians and in particular for violence against women.⁵⁴

While the model SOFA provides that the Secretary General will “obtain assurances” from contributing governments that they will exercise jurisdiction with respect to crimes that may be committed by members of their contingents serving in the PSO, this provision has rarely been adhered to by Member States.⁵⁵ Neither has the provision in the CA requiring contributing states to keep heads of missions apprised of the progress of investigations or proceedings had any real weight. For example, in the case of widespread abuses by peacekeepers in Somalia, the United Nations did not follow up with Member States concerning the outcome of proceedings even though there were only a few cases taken up by national authorities out of numerous allegations.⁵⁶

Member States have not been held accountable to the UN in terms of how they handle allegations of violations on the part of their peacekeepers. The UN’s fear that if it places too many demands on Member States, it will not get the level of cooperation it needs when assembling missions, is belied by the fact that some UN Member States willingly involve their military contingents in PSOs, because they are paid by the UN system.

Military and Civilian Police (CivPol) Personnel

The exclusive jurisdiction over military and CivPol⁵⁷ personnel awarded to contributing states in the model UN agreements contrasts with the ‘primary jurisdiction’ awarded in SOFA’s concluded between Member States of the North Atlantic Treaty Organisation (NATO).⁵⁸ The NATO agreements allow host states to exercise secondary jurisdiction over nationals of a contributing state when the contributing state declines to prosecute their own national for an alleged crime.⁵⁹

Even with a jurisdiction-sharing model, however, those serving in host states might often find it difficult or impossible to proceed with investigations of abuse by PSO personnel as well as aid workers associated with other international organisations in light of the fact that they are often reluctant to be seen as “going against” those who are there to help them. This creates an extreme power imbalance. Thus, the agreement must be supported by efforts to strengthen administrative disciplinary procedures and mechanisms of accountability.

UN Civilian Personnel

UN civilian personnel are governed by UN staff regulations and rules as well as codes of conduct. Civilian personnel employed directly by the UN as staff or experts are subject to UN staff rules and regulations, the 1946 Convention on Privileges and Immunities of the United Nations, codes of conduct and administrative disciplinary procedures. It has been reported that the UN does not have a coherent and coordinated system for recording allegations against its own personnel, as well as civilian or military personnel involved in PSOs.⁶⁰ Thus, perpetrators could conceivably move from one peacekeeping context to another without leaving any sort of paper trail. When any action has been taken upon receipt of allegations of sexual abuse or assault, often the most severe measure is dismissal. Dismissal appears to be rare considering the frequency and scope of sexual abuse, exploitation and trafficking documented in relation to PSOs. There are few known instances when UN personnel have been subject to criminal prosecutions for actions that violate either the criminal law in the host state or in their country of origin or which amount to an international crime.

Humanitarian Workers

A key responsibility of PSOs is to help ensure that aid and services are delivered to beneficiaries in an equitable and just manner and without abusing the economic and political power differential that exists between those serving in missions or with non-governmental aid agencies. To address cases of abuse, PSO CivPol contingents should develop gender and culturally-sensitive mechanisms for receiving and investigating complaints of abuse by humanitarian workers and ensure accountability for such abuse.

UN Security Council Resolution 1422 (2002): Immunity to ICC for some Peacekeepers

In June 2003, the UN Security Council renewed a controversial resolution, which purports to provide immunities from prosecution in the ICC for personnel from States that are not party to the Rome Statute and that have nationals participating in UN-authorized operations. This resolution is problematic in that it goes against basic democratic principles of equality before the law, transparency and accountability. It jeopardises the credibility of an entire operation, if some PSO personnel are not subject to the same level of accountability as everyone else. To reinforce legitimacy of international PSOs, responsible states and international and regional peacekeeping authorities need to ensure the fullest cooperation with the ICC.

Private Security Companies

In some PSOs, private security companies have been contracted by Member States to deploy employees into the missions. In addition, some aid agencies have at times contracted with private firms to provide security services. The use of such companies adds a further layer of difficulty in ensuring accountability for violations of the domestic criminal law of contributing and host states, as well as violations of international human rights and humanitarian law. This was illustrated in a case where an employee of one such company, the U.S.-based DynCorp, was fired for reporting allegations that officials and personnel serving on the UN mission in Bosnia were patronising nightclubs which were part of a trafficking route and where women were being held against their will. An employment tribunal later found the company guilty of wrongful dismissal.⁶¹ The company continues to do business and was recently awarded a contract of \$50 million by the United States State Department to provide police officers in Iraq.⁶²

The use of private military and security companies has been increasingly debated in recent years due in part to mercenary involvement in security companies, and the fact that the companies are not as directly accountable to the public and do not have to ensure the same level of transparency in their dealings and development of policies. While there are international and regional conventions outlawing the use of mercenaries,⁶³ the international legal framework has been slower in addressing the legal corporate security firms. The UN Commission on Human Rights has taken steps recently to address the issue by passing a resolution on *The Use of Mercenaries as a Means of violating Human Rights and Impeding the Exercise of the Right of Peoples to Self-determination*.⁶⁴ However, the resourcing of the required associated monitoring mechanisms is not so explicit.

Security companies have been increasingly subcontracted by Member States, and some aid agencies, to help fulfill peacekeeping obligations. Thus, it is imperative that states establish strict accountability routines including licensing, reporting, human rights and gender-awareness training requirements, as well as procedures for penalties.

Financial and Legal Responsibility for 'UN Children'

To date the UN has not taken steps to address the issue of children conceived by personnel serving in UN missions. The issue of children being fathered by military and civilian peacekeepers serving away from home has been well-documented.⁶⁵ In Cambodia, estimates place the number of children fathered by UN PSO personnel in Cambodia at 25,000.⁶⁶ In Liberia the prevalence of children born of peace support personnel was considered so serious that several NGOs were established to deal with the matter, including the UNOMIL-ECOMOG Children Organisation. Estimates vary, but some reports project that at a minimum 6,600 children were fathered by soldiers serving in the UN mission in Liberia.⁶⁷

Often the mothers and the children born of these encounters face persecution, scorn and stigma in their communities subsequent to the departure of a PSO. There are a myriad of political, psychological and social issues for the children abandoned by their UN fathers including rights of nationality. Abandonment of children is a direct violation of the Convention on the Rights of the Child.⁶⁸

The UN must take concrete steps to counter this phenomenon and hold those who conceive children while on mission financially and legally responsible for the children. The model SOFA agreement provides leeway for civil proceedings against personnel serving in missions if the legal proceeding is unrelated to the official duties of the mission's members.⁶⁹ In this regard, sexual encounters that result in pregnancies would fall into this category. When a civil proceeding in a host state is an option, PSO leadership should ensure the mission's cooperation with the relevant court.

Some states already include such provisions in their bilateral or multi-lateral SOFAs in response to the concern of children conceived by foreign troops and then abandoned. The UN should encourage and follow this track and include provisions in SOFAs to provide assistance in locating and/or determining the father and, if necessary, provide medical testing to determine the paternity if the imputed father contests the allegation.

Recommendations

1. **The UN Secretary General should seek to amend the current model Contribution Agreement and Status of Forces Agreements to include provisions allowing the ICC or other appropriate international judicial institutions to exercise jurisdiction over military and civilian peacekeeping personnel, if the contributing state is unable or unwilling to investigate and prosecute allegations.**
2. **The UN and regional peacekeeping bodies should not accept military or civilian personnel from countries, which have not genuinely investigated, or prosecuted alleged violations of human rights or humanitarian law, and are thereby in violation of previous Contribution Agreements.**
3. **Peacekeeping bodies and involved Member States must close the follow-through gaps that have allowed impunity for violations by PSO personnel, particularly with respect to rape and other forms of sexual violence and exploitation.**
4. **All PSOs should be mandated to establish and make public effective gender-sensitive accountability mechanisms, complaint procedures and disciplinary actions for peacekeepers, who commit violations against and exploit local citizens.**

5. The UN should include provisions in Status of Forces Agreements to ensure the establishment in all PSOs of a mechanism to help determine paternity and child support in situations where children have been conceived by PSO personnel while serving on mission.
7. There should be increased protection for 'whistleblowers', defenders and victims including resources for witnesses, job protection as well as gender-sensitive protection from harassment and intimidation.
8. An independent, transparent, and accessible mechanism should be established by the International Human Rights Community, specifically tasked with overseeing the gender-sensitive investigation and appropriate resolution of all allegations of misconduct or criminal behavior by PSO personnel, including the ability to conduct and follow-up inquiries regarding the status and outcome of investigations and administrative or legal proceedings.

Annex 1: Acronyms

CA	Contribution Agreement
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CIVPOL	Civilian Police
DPA	United Nations Department of Political Affairs
DPKO	United Nations Department of Peacekeeping Operations
ECOWAS	Economic Community of West African States
ECOMOG	Economic Community of West African States Monitoring Group
IASC	Inter-Agency Standing Committee (consisting of various UN agencies, funds and departments as well as NGO humanitarian aid organizations)
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the Former Yugoslavia
NATO	North Atlantic Treaty Organisation
OCHA	United Nations Office for the Coordination of Humanitarian Affairs
OSCE	Organisation for Security and Co-operation in Europe
PSO	Peace Support Operation
SOFA	Status of Forces Agreement
SRSG	Special Representative of the Secretary General (United Nations)
STOP	Special Trafficking Operations Programme of the United Nations Mission in Bosnia-Herzegovina
UNMIK	United Nations Mission in Kosovo/a
UNHCHR	United Nations High Commissioner for Human Rights
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Development Fund for Children
UNIFEM	United Nations Development Fund for Women
UNMIBH	United Nations Mission in Bosnia-Herzegovina
UNOMIL	United Nations Observer Mission in Liberia
UNTAET	United Nations Transitional Authority in East Timor
VPU	Vulnerable Persons Unit
WFP	United Nations World Food Program

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Endnotes

- ¹ This term is used to include the different forms of international peace missions ranging from peacekeeping, peacebuilding to what is now termed peace enforcement.
- ² Brahimi 2000, at para. 13.
- ³ Report of Special Rapporteur on Violence Against Women, 2001, at para. 57. See also, UNIFEM 2000, p. 33.
- ⁴ In defining rape as “a physical invasion of a sexual nature under circumstances which are coercive,” the ICTR recognised in the Akayesu judgement that coercion may be “inherent in certain circumstances, such as armed conflict...”. Prosecutor v. Akayesu at para. 688. The ICTY had a similar view in the Kunarac judgement when it found that one of the defendants could not reasonably have assumed a rape victim had freely consented to the act, even though she kissed him and helped him remove his clothing, in light of the “general context of the existing war-time situation and the specifically delicate situation of the Muslim girls detained...”. Prosecutor v. Kunarac et al at para. 646.
- ⁵ For example, in the southern part of the South Kivus in the Democratic Republic of Congo, there are whole communities wherein every single woman has been raped either by militia groups or armies. This is regarded by the local population as a clear strategy for community fragmentation and conflict generation.
- ⁶ See Rome Statute, Preamble and Articles 7(1)(g) crimes against humanity; 8(2)(b)(xxii) war crimes-international armed conflict; 8(2)(e)(vi) war crimes-internal armed conflict; 7(1)(h) and 7(1)(c) and 7(2)(c) crimes against humanity of trafficking and gender-based persecution.
- ⁷ See for example, Prosecutor v. Jean Paul Akayesu, Trial Chamber Judgement (ICTR) finding rape and sexual violence to constitute genocide; Prosecutor v. Delalic et al (ICTY) and Prosecutor v. Furundzija (ICTY) finding rape and sexual violence to be a form of torture.
- ⁸ Brownlie 1990.
- ⁹ In describing the rationale for holding commanders or superiors responsible for the actions of their subordinates, one tribunal stated: “It is absurd to consider a commander a murderer or rapist because one of his soldiers commits a murder or rape. Nevertheless, where murder and rape and vicious, revengeful actions are widespread offences, and there is no effective attempt by a commander to discover and control the criminal acts, such a commander may be held responsible, even criminally liable, for the lawless acts of his troops, depending upon their nature and the circumstances surrounding them.” United States Military Commission in Yamashita, decision of 7 December 1945. Text reprinted in Friedman (ed.), *The Law of War* (1972), vol. II, p. 1597. See also, article 28 of the Rome Statute regarding command and superior responsibility.
- ¹⁰ Brahimi Report 2000, para. 14.
- ¹¹ Deen, Thalif. “HIV/AIDS Threatens UN Peacekeeping,” 17 November 2003, Inter Press Service News Agency. International Alert, Mazurana & Piza Lopez at p. 43, July 2002
- ¹² Sandra Whitworth at pp 176-191, in Moxon-Browne ed, *New York 1998 & International Alert*, Mazurana & Piza Lopez at p. 43, July 2002
- ¹³ Security Council Resolution 1325, para 6.
- ¹⁴ Rome Statute, Articles 7(1)(c) and 7(2)(c).
- ¹⁵ See Vienna Convention, Article 53; .
- ¹⁶ Brownlie, 1990. Schabas 2000, p. 354.
- ¹⁷ Rome Statute, Article 68.
- ¹⁸ Rome Statute, Articles 43(6) and 68.
- ¹⁹ Trafficking Protocol, Articles 6 and 7.
- ²⁰ Id. at article 7.
- ²¹ Statement on the Occasion of the First Anniversary of the adoption of Security Council Resolution 1325, 31 October 2001, United Nations, New York. See also UNIFEM 2002.
- ²² Resolution 1325, para. 8(c) and (b).
- ²³ Corrin 2000 at p. 8.
- ²⁴ See, Rede 2000. For a fuller discussion of UNTAET’s Gender Affairs Unit, see Whittington 2003.
- ²⁵ Constitution of East Timor, Part I, Sec. 6(j).
- ²⁶ Constitution of East Timor, Part II, Title I, Sec. 17.
- ²⁷ Lyth 2001 at pp. 10-11.
- ²⁸ Lyth 2001.
- ²⁹ Lyth 2001. at p. 16.
- ³⁰ Whittington 2003, at p. 23 and East Timor “Women’s Charter of Rights.”
- ³¹ Lyth 2001, at p. 22
- ³² Lyth 2001, at p. 16.
- ³³ Lyth 2001, at pp. 19-20.
- ³⁴ Lyth 2001; See also UNIFEM 2000.
- ³⁵ See for example Report of Special Rapporteur on Violence Against Women 2001 at para 58:
- ³⁶ Security Council Res 1325, paras. 10-11.
- ³⁷ Brahimi Report 2000, at x.
- ³⁸ Brahimi Report 2000, at p.14
- ³⁹ The use of traditional justice systems as transitional justice mechanisms is not covered in this paper, since the parameters of this paper are within the context of the role of PSOs.
- ⁴⁰ Naik, 2003b.

- ⁴¹ Graça Machel Report 1996, pp. 23-26.
- ⁴² Lyth 2001; Corrin 2000.
- ⁴³ McKenna 2002.
- ⁴⁴ In a joint UNHCR/Save the Children (UK) report, 67 clear cases of abuse by field staff in refugee camps were documented. These were mainly by locally recruited personnel, but also expat personnel from UN agencies and International NGOs. The report has been reviewed by the UN Office of Internal Oversight Services (OIOS) which discovered further cases at the same time that it dismissed many of the allegations in the original UNHCHR report – in many cases without contacting the victims. To date, action has been reported in only five cases. See Naik, 2003b. The original UNHCR/Save the Children report has never been officially published. An executive summary, however, was released and can be accessed at: www.unhcr.cr/cgi-bin/texis/vtx/home/openssl.pdf?id=3c7cf89a4&tbl=PARTNERS. Additionally, the Report of the UN OIOS is available at http://www.un.org/Depts/oios/reports/a57_465.htm.
- ⁴⁵ Secretary General's Bulletin, 1999.
- ⁴⁶ Secretary General Bulletin 1999 at para. 7.2. This provision draws from the language of common article 3 of the Geneva Conventions.
- ⁴⁷ UNMIBH's program has been criticised for not addressing the problem comprehensively and instead focusing on nightly raids on brothels or clubs, which often reopen later under a different name. The strategy drives the operation further underground and makes it difficult to gather helpful evidence to address the full spectrum of the operation, according to its critics (McKenna 2002). Similarly, women's groups criticised the unreadiness of international staff to deal with trafficking in Kosovo/a. According to one report, despite the clear evidence that trafficking had become more of a problem with the arrival of PSOs elsewhere in the region "no preventive work had been undertaken before or after the arrival of the international community to Kosovo/a. Neither KFOR, UN or OSCE had any education on trafficking in their training for mission members. No organisation had any kind of Code of Conduct for their mission members regarding the exploitation of women subject to trafficking." (Lyth, 2001)
- ⁴⁸ Code of Personal Conduct, Rule 4.
- ⁴⁹ Peacekeeping Handbook.
- ⁵⁰ IASC report 2003.
- ⁵¹ Confidential interview. See also, Naik 2003b.
- ⁵² Naik, 2003b.
- ⁵³ Naik, 2003b, at p. 15
- ⁵⁴ For example, if trafficking or enforced prostitution is outlawed in the host state but not the contributing state, there would be no recourse on the part of host state authorities against those who participated in any way in a situation taking place on their territory. Similarly, it has been the case that certain other acts of sexual assault might be criminal in the host state but not the contributing state – such as marital rape, which is not considered an offense in many countries that have contributed troops to UN operations. In light of the fact that "forced marriages" have been reported in different UN missions, this gap can result in impunity for serious and severe violations of women's human rights if so-called husbands are allowed to sexually assault their "wives" with impunity. See Bedont 2001.
- ⁵⁵ Model SOFA, para. 48. See
- ⁵⁶ See Bedont 2001 at pp. 26-27.
- ⁵⁷ There seems to be even more of a gap when it comes to CivPol personnel than military personnel. Persons serving as part of a state's military contingent are subject to that state's military code and courts martial which theoretically have an interest in maintaining discipline and order among troops. It is unclear in many cases how CivPol personnel are to be held accountable for their actions though the responsibility and obligation lies with their contributing states.
- ⁵⁸ It should be noted that the NATO agreements discussed here are those concluded between NATO Member States governing the presence of foreign troops in receiving states. It has been the case that when NATO concludes a SOFA with non-NATO states where it will deploy or contribute to a peacekeeping presence, the agreement has not been as equitable and jurisdictional problems arise similar to those discussed here with UN SOFA's. One example is the case of NATO's agreement governing (Stabilisation Force) SFOR troops in Bosnia. A report issued by UNHCHR and UNMIBH described a case in which a civilian operating under the SFOR mandate 'purchased' two women from a brothel owner for 7,000 deutsche mark (US\$ 3,057). According to the report, "NATO declined to waive the SFOR member's diplomatic immunity; he left Bosnia without legal repercussions." (UNMIBH/OHCHR 2000, p. 7)
- ⁵⁹ See NATO SOFA., Articles VII(2) and (3).
- ⁶⁰ UNIFEM, 2002 at p. 72; Human Rights Watch, 2003 at pp. 48-50.
- ⁶¹ McKenna, 2002.
- ⁶² UNWIRE 2003.
- ⁶³ See International Convention Against the Recruitment, Use, Financing and Training of Mercenaries, 1989, and OAU Convention for the Elimination of Mercenaries in Africa, 1972.
- ⁶⁴ Commission on Human Rights, "The Use of Mercenaries As a Means of Violating Human Rights and Impeding the Exercise of the Right of Peoples to Self-Determination," Resolution 2003/2 adopted at the 47th meeting, 14 April 2003.
- ⁶⁵ See for example, Grieg 2001 at pp. 19, 20-30, 42-43, 45-46 and 97-99.
- ⁶⁶ Grieg 2001 at 42-43.
- ⁶⁷ Grieg 2001 at 45-46.
- ⁶⁸ Convention on the Rights of the Child, Articles 5,7 and 8
- ⁶⁹ Model SOFA, Article 49.

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