

Saint Louis University Public Law Review

Volume 22
Number 2 *The Protection of Children's Rights
Under International Law (Volume XXII, No. 2)*

Article 16

2003

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Recommended Citation

Schmiechen, Malinda M. (2003) "Parallel Lives, Uneven Justice: An Analysis of Rights, Protection and Redress for Refugee and Internally Displaced Women in Camps," *Saint Louis University Public Law Review*: Vol. 22 : No. 2 , Article 16.

Available at: <https://scholarship.law.slu.edu/plr/vol22/iss2/16>

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**PARALLEL LIVES, UNEVEN JUSTICE: AN ANALYSIS OF RIGHTS,
PROTECTION AND REDRESS FOR REFUGEE AND INTERNALLY
DISPLACED WOMEN IN CAMPS**

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I. INTRODUCTION

The Women's Commission for Refugee Women and Children estimates that 80% of displaced persons throughout the world are women and children. In 1999, the World Refugee Survey estimated that 14 million persons were displaced outside their own country and at least 21 million were displaced within their own country.¹ Many displaced women seek protection in camps outside and inside their own country. Women in camps have very little power to determine how they are treated and as a result are exposed to and experience discrimination and abuse. Military personnel, rebels, police, fellow refugees and in some cases, representatives of international organizations regularly violate the human rights of women in camps.

This paper analyzes the situation of externally and internally displaced women in camps and the legal rights, protection and redress they have under international law. This paper will first describe the discrimination against and degradation of externally displaced women in camps, followed by an analysis of the legal protection women can access locally, nationally and internationally. The paper will then recount the discrimination against and degradation of internally displaced women in camps, accompanied by a legal analysis of the national and international laws that these women can use if they are victims of violence. Finally, the paper will close with conclusions on the situation of both externally and internally displaced women in camps.

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1. Julie Dugan et al., *Assessing the Opportunity for Sexual Violence Against Women and Children in Refugee Camps*, J. HUMANITARIAN ASSISTANCE 1 (Aug. 22, 2000), available at <http://www.jha.ac/articles/a060.htm>.

A. *Overview of International Law and Displaced Women*

International law provides specific protection only to externally displaced women: that is, women who have crossed a recognized international border, as refugees.² Conversely, international law does not specifically address the rights and needs of internally displaced women: that is, women who have fled their homes but remain within their country. For example, international law guarantees access to shelter, food, health care, and sanitation for externally displaced women, whereas international law guarantees none of these basic needs to internally displaced women.

1. Externally Displaced Women

The 1951 Convention on the Status of Refugees ("Refugee Convention") and its 1967 Protocol are the leading international legal instruments that protect externally displaced persons. The Refugee Convention was written to protect refugees from World War II, but was expanded under the 1967 Protocol to include all refugees. The Refugee Convention defines a refugee as a person who has a "well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country."³

The Refugee Convention states that the laws of the host country where the refugee camp is located are to protect and govern the daily lives of the refugees.⁴ Thus, the laws that directly affect externally displaced women in camps vary according to which country the women are in. In addition, the international laws that govern the rights of externally displaced women are dependent upon the international and regional treaties to which the host country is a party.

The Refugee Convention and its Protocol must be understood as responses to the World War II and Cold War refugee problems respectively.⁵ However, since the end of the Cold War, the international community has become increasingly aware of the limitations of these legal instruments and how they do not adequately address many international problems such as violence against refugee women and internally displaced persons. In sum, these international instruments are outdated and need to be reformed.

2. Convention Relating to the Status of Refugees, art. 1(2), *opened for signature* July 28, 1951, 189 U.N.T.S. 150, 152 [hereinafter Refugee Convention].

3. *Id.* art. 1(2), 189 U.N.T.S. at 152.

4. *Id.* art. 2, 189 U.N.T.S. at 156.

5. Luke T. Lee, *Protection of Internally Displaced Persons in Internal Conflicts*, 3 ILSA J. INT'L & COMP. L. 529, 532 (1997).

The United Nations ("UN") has mandated the United Nations High Commissioner for Refugees ("UNHCR"), a UN agency, to implement the Refugee Convention. According to its statute, the UNHCR is to provide "international protection, under the auspices of the United Nations, to refugees who fall within the scope of the present Statute,"⁶ that is, externally displaced persons. The UNHCR's services and oversight are critical to the well being of externally displaced women. While generally the situation of externally displaced women in the camps is very difficult, these women are better off in many respects than internally displaced women, who are not guaranteed the protection that the UNHCR provides.

2. Internally Displaced Women

Even though no specific international treaty or UN agency exists to protect internally displaced women, the UN has been working since 1992 to develop protection mechanisms to help internally displaced persons. The UN defines internally displaced persons as "persons or groups of persons who have been forced to leave or flee their homes or places of habitual residence as a result of armed conflict, internal strife, systematic violation of human rights or natural or man-made disasters, and who have not crossed an internationally recognized State border."⁷

As in the case of externally displaced persons, the national laws of the country where the internally displaced persons live, theoretically, govern and protect them. Additionally, the international laws that internally displaced persons can take advantage of are dependent upon which international and regional treaties their country has signed and ratified. However, the internally displaced cannot rely on their governments to protect them because in most instances, the actions of the government are responsible for their displacement or for violations of their rights. For example, in Sudan, government bulldozers frequently demolish shelters where internally displaced persons live.⁸

Typically, a state must give its consent to a UN agency or an international humanitarian organization before the agency or organization can provide assistance to the internally displaced persons. The international organization or the UN must seek the state's consent because each state has the sovereign right to determine its internal affairs. Additionally, if the state or the party in power does not give its consent, it can be difficult and dangerous to help

6. *Statute of the Office of the United Nations High Commissioner for Refugees*, G.A. Res 428, U.N. GAOR, 5th Sess., Supp. No. 20, at para. 1, U.N. Doc. A/Res/428 (1950), available at http://www.unhcr.ch/html/menu3/b/o_unhcr.htm [hereinafter UNHCR Statute].

7. Lee, *supra* note 5, at 530 (citing The Draft Declaration on Internally Displaced Persons, adopted by The International Law Association (Helsinki, 1997)).

8. Dr. Curtis Doebbler, *The Human Rights of Internally Displaced Persons in Sudan*, available at <http://www.huquq.com/elibrary/sudan-curtis.pdf>.

internally displaced persons. During the conflict in Ethiopia, for example, the Ethiopian government allowed an international humanitarian organization to provide assistance, but those in need of assistance were in rebel-held territory, and the rebels in control of the territory refused to give their permission.⁹ In some cases of extreme humanitarian crisis, such as the case of the Kurds in Iraq, the UN Security Council can issue a binding resolution that allows the UN or an international humanitarian organization to intervene without the consent of the state.¹⁰

The UN and international humanitarian organizations could expedite aid and protection to internally displaced persons if the Refugee Convention and UNHCR's mandate included them. Yet, the UN is reluctant to expand the Refugee Convention or the UNHCR's mandate for several reasons. First, a state's sovereign right to govern domestic affairs complicates the extent to which the UN or an international humanitarian organization can intervene in a state. In addition, a significant part of the system of refugee protection would have to change, such as the definition of who is a refugee, a refugee's right to asylum and non-refoulement; that is, a refugee's right not to be returned to the country the refugee fled. For example, host countries that ordinarily accept refugees may turn away internally displaced persons at the border if the UNHCR is protecting them within their own country.¹¹ Finally, some UNHCR employees are hesitant about increasing UNHCR's mandate because it could put the agency in a position where it takes the responsibility of protecting displaced persons from the sovereign state.¹²

In 1992, the Secretary-General of the UN, Boutros-Ghali appointed Francis Deng as the Representative on Internally Displaced Persons' to advocate for the internally displaced and to try to overcome many of the barriers to international protection these persons face.¹³ In 1998, the Representative released a document entitled "Guiding Principles on Internal Displacement" ("Guiding Principles").¹⁴ The document covers general principles on internal displacement, principles relating to protection from and during displacement,

9. Zama Coursen-Neff, *Preventive Measures Pertaining to Unconventional Threats to the Peace such as National and Humanitarian Disasters*, 30 N.Y.U. J. INT'L L. & POL'Y. 645, 688-89 (1998).

10. HILARY CHARLESWORTH & CHRISTINE CHINKIN, *THE BOUNDARIES OF INTERNATIONAL LAW: A FEMINIST ANALYSIS* 172 (2000).

11. Bemba Fonkoh, *A Half-Century of International Refugee Protection: Who's Responsible, What's Ahead?*, 18 BERKELEY J. INT'L L. 260, 266 (2000).

12. *Id.* at 265.

13. THE BROOKINGS INSTITUTION, *MANDATE AND ACTIVITIES OF THE REPRESENTATIVE OF THE SECRETARY-GENERAL ON INTERNALLY DISPLACED PERSONS, DR. FRANCIS M. DENG*, (April 2002), available at <http://www.brook.edu/dybdocroot/fp/projects/idp/mandate.htm>.

14. *Id.*

and principles relating to humanitarian assistance.¹⁵ These guiding principles remain a useful tool for advocates of the internally displaced.

Several UN agencies, including the UNHCR, are actively involved in providing assistance to many internally displaced groups. The UN Office for the Coordination of Humanitarian Affairs ("OCHA") is charged with coordinating the UN's policy, advocacy and response to all humanitarian emergencies.¹⁶ Additionally, a UN inter-agency committee, the "Inter-Agency Standing Committee," made up of seven UN agencies such as UNHCR, the United Nations Development Programme ("UNDP") and the World Food Programme ("WFP") exists to enhance communication among humanitarian organizations that provide emergency aid.¹⁷ Yet, despite the seemingly large amount of UN activity, internally displaced persons continue to lack access to sufficient food, shelter, medical care and physical protection.

3. Researching the Situation of Externally and Internally Displaced Women Together

It is important to research the situation of externally and internally displaced women together because both groups suffer many of the same abuses, yet their different international legal status has a distinct impact on how their rights are protected. The legal disparity between the two groups highlights the effectiveness and ineffectiveness of international refugee, human rights and humanitarian law. The effect of the distinct legal status of externally and internally displaced women has meant that humanitarian programs and scholarship on international protection has developed independently. Yet the needs and concerns of both groups are similar enough that programs for externally displaced women would be helpful to internally displaced women, whereas new legal scholarship on the situation of internally displaced women would be helpful to externally displaced women. For example, the UN can replicate programs and services for both groups such as a mobile court, while the UNHCR can take advantage of existing international

15. *See generally* UNITED NATIONS OFFICE FOR THE COORDINATION OF HUMANITARIAN AFFAIRS, GUIDING PRINCIPLES ON INTERNAL DISPLACEMENT, BY THE REPRESENTATIVE OF THE SECRETARY-GENERAL ON INTERNALLY DISPLACED PERSONS, U.N. Doc. E/CN.4/1998/53/Add.2 (1998) *available at* http://www.reliefweb.int/ocha_ol/pub/idp_gp/idp.html [hereinafter Guiding Principles].

16. UNITED NATIONS OFFICE FOR THE COORDINATION OF HUMANITARIAN AFFAIRS, BASIC FACTS ABOUT THE OCHA, *available at* http://www.reliefweb.int/ocha_ol/about/facts/html (last visited Feb. 21, 2003).

17. INTER-AGENCY STANDING COMMITTEE, STATEMENT ON THE INTERNATIONAL CRIMINAL COURT, May 31, 1999, *available at* http://www.reliefweb.int/ocha_ol/pub/iasc/iascicc.htm.

documents, such as the Guiding Principles, to improve the situation of externally displaced women.

Additionally, this paper researches the situation of refugee and internally displaced women together because advocates for the internally displaced have suggested that the UN should write a separate treaty or expand the Refugee Convention to protect internally displaced persons. In addition, refugee scholars, non-governmental organizations and UN employees are debating whether the UN should also expand UNHCR's mandate to include internally displaced persons or whether OCHA's coordination efforts are sufficient.

B. Background on Camps for the Externally and Internally Displaced

This research focuses only on the experiences of externally and internally displaced women in camps. Some displaced women in both groups live outside the camps, such as in apartments, with host families¹⁸ or in the forest. However, for the purposes of this research, it is easier to describe and compare what is happening to displaced women if the focus remains on a common living arrangement, such as a camp.

1. Camps for the Externally Displaced

The UNHCR oversees the organization of camps for externally displaced persons. Such camps are found throughout the world, including, for example, in Kenya, Tanzania, Guinea and Thailand. The UN initially thought that refugees would stay in camps temporarily and that the camps would help "modernize" persons by encouraging them to use new agricultural techniques, for example.¹⁹ However, many refugees have spent years in camps, such as the Somali refugees in Kenya who have lived there since 1991.²⁰ Additionally, refugee camps have not modernized refugees. Rather, refugees tend to reject new technology and prefer to hold on to traditional ways of life.²¹

Refugees come to camps in order to find protection. The UNHCR, in conjunction with international humanitarian organizations and the host country, provide the refugees with health care, housing and food. Refugees are expected to stay in the camps until they are resettled in another country or in

18. For example, in Russia, 65% of internally displaced persons in Inguestia are staying with host families. UNICEF, UNICEF HUMANITARIAN APPEAL FOR CHILDREN AND WOMEN JAN.-DEC. 2002, Feb. 11, 2002, available at <http://www.reliefweb.int/w/rwb.nsf/s/1AB7B62F3FE4083A85256B600052FBD7>.

19. Barbara Harrell-Bond, *Are Refugee Camps Good for Children?*, J. HUMANITARIAN ASSISTANCE 2 (posted Sept. 19, 2001), available at <http://www.jha.ac/articles/u029.htm>.

20. DOCTOR'S WITHOUT BORDERS, DADAAB REFUGEE CAMPS IN KENYA, available at <http://www.refugeecamp.org/curriculum/task7/dadaab.htm> (last visited Feb. 21, 2003) [hereinafter Dadaab Refugee Camps].

21. Harrell-Bond, *supra* note 19, at 3.

the host country.²² In some places, such as Kenya, refugees are allowed outside the camp, while in others, such as Guinea, refugees are kept in the camps by camp security.

Host countries usually place camps in remote parts of the country near a border. In Kenya, for example, a collection of refugee camps called the Dadaab camps are located in the eastern part of the country near Somalia.²³ In the case of Thailand, camps for Cambodian refugees from 1978 to 1985 were located on the Thai-Cambodian border.²⁴

Refugee camps vary in appearance. In the Western Sahara, a refugee camp for Sahrawi people consists of neat rows of tents.²⁵ In Kenya, refugees from Somalia, Ethiopia, Uganda and Sudan have built mud huts in the camp and have grown thorn bushes around the huts to keep themselves safe.²⁶ Many camps, such as those in Nepal where refugees from Bhutan live, have schools, counseling services and libraries.²⁷

2. Camps for the Internally Displaced

The UN does not always oversee or even establish camps for internally displaced persons. Instead, state governments run some camps, as in the case of Burundi,²⁸ or camps are established by internally displaced persons

22. Note, according to Article 26 of the Refugee Convention, refugees are supposed to be allowed to move freely in the host country, that is, they are supposed to be allowed to leave the camp but can be restricted to the camp if other non-citizens of the country are similarly restricted. Refugee Convention, *supra* note 2, art. 26, 189 U.N.T.S. at 172.

23. DADAAB REFUGEE CAMPS, *supra* note 20.

24. Interview with a doctor, representative of an international humanitarian organization, in Minneapolis, Minn. (Feb. 26, 2002) (on file with author) [hereinafter Interview with a doctor]. The oppressive Khmer Rouge government was in power in Cambodia from 1975 until 1979 when the Vietnamese invaded Cambodia during 1978 and 1979. During and after the Vietnamese invasion over 600,000 Cambodians fled to Thailand. SOUTHEAST ASIA RESOURCE ACTION CENTER [hereinafter SEARAC] CAMBODIAN REFUGEES, *available at* <http://www.searac.org/cambref.html> (last visited Feb. 21, 2003).

25. WESTERN SAHARA OCCIDENTAL, LIVING IN THE REFUGEE CAMPS, *available at* <http://www.arso.org/05-3.htm> (last visited Feb. 21, 2003) (excerpting Oxfam Belgium and Comité belge de soutien au peuple Sahraoui, WESTERN SAHARA (1995)) [hereinafter LIVING IN THE REFUGEE CAMPS].

26. DADAAB REFUGEE CAMPS, *supra* note 20.

27. UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, UNHCR GLOBAL REPORT 2000 305, *available at* <http://www.unhcr/pubs>.

28. Rachel Watson, *Burundi: Dreaming of Home*, EUROPA, THE EUROPEAN UNION ON-LINE 10, *at* http://europa.eu.int/comm/development/publicat/courier/courier_185/en/en_01 (last visited Feb. 11, 2003).

themselves and later identified as official camps.²⁹ Different UN agencies assist internally displaced persons in camps on an ad hoc basis. Agencies such as the UNHCR, UNDP and the United Nations Children's Fund ("UNICEF"), will assist the internally displaced persons depending on direction from OCHA and the UN General Assembly.³⁰ Today, there are internally displaced persons in over forty countries, including Sudan, Angola, Colombia, Turkey, Azerbaijan, Indonesia and Myanmar.³¹

Like refugees, internally displaced persons come to the camps to find protection. However, protection in these camps is not guaranteed because many are exposed to the activities of military and rebel units.³² For example, in Angola, internally displaced women were caught in the crossfire of the civil war in 2001 as they moved from one camp to another.³³ Additionally, camps may not provide sufficient medical care or food, as in Burundi, because international aid organizations cannot safely access the camps.³⁴ When international assistance does arrive, military groups or even the country's government can hamper the delivery of services.³⁵ During the conflict in Angola in July 2001, for example, a World Food Programme plane was attacked at the airport and the organization was forced to cease shipments of food for several days.³⁶

Camps for internally displaced persons vary in appearance. Some camps are constructed temporarily with plastic tents from the UN such as those near Herat, Afghanistan where persons are encouraged to build their own mud shelters and move out of the plastic tents.³⁷ The tents in Herat are in-line blocks with latrines near each block.³⁸ Other camps for the internally

29. ERITREAN DEVELOPMENT FOUNDATION, INTERNALLY DISPLACED PERSONS' (IDP) CAMPS IN ERITREA, Sept. 25, 2000, available at <http://www.edfonline.org/News/September/25.htm>.

30. Lee, *supra* note 5, at 529.

31. U.S. COMMITTEE FOR REFUGEES, PRINCIPLE SOURCES OF INTERNALLY DISPLACED PERSONS, Dec. 31, 2000, available at http://www.refugees.org/world/statistics/wrs01_table5.htm.

32. Julie Mertus, *The State and the Post-Cold War Refugee Regime: New models, new questions*, 20 MICH. J. INT'L L. 59, 67 (1998).

33. WORLD FOOD PROGRAMME, CAUGHT IN THE CROSSFIRE: PLIGHT OF ANGOLA'S "SINGLE-PARENT MOTHERS," July 12, 2001, available at http://www.wfp.org/newsroom/in_depth/angola.html [hereinafter CAUGHT IN THE CROSSFIRE].

34. Watson, *supra* note 28, at 2.

35. J. Oloka-Onyango, *The Plight of the Larger Half: Human Rights, Gender Violence and the Legal Status of Refugee and Internally Displaced Women in Africa*, 24 DENV. J. INT'L L. & POL'Y 349, 379 (1996) (citing SUSAN FORBES MARTIN, REFUGEE WOMEN 28-29 (1992)).

36. CAUGHT IN THE CROSSFIRE, *supra* note 33.

37. NANCY SMITH, NOTES FROM THE FIELD: INTERNALLY DISPLACED PERSONS (IDP) CAMPS IN AND AROUND HERAT, AFGHANISTAN, Spring 2002, available at <http://www.afsc.org/nomore/nsmith.htm> (last visited Feb. 21, 2003).

38. *Id.*

displaced are not so orderly. In Eritrea, for example, displaced persons lived in caves as a result of Ethiopian military offenses.³⁹ In Sudan, two million internally displaced Sudanese live in slum communities just outside the capital city.⁴⁰

In sum, even though living conditions and legal protections may vary between externally and internally displaced women, both groups depend largely on the UN and international humanitarian organizations to protect them.

C. *International Law*

1. Sources of International Law

This paper uses a variety of binding and non-binding sources of international law in its analysis. Examples of binding international law include state parties to a treaty such as the Refugee Convention, UN Security Council resolutions and customary law such as Common Article 3 of the four Geneva Conventions. Non-binding sources of international law include treaties that states are not a party to such as the Additional Protocol II to the Geneva Conventions as well as declarations, UN General Assembly resolutions, committee reports from UNHCR and international court decisions such as in the *Prosecutor v. Jean-Paul Akayesu* case from the International Criminal Tribunal for Rwanda (“ICTR”).⁴¹ Even though states are not legally bound to adhere to non-binding sources of international law, these documents influence international law because they show where international consensus exists on a specific issue,⁴² such as the rights of women to be free from violence.⁴³ Additionally, UN agencies can use treaties, declarations and committee reports to establish standards that UN organizations should follow. For example, the UNHCR uses the Convention on the Elimination of All Forms of Discrimination Against Women (“CEDAW”) to determine how services to externally displaced women should improve.

39. ERITREAN DEVELOPMENT FOUNDATION, *supra* note 29.

40. Doebller, *supra* note 8.

41. IAN BROWNLIE, *PRINCIPLES OF PUBLIC INTERNATIONAL LAW* 2 (4th ed. 1990).

42. *Id.*

43. International documents such as the Declaration on the Elimination of Violence Against Women (“DEVAW”), the Beijing Platform for Action and UNHCR Executive Committee reports include information about the violence against women in camps. *See e.g., Declaration on the Elimination of Violence Against Women*, G.A. Res. 48/104 (Dec. 20, 1993); UN DIVISION FOR THE ADVANCEMENT OF WOMEN, *THE BEIJING PLATFORM FOR ACTION* (Sept. 25, 1995), available at <http://www.un.org/womenwatch/daw/beijing/platform/plat1.htm>; UNHCR Executive Committee, *UNHCR Policy on Refugee Women*, U.N. Doc. A/AC.96/754 (Aug. 20, 1990).

2. Enforcement of International Law

International law is enforced through treaty monitoring bodies, international courts and domestic legislation. Some state parties submit reports to UN committees that monitor state party compliance with particular international treaties. For example, the Committee on the Elimination of Discrimination against Women receives reports from state parties on how they are complying with CEDAW. The International Court of Justice ("ICJ") and the International Criminal Court ("ICC"), which just began its work as a permanent court on July 1, 2002,⁴⁴ apply international humanitarian law.⁴⁵ And, although it is not a court, the UN Security Council can also enforce international law when it issues resolutions and can call for economic sanctions or military force.⁴⁶ Finally, domestic legal systems can enforce international law if a state integrates a treaty's principles into its domestic legislation.⁴⁷

International law is also enforced through less direct routes. One international law scholar described a process by which some states comply with international law through a transnational legal process.⁴⁸ This process occurs when transnational actors, such as governments, international bodies and non-governmental organizations debate and interpret general international human rights norms. After the debate, a country internalizes the international norms into its legal system⁴⁹ and eventually complies with international law when it becomes an "institutional habit."⁵⁰ For example, the UNHCR's Executive Committee issued several conclusions on the precarious situation of women refugees in camps beginning in 1985. In 1991, the Kenyan government began sheltering refugees in the Dadaab refugee camps in eastern Kenya. These camps became notoriously violent, and in particular, other refugees often physically attacked women. It was not until 1998 that the Kenyan government, with the support of the UNHCR, instituted a mobile court

44. The modern idea of a permanent international criminal court has been around since after World War I. However, plans for the court intensified after the UN Security Council established the Yugoslav and Rwandan Tribunals in the early 1990s. Brook Sari Moshan, *Women, War and Words: The Gender Component in the Permanent International Criminal Court's Definition of Crimes Against Humanity*, 22 FORDHAM INT'L L.J. 154, 165-69 (1998). Both tribunals have played a significant role in expanding international humanitarian law and have influenced the ICC statute.

45. BROWNIE, *supra* note 41, at 20.

46. CHARLESWORTH & CHINKIN, *supra* note 10, at 172.

47. Harold Hongju Koh, *How is International Human Rights Law Enforced?*, 74 IND. L.J. 1397, 1412-13 (1999).

48. *Id.* at 1397. Note, this model is constructed to explain the how states comply with international human rights law, but the model may also be applicable to refugee and humanitarian law.

49. *Id.* at 1399.

50. *Id.* at 1411.

to adjudicate refugee complaints of violence after several years and at least three Executive Committee conclusions. The UNHCR had issued non-binding conclusions on the situation of refugee women based on its interaction with international humanitarian organizations working in camps such as Dadaab. Eventually, these conclusions were internalized in Kenya through the establishment of the mobile court. In sum, this transitional legal process works to explain how some states comply with international binding and non-binding documents and how these documents are ultimately effective.

3. Gender Perspectives and International Law

International law has traditionally focused on the relations between states⁵¹ and not the private actions of individuals. As a result, international law has largely ignored injustices that occur in the private realm where the activities of women are historically centered. In many instances, states use this public/private distinction to argue that they cannot or should not interfere in the private realm and do not have an obligation to legislate the private lives of their citizens.⁵² This traditional argument has resulted in fewer protections for women in domestic life and has often excluded women from the protection of international law,⁵³ as in the case of domestic violence.

In reality, this public/private boundary is not rigid and the state does intervene in the private realm on occasion.⁵⁴ For women in refugee camps, almost every aspect of their lives is both private and public. The UNHCR, in conjunction with the host country and international humanitarian organizations, determines how a camp is organized. This includes when food is dispersed, where women live and where sanitary facilities are located.

Even though international law has traditionally marginalized women, the UN, its member states and international non-governmental organizations have begun addressing the needs of women. For example, the ICTR has been instrumental in improving the possibility that women who are victims of sexual violence during wartime can find justice in international law. The ICTR and the *Akayesu*⁵⁵ case is particularly important for this research paper because it expanded the definition of sexual violence beyond physical touching and the

51. CHARLESWORTH & CHINKIN, *supra* note 10, at 24.

52. See Eve McCabe, *The Inadequacy of International Human Rights Law to Protect the Rights of Women as Illustrated by the Crisis in Afghanistan*, 5 UCLA J. INT'L L. & FOREIGN AFF. 419, 428 (2000-2001).

53. *Id.* at 429.

54. In the U.S. for example, the government determines the amount of a welfare check, who can get legally married, and so forth. *Id.*

55. Prosecutor v. Jean-Paul Akayesu, Judgment No. ICTR-96-4-T (Int'l Crim. Tribunal for Rwanda Sept. 2, 1998).

reach of international law, finding that non-state actors, as well as state actors can violate international humanitarian law.⁵⁶

D. *Defining Gender Violence*

Violence against women is divided into structural and physical violence.⁵⁷ Structural violence occurs when a community's rules or policies systematically discriminate against or degrade groups within the community. In refugee camps, the structure of the camp administration, security, health care, shelter, food distribution, and sanitation systems discriminate against and degrade women. Physical violence includes the entire spectrum of physical contact, including sexual bartering, public beating, domestic violence, sexual assault, and rape. Both structural and physical violence against women systematically occur in camps for the displaced.

E. *Using A Feminist Analysis*

Women have always shared the experiences of refugee camps with men. However, scholars have only recently begun using a feminist perspective to analyze what happens to these women and how international law applies. International law has historically dealt with relations and obligations among states and has not governed the acts of private individuals. Moreover, international law has generally not included women except when women are in need of protection, such as under Common Article 3 of the four Geneva Conventions that governs how the military should treat civilians during an internal armed conflict.⁵⁸

Hilary Charlesworth and Christine Chinkin, leading scholars in feminist international law, take a deconstruction/reconstruction approach in their analysis. Specifically, they investigate "the silences of international law . . . [and inquire] why are some activities considered capable of international legal regulation while others are not."⁵⁹ According to Charlesworth and Chinkin, reconstruction includes "rebuilding the basic concepts of international law in a way that does not support or reinforce the domination of women by men."⁶⁰

56. The *Akayesu* case is relevant to internally displaced women because it is based on violence against internally displaced women who sought shelter from the conflict in a state compound. Kelly D. Askin, *Sexual Violence in Decisions and Indictments of the Yugoslav and Rwandan Tribunals: Current Status*, 93 AM. J. INT'L L. 97, 106 (1999).

57. Oloka-Onyango, *supra* note 35, at 382 (citing Nahid Toubia, *Women's Reproductive and Sexual Rights*, in GENDER VIOLENCE AND WOMEN'S HUMAN RIGHTS IN AFRICA (Centre for Women's Global Leadership ed., 1994) 16-17).

58. CHARLESWORTH & CHINKIN, *supra* note 10, at 48.

59. *Id.* at 60.

60. *Id.* at 61.

This analysis is helpful to women because it identifies areas of the law where women are not included and recommends ways to strengthen the law and incorporate women specifically. For example, many international documents are written in the male pronoun.⁶¹ Feminist scholars assert that the continued use of gendered language in international documents reinforces “the exclusion of women” in international law.⁶² Additionally, human rights documents and treaties such as Article 16(3) of the Universal Declaration of Human Rights (“UDHR”), generally protect the family as “the natural and fundamental group unit of society”.⁶³ This language is often used by states as an excuse to protect the family and ignore discriminatory and degrading actions, such as domestic violence, that hurt women.

II. DISCRIMINATION AGAINST AND DEGRADATION OF REFUGEE WOMEN IN CAMPS

A. *Structural Violence*

Discrimination against and degradation of externally displaced women in refugee camps is extensive and systematic. Almost every aspect of camp life negatively impacts women. Certainly, camp life for men and children is not easy but refugee women are particularly disadvantaged and in many cases abused.

1. Camp Administration

The camp administration organizes daily life in most refugee camps. The administration generally consists of local persons or refugees working in the camp. A UNHCR Protection Officer works in most camps for the externally displaced. This officer is “responsible for overseeing all security and protection duties including assisting refugees who are victims of crime with legal advice on how to pursue their cases in court.”⁶⁴ In addition, a camp may have a field officer. This person “oversees the camp management, allocates newly arrived refugees with places to live, and distributes plastic sheeting, food, and other supplies.”⁶⁵ Finally, local officials from the host country who

61. Anders B. Johnson, *The International Protection of Women Refugees*, 1 INT’L J. REFUGEE L. 221, 222 (1989).

62. CHARLESWORTH & CHINKIN, *supra* note 10, at 49 (citing D. SPENDER, MAN MADE LANGUAGE 147-48 (1980)).

63. *Id.* at 231.

64. HUMAN RIGHTS WATCH, SEEKING PROTECTION: ADDRESSING SEXUAL AND DOMESTIC VIOLENCE IN TANZANIA’S REFUGEE CAMPS, (October 2000) at ch. III at 2, *available at* <http://www.hrw.org/reports/2000/tanzania/index.htm> [hereinafter SEXUAL AND DOMESTIC VIOLENCE IN TANZANIA].

65. *Id.*

“are responsible for overseeing the administration and enforcement” of national law and policies in the camps may work at the camp.⁶⁶ In some cases, those in charge of camp administration are almost exclusively men,⁶⁷ in others, 70% of the administration consists of men,⁶⁸ while in some rare cases, such as the Sahrawi women in Western Algeria, women are in charge.⁶⁹

Discrimination against refugee women in a camp begins with the camp administration. Camp policies that require refugees to fill out paperwork have a detrimental effect on women. For example, Afghan women in Pakistani camps who are illiterate will trade food or sex for help with filling out camp documents.⁷⁰ Other camp structures that have a decidedly discriminatory effect on women include rules that give men better paying jobs than women. For example, Burmese women in Thai camps are paid 50% less than men for the work they do in the camp.⁷¹

2. Camp Security

The primary purpose of a camp is to provide protection to all refugees. The level of security on the perimeter and inside the camp varies at each. In some places the local military or refugees themselves are in charge of security.⁷² Some evidence indicates that those in charge of camp security, such as UN peacekeepers, national militia, local police, and government personnel, do not provide security but rather violate the women in the camps.⁷³ For example, Thai police have raped Burmese women as they returned to a camp after work.⁷⁴

66. *Id.*

67. Interview with a doctor, *supra* note 24.

68. Information collected from the author's research survey, filled out in Guinea by a representative of an international humanitarian organization (on file with author) [hereinafter Information collected from the author's research survey].

69. LIVING IN THE REFUGEE CAMPS, *supra* note 25.

70. KATHRYN MCCONNELL, U.S. DEPARTMENT OF STATE, INTERNATIONAL INFORMATION PROGRAMS: RELIEF AGENCIES REPORT GETTING AID INTO AFGHANISTAN, Oct. 25, 2001, available at <http://usinfo.state.gov/topical/pol/terror/01102519.htm>.

71. INITIATIVE FOR INTERNATIONAL DIALOGUE (hereinafter IIDNET), VOICES FROM THE KARENNI REFUGEE CAMP, available at <http://www.iidnet.org/icp/mac2.htm>.

72. Interview with a doctor, *supra* note 24.

73. UNHCR AND SAVE THE CHILDREN UK, NOTE FOR IMPLEMENTING AND OPERATIONAL PARTNERS ON SEXUAL VIOLENCE & EXPLOITATION, Feb. 2002, at ch. II, available at <http://www.reliefweb.int/w/rwb.nsf/vID/6010F9ED3C651C93C1256B6D00560FCA?OpenDocument> [hereinafter Sexual Violence & Exploitation] (this report is based on interviews with persons in refugee and internally displaced camps in Guinea, Liberia and Sierra Leone).

74. EILEEN PITTAWAY AND LINDA BARTOLOMEI, THAILAND FIELD TRIP: ISSUES FOR BURMESE REFUGEES IN THE THAILAND AND ALONG THE THAI BURMA BORDER, UNSW CENTER FOR REFUGEE RESEARCH, UNIVERSITY OF NEW SOUTH WALES, AUSTRALIA AND ANCORW, Feb. 2002, available at <http://www.crr.unsw.edu.au>.

In addition to abusing those they are supposed to protect, some camp security forces do not provide any security at certain times of the day.⁷⁵ In a refugee camp in Kenya where Somali, Sudanese, Ugandan and Ethiopian refugees live, Kenyan police do not go into the camp at night because many of the refugees are armed. As a result of the lack of police presence, refugees attack women in the camp at night.⁷⁶

3. Health

The health care system in refugee camps negatively impacts women's health. Camps generally do not have any female health care providers; women have limited access to contraception and have difficulty obtaining abortions. Additionally, incidents of maternal mortality, pregnancy complications, sexually transmitted diseases ("STDs"), and lack of basic hygienic goods are commonplace in most camps. For example, health providers do not test Afghani women refugees in Pakistan for STDs because the Afghani women do not want a male health provider to take care of them and there are not enough women health care providers available.⁷⁷ In addition, women of childbearing age often do not have access to contraception in the camps. For example, in a refugee camp on the Thai/Cambodian border, there was always a shortage of condoms.⁷⁸ In other instances, contraception is stolen from the camp, as in Pakistan.⁷⁹

Women who do become pregnant in the camps and seek abortions have a high risk of dying because the abortions are improperly performed.⁸⁰ The Center for Reproductive Law and Policy noted that "botched abortions constitute 25-50% of maternal deaths among refugees, compared with 13% of

75. DADAAB REFUGEE CAMPS, *supra* note 20.

76. *Id.* Note, the UNHCR has spent additional money in the past years buying bullet proof jackets and adding thornbushes around the camp to increase security. UNHCR MID-YEAR REPORT, COUNTRY OPERATION KENYA (2000), at 68, *available at* <http://www.unhcr.ch/pubs/fdrs/my2000/ken.pdf>.

77. See BBC News, *Afghan Refugee Women at Risk* (Nov. 3, 2001), *available at* http://news.bbc.co.uk/1/hi/english/world/south_asia/newsid_1630000/1630970.stm.

78. Interview with a doctor, *supra* note 24.

79. BBC News, *supra* note 77.

80. Some young women do not have access to abortions because abortion is illegal in the host country. SEXUAL VIOLENCE & EXPLOITATION, *supra* note 73, ch. III (A) (f) (i).

such deaths worldwide.”⁸¹ Women who carry their pregnancies to term are susceptible to malnourishment, infection, and hazardous birthing conditions.⁸²

Women in refugee camps also suffer from STDs. In Zambia, one humanitarian aid worker noted that “sexually transmitted diseases prevail” among Congolese refugee women.⁸³ The rate of STDs among women and girls in one refugee camp in Tanzania increased when soap was not delivered to the camp for over a year.⁸⁴

4. Housing

Camp officials often ignore women’s housing needs. In refugee camps in Guinea, many refugees are required to build their own housing.⁸⁵ A woman who is the head of a household may have a difficult time building her own shelter because she lacks the technical knowledge and/or the time to build the shelter.⁸⁶ When housing is available, unaccompanied women are often housed with strangers and as a result are more susceptible to violence.⁸⁷ In Guinea, for example, when an adult male is not in the shelter, women and girls are more vulnerable to physical violence from “neighbors, care givers and male friends of the mother.”⁸⁸ In Zambia, households headed by single mothers are not grouped together, and as a result, these women are isolated and are also susceptible to violence.⁸⁹

5. Sanitation

Camp sanitation policies also expose women to violence. Often camp latrines are placed far from the shelters in unlit, isolated areas. In Guinea,

81. CENTER FOR REPRODUCTIVE LAW AND POLICY, *DISPLACED AND DISREGARDED: REFUGEES AND THEIR REPRODUCTIVE RIGHTS*, October 2001, at ch. B, *available at* http://www.crlp.org/pub_art_refugees.html.

82. *Id.* (referring to UNITED NATIONS POPULATION FUND [hereinafter UNPF], *PREVENTING INFECTION AND PROMOTING REPRODUCTIVE HEALTH*, 2001, at 21, *available at* <http://www.unfpa.org/aids/response/chapter08.htm>).

83. Winnie Ogana, *Girls are Easy Prey in Zambian Refugee Camp*, RELIEF WEB, (April 11, 2001), *at* <http://www.reliefweb.int/w/rw.nsf/s/96C8835548B3087485256A2B006B4FDC>.

84. REFUGEES INTERNATIONAL, *NOTES FROM THE FIELD: THE IMPACT OF SOAP SHORTAGES ON FEMALE REFUGEES IN TANZANIA*, *available at* <http://www.reliefweb.int/>.

85. Interview with a social worker, representative of an international humanitarian organization, in Minneapolis, Minn. (Mar. 19, 2002) (on file with author) [hereinafter Interview with a social worker].

86. *Id.*

87. Interview with a doctor, *supra* note 24.

88. *SEXUAL VIOLENCE & EXPLOITATION*, *supra* note 73, ch. III (B) (a).

89. Penny Dale, *Zambia Project Aims to Protect Women Refugees*, REUTERS ALERTNET (Dec. 6, 2001), *at* <http://www.alertnet.org/thefacts/reliefresources/349815>. In December 2001, CARE International began a project to monitor and evaluate violence against women and girls in two refugee camps in Zambia.

Liberia and Sierra Leone, most sexual attacks on girls occur when the girls go to the latrine or the bathroom.⁹⁰ It is also reported that in Guinea, the walls of the women's latrines are perforated with holes used for peeking at the women.⁹¹ In Pakistan, Afghani women wait until dark to go to the latrines because of traditional cultural rules, thereby increasing their chances of attack at night and harming their renal system because of the lack of water intake throughout the day.⁹²

6. Food

Camp food distribution policies generally ignore women and do not stop other refugees from limiting the women's food supply. Camp officials control the supply of food. In Thailand for example, Thai officials control what type of food Burmese refugees plant in the camps.⁹³ Camp officials also determine how food is distributed. Generally, men are in charge of the distribution.⁹⁴ Food is generally distributed according to food ration cards. Usually, male heads of households are given these cards.⁹⁵

The biased food distribution plans harm women even more when a shortage of food exists. The UNHCR recently noted, in a document to international organizations that work in refugee camps, that food distributed for thirty days in reality only feeds the camp for ten.⁹⁶ When food is distributed to women, they may lose it. For example, in Guinea, men will sell the family food rations for alcohol.⁹⁷ In other cases, refugees will take food away from women who are the head of the household because women lack protection or because refugees are following cultural beliefs that prohibit women from eating certain types of food distributed in the aid packages.⁹⁸

The resulting shortage of food makes women resort to sexual bartering and exposes them to domestic violence. In some cases, the women and girls are physically stunted. Public health scholars found that Sudanese women who grew up in refugee camps have pelvises that are too small to deliver children naturally because they suffered from malnutrition when they were young.⁹⁹ In

90. SEXUAL VIOLENCE & EXPLOITATION, *supra* note 73, ch. III (B) (a).

91. Interview with a social worker, *supra* note 85.

92. BBC News, *supra* note 77.

93. VOICES FROM THE KARENNI REFUGEE CAMP, *supra* note 71.

94. Dugan et al., *supra* note 1, at 2.

95. Royce Bernstein Murray, *Sex for Food in a Refugee Economy: Human Rights Implications and Accountability*, 14 GEO. IMMIGR. L.J. 985, 997 (2000).

96. SEXUAL VIOLENCE & EXPLOITATION, *supra* note 73, ch. III (A) (i) (ii).

97. Information collected from the author's research survey, *supra* note 68.

98. Ninette Kelley, *Report on the International Consultation on Refugee Women*, 1 INT'L J. REFUGEE L. 233, 237 (1989).

99. Harrell-Bond, *supra* note 19.

Zambia, women in camps exchange sex for food and other resources.¹⁰⁰ In Pakistan, too, non-governmental organizations report that Afghani women refugees are engaging in prostitution to get the goods they need to survive.¹⁰¹

B. *Physical Violence*

The structural violence that women experience in the camp provides the basis for the physical violence that is perpetrated against them. Physical violence against women in refugee camps includes sexual exploitation, public beating, domestic violence, sexual assault and rape.

1. Sexual Bartering

A majority of women in refugee camps barter sex in exchange for resources or the use of camp facilities. A common expectation among women and men is that women and girls will use sex to get what they and their families need to survive, including sometimes the use of a toilet.¹⁰² A male refugee in a camp in West Africa stated: "If you do not have a wife or a sister or a daughter to offer the NGO workers, it is hard to have access to aid."¹⁰³

2. Public Beating

Physical violence against women extends beyond sexual bartering to the public beating of old women. In Guinea, other refugees charge old women, who are alone in the camps, with witchcraft, blaming and beating them for some misfortune or illness that has happened.¹⁰⁴

3. Domestic Violence

Physical violence against women in camps also occurs in the private realm, as incidents of domestic violence are high. In Tanzania, Refugee International estimates that 90% of Burundi and Congolese women refugees experience domestic violence.¹⁰⁵ In Guinea, one humanitarian aid worker estimated that 60% of women experience domestic violence.¹⁰⁶ Domestic violence in camps occurs not only between intimate partners, but also between widows and

100. Dale, *supra* note 89.

101. BBC News, *supra* note 77.

102. Interview with a doctor, *supra* note 24.

103. SEXUAL VIOLENCE & EXPLOITATION, *supra* note 73, ch. III (A) (b).

104. Interview with a social worker, *supra* note 85.

105. REFUGEES INTERNATIONAL, PROTECTION AND SUPPORT OF WOMEN'S RIGHTS DEFENDERS LACKING IN TANZANIAN REFUGEE CAMPS, August 13, 2001, available at <http://www.reliefweb.int>.

106. Information collected from the author's research survey, *supra* note 68.

extended family members, such as Afghan women in Pakistani camps because their families consider them a financial burden.¹⁰⁷

4. Sexual Assault and Rape

Not surprisingly, many women and girls are sexually assaulted and/or raped in the camps. Intimate partners, military personnel, strangers and acquaintances sexually assault women in the camps. "Unaccompanied women, adolescents and single parent heads of household[s] tend to be at a greater risk [of violence] than other women."¹⁰⁸ In Tanzania, men will rape Congolese women refugees they want to marry if they cannot afford to pay the dowry.¹⁰⁹ In addition, refugee women and girls in Zambia are often attacked when they first arrive at the camp¹¹⁰ and in Kenya, armed bandits attack Somali women while they gather firewood outside the camp.¹¹¹

In sum, the situation of refugee women in camps is horrendous. Camp policies either ignore or discriminate against women. Moreover, these policies create a culture where women are exploited for any reason, by anyone.

III. PROTECTION AND JUSTICE FOR EXTERNALLY DISPLACED WOMEN

Local, national and international laws ideally govern refugee camps for the externally displaced. UN and international humanitarian organizations, in conjunction with national and local government representatives, are responsible for enforcing and implementing these laws. Some of these laws do not address the needs of women while others that do are difficult to enforce or are ignored.

It is difficult for most of the women who experience structural and physical violence to seek and receive any type of redress. When reporting mechanisms do exist, they only address incidents of physical violence against women and ignore the systemic discriminatory structural abuses that occur. The existence of reporting mechanisms does not in itself guarantee that women will come forward. For example, in West Africa, if the abuser is an aid

107. McConnell, *supra* note 70.

108. THE WOMEN'S COMMISSION FOR REFUGEE WOMEN AND CHILDREN, SEXUAL VIOLENCE IN REFUGEE CRISIS, *available at* <http://www.womenscommission.org/special/guidelines/sexviol.html> (last visited May 14, 2003) [hereinafter SEXUAL VIOLENCE IN REFUGEE CRISIS].

109. REFUGEES INTERNATIONAL, VIOLENCE AGAINST WOMEN AND DOWRY PRICING IN CONGOLESE REFUGEE CAMPS, *available at* <http://www.reliefweb.int/> [hereinafter DOWRY PRICING IN CONGOLESE REFUGEE CAMPS].

110. Ogana, *supra* note 83.

111. MARY ANN FITZGERALD & SHEP LOWMAN, PROTECT REFUGEE WOMEN AS THEY GATHER FIREWOOD (Refugee International), *available at* <http://www.reliefweb.int/w/rwb.nsf/s/1554CE423D6F34FOC12566710056ADDC>.

worker, women are often hesitant to report the abuse for fear that the supply of assistance will end.¹¹² Or, if the abuser is another refugee, the women may not come forward because they are afraid that other refugees will attack them for complaining.¹¹³

A. *Camp Rules*

Most camps adopt local camp rules. It is unclear how well these camp rules are followed. In Kenya, the refugee community uses *Sharia* law instead of local or national laws to resolve disputes.¹¹⁴ In Tanzania, male elders in the refugee camp often resolve disputes in the community using traditional tribal rules.¹¹⁵ If a woman does complain to the group about some type of violence, it is difficult to enforce a judgment or punishment that the elders have given.¹¹⁶ Human Rights Watch recently noted that community based mediation in Tanzania specifically, “should not be treated as an acceptable substitute for redress through the criminal justice system.”¹¹⁷

In Tanzania, if a woman complains of sexual violence, the local remedy is to move her to another part of the camp.¹¹⁸ In Kenya, camp officials will move a woman who complains of violence to a different camp completely.¹¹⁹ In other camps, the solution is more harmful to the woman. For example, one international organization noted that in camps where Congolese refugees live, if a man rapes a woman, the community solution is for the woman to marry her rapist.¹²⁰ One representative of an international organization remarked ironically that if a woman experiences violence, she would be better off abandoning the camp altogether.¹²¹

B. *National Laws of the Host Country*

In addition to local camp rules, the national laws of the host country are supposed to protect and provide security for refugees. The “country of asylum has the primary responsibility for ensuring the personal security of refugees in its territory, the laws of each State provide the basic legal protection for the

112. SEXUAL VIOLENCE & EXPLOITATION, *supra* note 73, ch. III (A) (b).

113. NJARI GITONGA, TRIBAL, MODERN LAW DIFFERENCES CAUSE TROUBLE, *available at* <http://www.mssc.edu/international/mccaleb/kenya/tribal.htm> (last visited May 14, 2003).

114. *Id.*

115. SEXUAL AND DOMESTIC VIOLENCE IN TANZANIA, *supra* note 64, ch. III.

116. *Id.* ch. IV.

117. *Id.*

118. *Id.*

119. Gitonga, *supra* note 113.

120. DOWRY PRICING IN CONGOLESE REFUGEE CAMPS, *supra* note 109.

121. Interview with a doctor, *supra* note 24.

security of refugees.”¹²² Additionally, the government of the country of asylum has the responsibility to investigate refugee complaints and prosecute those responsible for perpetrating the crimes.¹²³ For refugee women, the application of host country’s laws does not guarantee that the government will promote their right to be free of structural and physical violence. Moreover, when national legal remedies do exist, they may not be effective because women are not confident they can safely access the system.

One positive development in this regard is in Kenya. The Kenyan government and the UNCHR have established a mobile court in 1999 that went to the Dadaab camps in eastern Kenya.¹²⁴ The court was established to “expedite prosecution of crimes inflicted on refugees.”¹²⁵ The court has had a slow start. In 2000, the court convicted only 3 persons who had raped women in the Dadaab camps.¹²⁶ The low number of convictions may be a result of the low number of women who use the court for redress. Many women in the camps continue to use the traditional law because they can get some type of compensation and do not fear retribution.¹²⁷

In a recent study on domestic violence in refugee camps in Tanzania, Human Rights Watch found that there was confusion among Tanzanian and UNHCR officials concerning who was responsible for responding to incidents of domestic violence. “As a result [of this confusion], often cases were circulated from person to person with little effect and leaving the victim confused or discouraged from further reporting or using their cases in court.”¹²⁸ Moreover, Tanzanian police “did not take adequate measures . . . to prevent or to respond to violence against women refugees . . . [the police had a] degree of corruption, a general lack of awareness about the seriousness of such abuses and lack of resources . . . rather than investigate reports of domestic violence the police simply refer the victims to UNHCR and other organizations for counseling.”¹²⁹

C. International Law

122. *International Protection: The personal security of refugees, Conclusion by the Executive Committee*, UNHCR, ch. IV, para. 26, U.N. Doc. EC/1993/SCP/CRP.3 (1993) [hereinafter *International Protection*].

123. SEXUAL VIOLENCE IN REFUGEE CRISES, *supra* note 108.

124. GITONGA, *supra* note 113.

125. U.S. COMMITTEE FOR REFUGEES, COUNTRY REPORT: KENYA, 1999, available at <http://www.refugees.org/world/countryrpt/africa/1999/kenya.htm>.

126. The Nation, *Double Agony for Women Refugees* (June 22, 2001), available at <http://allafrica.com/stories/200106210401.html>. Dadaab camps shelter over 100,000 persons. GITONGA, *supra* note 113.

127. *Id.*

128. SEXUAL AND DOMESTIC VIOLENCE IN TANZANIA, *supra* note 64, ch. III.

129. *Id.* ch. VII.

Women can assert their rights in the refugee camps using international law. Additionally, international refugee, human rights and humanitarian law can influence how externally displaced refugees are treated.

1. International Refugee Law

As discussed earlier, the Refugee Convention and the 1967 Protocol are the primary international legal instruments that protect externally displaced refugees. The general purpose of the Refugee Convention is to provide protection under Article 33 to those who cross an internationally recognized border and to ensure that refugees who are protected under the Convention are not returned to the country they fled under the principle of non-refoulement.¹³⁰

Advocates for refugees have not used the Refugee Convention as an instrument to promote issues affecting women. In fact, only recently have countries such as the United States granted women refugee status under the Refugee Convention because they were persecuted as women.¹³¹ The Refugee Convention, like so many other international treaties, uses the male pronoun when referring to a refugee. Additionally, the Refugee Convention does not mention the specific situation of women except in Article 24, which governs refugees and labor issues. This article states that the same labor rules apply to refugees as they do to nationals of the host country, including rules regarding women's work. This reference to "women's work" presumably refers to domestic work such as childcare, cooking and house cleaning. Refugee women may also benefit from a host country's maternity laws and regulations under Article 24. Additionally, Article 12(2) of the Refugee Convention specifically states that "Rights previously acquired by a refugee . . . more particularly rights attaching to marriage, shall be respected by a Contracting State."

Even though the Refugee Convention refers to women in limited, traditional ways, women could use other articles in the instrument to help them assert their rights, for example Article 1(f)(c). The Refugee Convention and its Protocol define who is and who is not protected as a refugee under international law. Article 1(f) describes whom the Refugee Convention does not protect. This article specifically states that "the provisions of this convention shall not apply to any person with respect to whom there are serious reasons for considering that . . . (c) He has been guilty of acts contrary to the purposes and principles of the United Nations."¹³² Originally, Article

130. Refugee Convention, *supra* note 2, 189 U.N.T.S. at 176.

131. See Andrea Binder, *Gender and the "Membership in a Particular Social Group" Category of the 1951 Refugee Convention*, 10 COLUM. J. GENDER & L. 167, 167 (2001).

132. Refugee Convention, *supra* note 2, art. 1(f) (Article 1(f) also states that a refugee is also not covered by the Convention if (a) "He has committed a crime against peace, a war crime, or a

1(f) of the Refugee Convention was drafted to exclude World War II war criminals.¹³³ Now, with the rise of women's human rights in international law, women refugees could use this section of the Refugee Convention to exclude refugees who commit acts against women that do not uphold the purposes and principles of the UN.

The Preamble of the UN Charter and Articles 1 & 2 state the purposes and principles of the UN.¹³⁴ The Preamble refers to "faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women." Article 1 of the Charter states that the purposes of the UN, among others, are to promote and encourage "respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion." Additionally, Article 2 states that as a member of the UN, the state shall not act in a manner that is "inconsistent with the purposes of the United Nations."

The UN defines fundamental human rights in the UDHR. The UDHR asserts that "everyone is entitled to all the rights and freedoms set forth . . . without distinction."¹³⁵ The UDHR lists a number of rights applicable to refugee women and girls such as "the right to life . . . and security of person,"¹³⁶ the right not to be tortured or be subject to degrading treatment,¹³⁷ the right to have equal protection before the law¹³⁸ and the right to adequate health and well-being which includes "food, clothing, housing and medical care."¹³⁹

State courts have used Article 1(f)(c) to exclude from the protection of the Refugee Convention government officials as well as non-state actors who acted contrary to the UN's purposes and principles.¹⁴⁰ The Canadian Supreme Court, in a recent case involving a Sri Lankan national who was convicted of drug trafficking, held that a person who commits an act that is a "sufficiently serious and sustained violation of fundamental human rights as to amount to persecution,"¹⁴¹ should be excluded from the Refugee Convention under Article 1(f)(c). In that case, the court found that drug trafficking was not

crime against humanity, as defined in the international instrument drawn up to make provision in respect of such crimes; (b) He has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee.").

133. GUY S. GOODWIN-GILL, *THE REFUGEE IN INTERNATIONAL LAW* 95 (2d ed. 1996).

134. *Id.* at 109.

135. Universal Declaration on Human Rights, G.A.Res. 217 A , U.N. GAOR, 3rd Sess., art. 2, U.N. Doc. A/810 (1948) [hereinafter UDHR].

136. *Id.* art. 3.

137. *Id.* art. 5.

138. *Id.* art. 7.

139. *Id.* art. 25.

140. GOODWIN-GILL, *supra* note 133, at 114.

141. *Pushpanathan v. Minister of Citizenship and Immigration*, [1998] 1 S.C.R. 982.

against the purposes and principles of the UN because it did not relate to fundamental human rights.¹⁴²

As discussed above, externally displaced women in refugee camps suffer from sufficiently serious and sustained violations of their human rights simply because they are women. It would seem appropriate, therefore, that a refugee who systematically violated the fundamental human rights of a woman in a camp could be excluded from the protection of the Refugee Convention under Article 1(f)(c).

Some scholars may criticize the application of Article 1(f)(c) to the situation of women in refugee camps as too broad. States, like the Netherlands, do not even apply this section of Article 1(f) precisely because it can be interpreted so broadly.¹⁴³ Additionally, the traditional language of the Refugee Convention could make it difficult for a woman to argue that if another refugee takes food away from her (a violation of her right to food) then that person ought to be excluded from the Refugee Convention and sent back to the country he or she fled.

One refugee scholar suggests that before Article 1(f)(c) is applied, the adjudicator should balance the seriousness of the crime with the fear of persecution, should the host country return the perpetrator to the country he or she fled.¹⁴⁴ This is a reasonable suggestion, except it does not guarantee that those who are in charge of adjudicating the crime would value the rights of women.

The Refugee Convention has not been used to exclude a refugee who harms another while in a refugee camp. Nevertheless, the application of Article 1(f)(c) to protect the rights of women in camps may be an effective deterrent. Refugees who may want to take more than their share of the food or demand sex from vulnerable single women may not take such action if they know they might be returned to the country they just fled. Applying Article 1(f)(c) in this way would not eliminate all of the violence against women in the camps but it would help to stop some of the violence.

2. International Human Rights Law

CEDAW is, in theory, the most applicable treaty for women refugees because it condemns all forms of discrimination against women. Although

142. *Id.* para. 154.

143. James C. Hathaway & Colin J. Harvey, *Framing Refugee Protection in the New World Disorder*, 34 CORNELL INT'L L. J. 257, 271 (2001).

144. GOODWIN-GILL, *supra* note 133, at 106.

CEDAW does not specifically include or exclude refugees or internally displaced women,¹⁴⁵ several of its articles are relevant to refugee women.

CEDAW specifically calls upon state parties to “condemn discrimination against women in all its forms [and] pursue by all appropriate means . . . a policy of eliminating discrimination against women.”¹⁴⁶ CEDAW specifically requires state parties to eliminate discrimination against women by individuals and state actors in public life¹⁴⁷ and to ensure that women’s rights are legally protected¹⁴⁸ and that “public authorities and institutions shall act in conformity with this obligation [to end discrimination].”¹⁴⁹ Thus, the host nation has an obligation to ensure that national and camp rules do not discriminate against women. For example, if a camp only gives food cards to the male head of the household, the host government would be required under CEDAW to eliminate this policy and issue food cards to both men and women. In addition, if refugees publicly beat an old woman for witchcraft in a camp, the state should, under CEDAW, investigate and prosecute the perpetrators.

CEDAW defines discrimination against women as “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment, or exercise by

145. Oloka-Onyango, *supra* note 35, at 351. CEDAW’s condemnation of all forms of discrimination should also be interpreted as condemning discrimination against women because of their status as refugees or internally displaced women.

146. Convention on the Elimination of All Forms of Discrimination Against Women, *opened for signature* March 1, 1980, G.A. Res. 34/180, U.N. GAOR, 34th Sess., Supp. No. 46, art. 2, at 194, U.N. Doc. A/34/180, 1249 U.N.T.S. 14 [hereinafter CEDAW]. For example, Article 2(f) requires state parties “To take all appropriate measures, including legislation, to modify or abolish existing law, regulations, customs and practices which constitute discrimination against women.”

147. *Id.* art. 2(e), G.A. Res. 34/180 at 195; McCabe, *supra* note 52, at 431 (the language in Article 2 that refers to the elimination of discrimination against women by individuals and states sets CEDAW apart from other international treaties which generally condemn action by state parties); *id.* at 434 (CEDAW’s inclusion of individuals in this section expands the reach of CEDAW and is why some argue that Article 2 should be interpreted as ending discrimination against women in their private as well as public lives even though this is not explicitly stated); Joel Richard Paul, *Cultural Resistance to Global Governance*, 22 MICH. J. INT’L L. 1, n. 86 (2000) (not surprisingly, many state parties have reserved their right not to enforce Article 2 through a formal reservation process because they argue that the article conflicts with their cultural and/or religious law).

148. CEDAW, *supra* note 146, art. 2(c), G.A. Res. 34/180 at 195.

149. *Id.* art. 2(d), G.A. Res. 34/180 at 195; Rebecca J. Cook, *State Responsibility for Violations of Women’s Human Rights*, 7 HARV. HUM. RTS. J. 125, 159 (1994) (it is important to clarify that CEDAW only requires state parties to act with due diligence and does not attach any criminal liability to a violation of one of its articles); Kerri Ritz, *Soft Enforcement: Inadequacies of Optional Protocol as a remedy for the Convention on the Elimination of all forms of Discrimination Against Women*, 25 SUFFOLK TRANSNAT’L L. REV. 191, 205 (2001) (one scholar noted in her criticism of CEDAW, “CEDAW includes no provision for the committee to pronounce a state party in violation of CEDAW, or to order a remedy for a violation.”).

women . . . of human rights and fundamental freedoms in the political, economic, social, cultural, civil, or any other field.”¹⁵⁰ Many of the human rights and fundamental freedoms CEDAW refers to are defined in other international human rights treaties such as the UDHR, the International Covenant on Civil and Political Rights (“ICCPR”) and the International Covenant on Economic, Social and Cultural Rights (“ICESCR”). As previously mentioned, the UDHR lists a number of rights applicable to refugee women such as “the right to life . . . and security of person,”¹⁵¹ the right not to be tortured or be subject to degrading treatment,¹⁵² the right to have equal protection before the law¹⁵³ and the right to adequate health and well-being which includes “food, clothing, housing, and medical care.”¹⁵⁴ The civil and political rights listed in the UDHR are codified in the ICCPR¹⁵⁵ and the economic, social, and cultural rights of the UDHR are codified in the ICESCR.¹⁵⁶ Under these provisions, the host country should, for example, provide adequate camp security so that women are not sexually assaulted when they gather firewood (a violation of health and well-being). The host country is also obligated to provide adequate sanitation so that women can use camp latrines in privacy. Additionally, the host country must ensure that women do not face degrading or torturous treatment in the camp such as domestic violence.

In addition to articulating general principles against discrimination, CEDAW includes some specific articles that countries are obligated to adhere to. For example, Article 6 states that “State Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.”¹⁵⁷ This means that states should enact

150. CEDAW, *supra* note 146, art. 2(c), G.A. Res. 34/180 at 194; Katrin Corrigan, *Putting the Brakes on the Global Trafficking of Women for Sex Trade: An analysis of existing regulatory schemes to stop the flow of traffic*, 25 FORDHAM INT’L L.J. 151, 172-73 (2001) (general Recommendation 19 states that Article 1 should be interpreted as also including violence against women as discrimination because violence interferes with a woman’s enjoyment of her human rights and fundamental freedoms).

151. UDHR, *supra* note 135, art. 3.

152. *Id.* art. 5.

153. *Id.* art. 7.

154. *Id.* art. 25.

155. International Covenant on Civil and Political Rights, *opened for signature* Dec. 16, 1966, 999 U.N.T.S. 171.

156. International Covenant on Economic, Social and Cultural Rights, *opened for signature* Dec. 16, 1966, 993 U.N.T.S. 3.

157. CEDAW, *supra* note 146, art. 6, G.A. Res. 34/180 at 195; Michelle O.P. Dunbar, *The Past, Present, and Future of International Trafficking in Women for Prostitution*, 8 BUFF. WOMEN’S L.J. 103, 112 (1999-2000) (Article 6 focuses on ending the activities of those who organize the sexual exploitation of women, not on the women who are prostituted).

and enforce legislation so that women will no longer be taken into sexual slavery or coerced into prostitution. Article 12 states that “State Parties shall take all appropriate measures to . . . ensure . . . access to health care services, including those related to family planning.”¹⁵⁸ Under this article, host countries are obligated to end the sexual bartering that occurs in the camps. Additionally, this article articulates the right refugee women have to contraception and other reproductive health needs in the camps.

The Optional Protocol to CEDAW has a complaint mechanism that individuals or groups within the jurisdiction of the state party, including refugees, can use if any of their rights under CEDAW have been violated, provided that the host country has adopted both CEDAW and the Optional Protocol.¹⁵⁹ The CEDAW committee will not accept a complaint from the individual or group except where “all available domestic remedies have been exhausted unless, the application of such remedies is unreasonably prolonged or unlikely to bring effective relief.”¹⁶⁰ Thus, as long as a woman refugee can prove that the local and national legal systems do not provide an adequate remedy for her complaint, and the host country is a party to CEDAW and the Optional Protocol, she can submit a claim to the CEDAW committee. The Optional Protocol also empowers the CEDAW committee to inquire into “grave or systematic violations by a state party of rights set forth in the Convention” if the Committee receives reliable information that such violations exist.¹⁶¹ Therefore, if the CEDAW committee has reason to believe that a woman’s or group of women’s rights are being discriminated against in a refugee camp; the committee can initiate an investigation and will “invite the State Party to cooperate in the examination of the information.”¹⁶²

In theory, CEDAW and its Optional Protocol are adequate mechanisms for women refugees who face discrimination and degradation in the camps. However, realistically, CEDAW and its Optional Protocol are not as useful as they could be because few states have signed and ratified both documents. In fact, of the countries that host refugees discussed in this article, all but

158. CEDAW, *supra* note 146, art. 12, G.A. Res. 34/180 at 196; Mary Ruth Coffey, *From Comparison to Paradox to the Dichotomous Nature of International Human Rights and Feminist Perspective of Female Circumcision as a Violation of Human Rights of Women*, 4 DEPAUL INT’L L.J. 1, 12-13 (2000) (Article 12 is not interpreted as opposing controversial procedures such as female genital mutilation or abortion, rather the article is interpreted as requiring safe health care for women and girls who have these procedures).

159. *Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women*, U.N. GAOR, 54th Sess., Annex, 28th plen. mtg., Agenda Item 109, at 3, U.N. Doc. A/Res/54/4 (1999) [hereinafter *Optional Protocol*].

160. *Id.* at 3

161. *Id.* at 5.

162. *Id.*

Tanzania are state parties to CEDAW.¹⁶³ However, none of the host countries discussed in this article have ratified the Optional Protocol. Only Sierra Leone has signed, but not ratified it.¹⁶⁴

Therefore, even though CEDAW is the most applicable international treaty for women refugees, it is perhaps the least accessible. Even if refugee women are able to use CEDAW and its Optional Protocol to begin the complaint mechanism, the process would take a long time. Furthermore, refugee women may have left the camp by the time the complaint process is complete. CEDAW, in the end, is perhaps more effective for refugee women as a bill of rights they can assert on the local level, in the camp.

Using the transnational legal process model discussed in the introduction, it is possible to understand how CEDAW is effective and can help externally displaced women even though it is largely unenforceable. For example, in May 1999, the Inter-Agency Standing Committee of the UN issued a document entitled "Policy Statement for the Integration of a Gender Perspective in Humanitarian Assistance."¹⁶⁵ Paragraph 3 of the document specifically refers to CEDAW and the committee's commitment to its principles.¹⁶⁶ Thus, when transnational actors, such as local non-governmental organizations, international humanitarian organizations, or the UNHCR abide by this document in practice, for example, in efforts to ensure that women have an equal voice in all decision making levels of humanitarian assistance, then significant aspects of CEDAW are enforced.

D. UNHCR

The UNHCR is perhaps in the best position to protect women from experiencing discriminating and degrading behavior in refugee camps because it has the best access to the camp administrators, international humanitarian organizations and host governments. Moreover, the UNHCR appears to understand the problems women face in camps. In 1991, the UNHCR wrote that women need "a legal status that accords adequate social and economic rights; and access to such basic items as food, shelter, clothing and medical care. In addition . . . they need . . . protection against sexual and physical

163. Division for the Advancement of Women, *State Parties available at* <http://www.un.org/womenwatch/daw/cedaw/states.htm> (last visited Feb. 13, 2003).

164. Division for the Advancement of Women, *Signatures to and Ratifications of the Optional Protocol*, at <http://www.un.org/womenwatch/daw/cedaw/sigop.htm> (last visited Feb. 13, 2003).

165. Inter-Agency Standing Committee, *Policy Statement for the Integration of a Gender Perspective in Humanitarian Assistance*, May 31, 1999, at http://www.reliefweb.int/ocha_ol/pub/iasc/IASC%20gender%20policy.htm (this document addresses the issue of integrating gender for both externally and internally displaced persons).

166. *Id.* para. 3.

abuse and exploitation and protection against sexual discrimination in the delivery of goods and services.”¹⁶⁷

According to its statute, the UNHCR is to provide “international protection, under the auspices of the United Nations, to refugees who fall within the scope of the present Statute,”¹⁶⁸ that is, externally displaced persons. The UNHCR is to protect these persons by:

- (a) Promoting the conclusion and ratification of international conventions for the protection of refugees, supervising their application and proposing amendments thereto; (b) Promoting . . . any measures calculated to improve the situation of refugees (f) Obtaining from governments information concerning the number and conditions of refugees in their territories and the laws and regulations concerning them; . . . [and] (g) Keeping in close touch with the governments and inter-governmental organizations concerned¹⁶⁹

The Refugee Convention specifically cites the UNHCR and its role within the Convention, explicitly stating that the UNHCR is in charge of “supervising international conventions providing for the protection of refugees.”¹⁷⁰ Article 35 of the Refugee Convention notes that state parties agree to cooperate with the UNHCR “in the exercise of its functions, and shall in particular facilitate its duty of supervising the application of the provisions of this [Refugee] Convention.”¹⁷¹

The UNHCR frequently issues non-binding documents on special areas of concern. The UNHCR’s Executive Committee has issued a number of conclusions on international protection and in particular on the situation of women refugees. The Committee stated in Conclusion Number 73 that it

167. UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, INFORMATION NOTE ON UNHCR’S GUIDELINES ON THE PROTECTION OF REFUGEE WOMEN, U.N. Doc. EC/SCP/67, para. 3 [hereinafter NOTE ON UNHCR’S GUIDELINES].

168. UNHCR Statute, *supra* note 6, para. 1. The Statute’s definition of refugee is similar to the Refugee Convention’s definition:

Any person who, as a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality or political opinion, is outside the country of his nationality and is unable or, owing to such fear or for reasons other than personal convenience, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear or for reasons other than personal convenience, is unwilling to return to it.

Id. para. 6 (ii).

169. *Id.* para. 8.

170. Refugee Convention, *supra* note 2, 189 U.N.T.S. at 152.

170. Refugee Convention, *supra* note 2, 189 U.N.T.S. at 152.

171. *Id.*, 189 U.N.T.S. at 176.

“strongly condemned persecution through sexual violence,”¹⁷² urging states to ensure the fundamental rights of all individuals and take action to investigate and prosecute claims of sexual violence.¹⁷³

Notably, the UNHCR issued Guidelines for the Protection of Refugee Women in 1991 and Guidelines on Prevention and Response to Sexual Violence in 1995. These guidelines focus primarily on the “special protection needs” of refugee women and girls and acknowledged that “refugee women who are unable to feed, cloth, and shelter themselves and their children, for example, will be more vulnerable to physical and sexual abuse in order to obtain such necessities.”¹⁷⁴ The 1991 Guidelines state that “protection of refugee women requires adherence not only to the 1951 Convention and its 1967 Protocol but also to other relevant international instruments such as the Universal Declaration of Human Rights; . . . [and] CEDAW”¹⁷⁵ Moreover, the 1991 Guidelines note that even if a state is not a signatory to one of the treaties mentioned above, the treaties “provide a framework of international human rights standards for carrying out protection and assistance activities related to refugee women.”¹⁷⁶ Additionally, in a 1999 conclusion, the Committee noted that “there may be a need to develop complementary forms of protection”¹⁷⁷ for women refugees.

Although UNHCR’s guidelines and Executive Committee conclusions are not international law, they can improve the situation of women in camps. As mentioned earlier, although these documents are officially non-binding, advocates for displaced women can use them to influence how UN member states act and how international humanitarian organizations deliver humanitarian aid. Further, as the transnational legal model illustrates, the documents add to the debate on displaced women with the hope that host nations may eventually integrate them into their national and local practices. To illustrate, Human Rights Watch visited a camp in Tanzania run by the UNHCR in 1998 and 1999 to interview refugee and camp officials about domestic violence. Even though the situation in the camps was not ideal, Human Rights Watch documented an improvement in the situation of women

172. United Nations High Commissioner for Refugees, *Refugee Protection and Sexual Violence, Conclusion by the Executive Committee*, 44th Sess. No. 73, para. a, U.N. Doc. A/AC.96/821 (1993).

173. *Id.* para. b.

174. NOTE ON UNHCR’S GUIDELINES, *supra* note 167, para. 5.

175. United Nations High Commissioner for Refugees, *Guidelines for the Protection of Refugee Women*, section (I)(B), para. 6, U.N. Doc. EC/SCP/67 (1991).

176. *Id.*

177. United Nations High Commissioner for Refugees, *General Conclusion on International Protection, Conclusion by the Executive Committee*, No. 87(L), at para. f (Oct. 8, 1999).

in the camp and the response to domestic violence between 1998 and 1999.¹⁷⁸ This change, Human Rights Watch thought, was due in part to UNHCR guidelines.¹⁷⁹

UNHCR's increasing attention to discrimination and violence against women is no doubt beneficial to women in camps. However, the UNHCR has not issued any guidelines or conclusions that address the problem of UN personnel, aid workers and peacekeepers violating women.¹⁸⁰ Discrimination against, and degradation of refugee women by representatives of the UN and international humanitarian organizations is very serious. Not only are these actions a violation of the women's fundamental human rights, but they also set an example that persons who violate women's rights can act with impunity. It is no wonder, then, that UNHCR guidelines and conclusions are less effective than one might expect if representatives of the UN and international humanitarian organizations themselves are not following them.

The UN has an Office of Internal Oversight Services ("OIOS") that investigates UN personnel misconduct and abuse in UN operations.¹⁸¹ If a UN employee violates the "laws or standards of ethical conduct or has been responsible for misconduct, waste, abuse or mismanagement," the employee may face disciplinary action or criminal prosecution in his/her own country or in the country where the crime was committed.¹⁸² After the recent revelations in West Africa, where the UNHCR and aid workers exploited girls for sex, the UNHCR initiated a new official policy. Under this policy, the UN will expel any peacekeeper found to engage in this type of activity.¹⁸³

IV. DISCRIMINATION AGAINST AND DEGRADATION OF INTERNALLY DISPLACED WOMEN IN CAMPS

A. *Structural Violence*

1. Camp Security

178. SEXUAL AND DOMESTIC VIOLENCE IN TANZANIA, *supra* note 64, ch. IV.

179. *Id.*

180. *International Protection*, *supra* note 122, para. 34 (UNHCR does note that if "the security of refugees is violated by Government personnel, such as camp guards" that the host state should criminally prosecute the Government employee as well as internally discipline the person).

181. OIOS Homepage, at www.un.org/Depts/OIOS/.

182. *The U.N. and the Sex Slave Trade in Bosnia: Isolated Case or Larger Problem in the UN System?*: Testimony of Ambassador Nancy Ely-Raphel Before the House Comm. on Int'l Relations, Subcomm. on Int'l Operations & Human Rights, (2002), available at <http://usinfo.state.gov/topical/global/traffic/02042401.htm>.

183. *Id.*

Many internally displaced persons, specifically women, live in camps because it is safer than living in their homes. In Angola, women specifically seek out the safety of a camp because their husbands have left to join the civil war.¹⁸⁴ In Uganda, internally displaced persons fled to camps in 1997 when rebels from Sudan attacked their village.¹⁸⁵

Moving to an internally displaced camp does not ensure that a woman or man is safe because the camps are often near or in the middle of a conflict area. In 2000, in Eritrea, internally displaced persons frequently moved from camp to camp because Ethiopian military forces were nearby.¹⁸⁶ In Uganda, in June 2002, 6,000 internally displaced persons fled their camp fearing an attack by rebels.¹⁸⁷ In other countries, militia or opposition groups forcibly move internally displaced persons. In Afghanistan for example, military forces from one ethnic group evicted internally displaced persons and then bulldozed their camp, in less than an hour.¹⁸⁸

In some cases, UN Peacekeepers work at the camp to try and make it more secure. However, in some instances, such as in refugee camps, those charged with providing security, abuse the women they are mandated to protect. In a recent article on sexual violence in the camps, the UNHCR itself noted that "peacekeepers are reportedly among the highest paying customers for sex with children," paying from \$5 to \$300.¹⁸⁹ A Ugandan scholar also noted that UN troops in Mozambique had more of a negative impact than a positive impact on the internally displaced persons they were supposed to protect.¹⁹⁰

2. Health

The health problems of internally displaced persons in camps are staggering. In 2001, the Women's Commission for Refugee Women and Children found that women were in very poor health when they arrived at the camp because they had walked several days to get to the camp.¹⁹¹ Many women in camps are pregnant and suffer from additional health complications

184. CAUGHT IN THE CROSSFIRE, *supra* note 33.

185. Kacoke Madit, *IDP Camp Survey: Padibe*, at http://www.c-r.org/km/about/partners/justice_peace/surveys/idpsurveyepadibe.htm.

186. ERITREAN DEVELOPMENT FOUNDATION, *supra* note 29.

187. Henry Wasswa, *Displaced Ugandans Flee Camps*, ASSOCIATED PRESS, June 29, 2002, available at 2002 WL 23164288.

188. Human Rights Watch, *On the Precipice: Insecurity in Northern Afghanistan*, June 2002, at <http://www.hrw.org/backgrounder/asia/afghanistan/afghan-bck-03.htm>.

189. SEXUAL VIOLENCE & EXPLOITATION, *supra* note 73, ch. III (A) (c).

190. Oloka-Onyango, *supra* note 35, at 387-88.

191. Women's Commission for Refugee Women and Children, *Assessment of Reproductive Health for Internally Displaced Persons, Angola*, February 15-28, 2001, available at http://www.womenscommission.org/reports/wc_ang07.html [hereinafter *Assessment of Reproductive Health*].

because of their pregnancies. For example, in Angola many pregnant women have malaria and as a result have miscarriages and even die.¹⁹² Camps in Uganda¹⁹³ and West Africa have high rates of teen pregnancy as well as STDs.¹⁹⁴

Women in camps for the internally displaced often cannot get medical care or even the medicine they need because camps are far from medical facilities and humanitarian aid cannot get to them, or assistance is simply not available. In one camp in Afghanistan where a dozen babies are born in a week, pregnant mothers cannot get to the hospital, 50 kilometers away, because of bad roads and lack of ambulances.¹⁹⁵ In Angola, nine “health posts” serve twenty internally displaced camps where over 300,000 persons live.¹⁹⁶ Internally displaced persons in Indonesia do not have any health care facilities,¹⁹⁷ while internally displaced persons in Burundi do not have access to either health care facilities or medicine because it is too dangerous for humanitarian organizations to deliver aid since government and rebel forces are fighting each other along the main transportation routes.¹⁹⁸

192. *Id.*

193. Madit, *supra* note 185.

194. SEXUAL VIOLENCE & EXPLOITATION, *supra* note 73, ch. III (A) (f) (iv).

195. Relief Web. *Women and Girls in Herat-Afghanistan IDP Camp*, March 6, 2001, available at <http://www.reliefweb.int/w/rwb.nsf/s/7FA6E504A69A245985256A0700570C31>.

196. *Assessment of Reproductive Health*, *supra* note 191.

197. Refugees International, *Displaced Women in West Kalimantan, Indonesia*, March 7, 2002, available at <http://www.reliefweb.int/w/rwb.nsf/6686f45896f15dbc852567ae00530132/92648a55000c6bfa> [hereinafter *Displaced Women*].

198. Watson, *supra* note 28, at 2.

3. Housing

Poor housing conditions and overcrowding are typical in internally displaced camps. The type of housing in these camps ranges from plastic tents in Afghanistan¹⁹⁹ to mud huts in Uganda²⁰⁰ to caves in Eritrea.²⁰¹ In Indonesia, sixteen to twenty people from different families live together in rooms as small as four by five meters without sufficient toilets or bathrooms available.²⁰² In Angola, some internally displaced persons are initially sheltered in government run transition centers where 300 persons live in one large room.²⁰³ Living conditions in camps for the internally displaced in Burundi are so poor that some camps are shut down.²⁰⁴

4. Food

The uncertainty of food delivery to internally displaced camps is the most significant difference between the experiences of refugee and internally displaced women. The difficulty of delivering food to camps for the internally displaced means that most people are malnourished. In Indonesia, for example, the lack of nutrition directly affects pregnant women, who are in dire need of additional food.²⁰⁵ Internally displaced persons in camps in Uganda²⁰⁶ and Angola²⁰⁷ also suffer from malnutrition. Additionally, the civil wars in Burundi and Angola have made it very difficult and dangerous for humanitarian aid organizations to deliver food and other aid supplies. For example, in Angola in July 2001, the World Food Programme's plane was targeted and the agency had to stop aid delivery for a short time.²⁰⁸

As a result of the lack of food, women grow food if they can, prostitute themselves for food, or go hungry. Some women in Uganda return to their villages to grow food during the day,²⁰⁹ while women in Indonesia grow food

199. SMITH, *supra* note 37.

200. Wasswa, *supra* note 187.

201. ERITREAN DEVELOPMENT FOUNDATION, *supra* note 29.

202. Aceh Child Rights Alliance, *Those Who are Exiled: The Picture of Aceh Internally Displaced Persons in North Sumatra*, 2001, available at <http://www.acra.ws/acra/Analisis/ThoseWhoareExiled.html> (last visited July 9, 2002).

203. Nicoloe Itano, *Women Bear Brunt of Suffering Caused by Angola War*, May 9, 2002, available at <http://zimbabwe.indymedia.org/news/2002/05/303.php>.

204. Watson, *supra* note 28, at 2.

205. Aceh Child Rights Alliance, *supra* note 202.

206. Madit, *supra* note 185.

207. *Assessment of Reproductive Health*, *supra* note 191.

208. CAUGHT IN THE CROSSFIRE, *supra* note 33.

209. Madit, *supra* note 185.

at the camp.²¹⁰ Women in camps for the internally displaced in West Africa prostitute themselves for food.²¹¹

B. *Physical Violence*

The structure of daily life, or the lack thereof, provides the basis for physical violence against internally displaced women just as it does for externally displaced women. Little difference exists between the type and severity of violence internally displaced women experience in camps and that experienced by refugee women. Physical violence against internally displaced women includes prostitution, domestic violence, sexual harassment, sexual assault, and rape.

1. Sexual Bartering

It is not unusual for women to prostitute themselves for food and other resources they need to survive.²¹² Internally displaced persons in West Africa are commonly known to exchange sex for food with humanitarian employees.²¹³

2. Domestic Violence

Internally displaced women in camps also experience domestic violence. The Women's Commission found that domestic violence was a common experience among Angolan women in camps in central Angola.²¹⁴ In the spring of 2002, the UN estimated that 1/3 of displaced Angolan women suffered from domestic violence.²¹⁵

3. Sexual Assault and Rape

Some internally displaced women must contend with harassment in the camps from other displaced persons and sexual assault from armed men in and outside the camps. For example, in one camp in Afghanistan, men from one ethnic tribe harassed women from a different ethnic tribe to such an extent that some women refused to leave their tents.²¹⁶ Additionally in Afghanistan, armed Arab men living in the camps as well as military personnel who would

210. *Displaced Women in Indonesia*, *supra* note 197.

211. SEXUAL VIOLENCE & EXPLOITATION, *supra* note 73, ch. III (A)(b).

212. *Id.*

213. *Id.*

214. *Assessment of Reproductive Health*, *supra* note 191.

215. Itano, *supra* note 203. The UN based its results on a survey of internally displaced women. It is not clear whether this survey was restricted to internally displaced camps or included sample responses from internally displaced women living outside the camps as well.

216. *Precipice: Insecurity in Northern Afghanistan*, *supra* note 188.

come to the camp at night would sexually assault women living in the camp.²¹⁷ Military personnel who are not part of the camp per se, also attack women. In Angola, state military personnel perpetrate most of the rapes on internally displaced women.²¹⁸

V. REDRESS FOR INTERNALLY DISPLACED WOMEN

A. *National Law*

Ideally, the national laws of a country protect those within its jurisdiction. In the case of internally displaced women in camps, this principle presents unique and difficult problems because the state may not be able to or may not want to implement its laws because of the armed conflict, internal strife or natural and man-made disasters that caused the displacement initially. One international law scholar noted, “the very government that caused the displacement often has the primary responsibility for their protection, thus complicating access and provision of protection and assistance.”²¹⁹

In Angola, for example, the legislature passed a law that set “a minimum standard for conditions in transit centers and relocation camps” based on UN standards for refugees.²²⁰ Unfortunately, the minimum standards have not been upheld, and Angola is not in compliance with its own law.²²¹ In Sudan, the government frequently demolishes the homes of internally displaced persons around the capital city²²² and in so doing, violates its own law. This Sudanese law states that “demolitions should only take place after the displaced persons have been given alternative accommodations that have adequate services and after appropriate notice has been given to the persons whose houses are being destroyed.”²²³ However, internally displaced persons have rarely used this law to advocate for themselves because few lawyers in Sudan are interested in assisting them.²²⁴ With regard to women’s rights specifically, internally displaced women in Sudan have a difficult time asserting their right to reproductive health care or their right to be free from domestic violence because the Sudanese government does not promote women’s human rights, rather it limits women’s role in society so that their

217. *Id.*

218. *Assessment of Reproductive Health*, *supra* note 191.

219. Mertus, *supra* note 32, at 67.

220. Itano, *supra* note 203.

221. *Id.*

222. Doebller, *supra* note 8, at 4.

223. *Id.* at 9, (with reference to Decree 941 in Sudanese law).

224. *Id.* The author of this article identifies other legal rights available in Sudan that would help internally displaced people such as equality before the law and the right to freedom of movement and residence but few lawyers are using these rights to help the internally displaced.

participation in the community conforms to the role of women in an Islamic society.²²⁵

In some countries, the government cannot implement the national laws to protect internally displaced persons because the government does not control the territory on which they are found. For example, in Ethiopia, the government gave its consent to allow humanitarian aid in, but the aid was for civilians in rebel territory and the rebels did not give their consent.²²⁶ To remedy this type of situation, the UN's Draft Declaration on the Internally Displaced states that if the state cannot protect the displaced because they are not in power in that area, then those in power (the de facto authorities) have the obligation to provide protection.²²⁷ However, this provision of the Draft Declaration cannot guarantee that those in power will protect those who are displaced or even give their consent to allow international aid and protection for civilians.

In sum, it is difficult for internally displaced women to rely on their country's laws to protect them or provide them with an adequate remedy should they experience structural or physical violence in a camp. Instead, internally displaced women need to have access to international law so that they can preserve and protect their rights and find redress if their fundamental freedoms are violated.

B. *International Law*

1. *International Human Rights Law*

If another refugee or national from her country discriminates against or physically violates an internally displaced woman, she could assert her rights under the international human rights instruments to which her country is a party. See above discussion in section III C. 2. It may, in fact, be easier for an internally displaced woman, than an externally displaced refugee to initiate a claim before the CEDAW committee because the chaos in her country hampers her access to local and national remedies. As mentioned above, the CEDAW committee requires that the individual or group exhaust all domestic remedies before bringing a claim to the committee.²²⁸

Realistically, internally displaced women may have a difficult time gaining access to the CEDAW committee because only 41 countries have ratified both

225. *Id.* at 14.

226. See Coursen-Neff, *supra* note 9, at 6887-88.

227. Lee, *supra* note 5, at 530.

228. Optional Protocol, *supra* note 159, art. 2.

CEDAW and the Optional Protocol.²²⁹ Of the countries discussed in this article with internally displaced populations, only Azerbaijan has ratified both international documents. Indonesia and Burma have signed the Optional Protocol but have yet to ratify it. Seven other countries with small populations of internally displaced persons, specifically Bangladesh, Croatia, Cyprus, Mexico, Peru, and Senegal, have ratified both documents.²³⁰

Furthermore, committees that oversee human rights treaties, such as the CEDAW Committee, the Human Rights Committee, which oversees the ICCPR, and the Committee Against Torture, which oversees the Torture Convention, do not adjudicate many complaints. For example, the Human Rights Committee can hear only 30 complaints a year.²³¹ Additionally, the Committee Against Torture found only 16 violations out of the 154 complaints sent to the committee during its first 13 years.²³²

2. International Humanitarian Law

a. Common Article 3 and Additional Protocol II of the Geneva Conventions

Internally displaced women may find some legal protection in Common Article 3 and Additional Protocol II of the four Geneva Conventions if their country is involved in internal armed conflict. The four Geneva Conventions primarily govern interstate conflicts. The four Geneva Conventions share Common Article 3, which specifically governs internal armed conflicts. In conjunction with Common Article 3, Additional Protocol II to the Geneva Conventions also governs internal conflicts. Both treaties are interpreted as encompassing the basic human rights of civilians in internal armed conflict.²³³

Common Article 3, along with the four Geneva Conventions of 1949, are considered to have the legal force of customary law,²³⁴ that is, even if a

229. See Division for the Advancement of Women, *State Parties*, available at <http://www.un.org/womenwatch/daw/cedaw/states.htm> (last visited June 15, 2003). See also Division for the Advancement of Women, *Signatures to and Ratifications of the Optional Protocol*, available at <http://www.un.org/womenwatch/daw/cedaw/sigop.htm> (last visited June 15, 2003).

230. *State Parties*, *supra* note 229.

231. Oona A. Hathaway, *Do Human Rights Treaties Make a Difference?* 111 YALE L.J. 1935, 2015 (2002) (citing INTERNATIONAL HUMAN RIGHTS IN CONTEXT 740-41 (Henry J. Steiner & Philip Alston eds., 2d ed. 2000)).

232. *Id.* (citing INTERNATIONAL HUMAN RIGHTS IN CONTEXT at 777).

233. HILAIRE MCCOUBREY, INTERNATIONAL HUMANITARIAN LAW: MODERN DEVELOPMENTS IN THE LIMITATION OF WARFARE 253-255 (1998).

234. Carlyn M. Carey, *Internal Development: Is Prevention Through Accountability Possible? A Kosovo case study*, 49 AM. U.L. REV. 243, 264 (1999) (citing John R. Cook,

country is not a state party to the Geneva Conventions, the legal norms and principles of Common Article 3 are deemed to be accepted and practiced by the country as law and have the force of binding international law.²³⁵ Common Article 3 governs all parties in an internal armed conflict even when one party violates Common Article 3, the other party(ies) in the conflict are still obligated to abide by its provisions.²³⁶ Additionally, Common Article 3 is interpreted as applying to both state and non-state actors, that is, non-governmental forces are also obligated to abide by its provisions.²³⁷ The primary purpose of Common Article 3 is to prohibit the parties to the conflict from treating civilians inhumanely.²³⁸

Common Article 3 specifically states, “persons taking no active part in the hostilities . . . shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.”²³⁹ Acts prohibited under Common Article 3 include “(a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; (c) outrages upon personal dignity, in particular humiliating and degrading treatment.”²⁴⁰ Although Common Article 3 does not explicitly prohibit rape, scholars interpret subdivisions (a) and (c) as including rape.²⁴¹

Additional Protocol II expands upon the provisions of Common Article 3. In contrast to the legal force of Common Article 3, Additional Protocol II of 1977 is only binding if a country is a state party²⁴² and is not yet considered customary international law. This protocol applies “without any adverse distinction founded on race, colour, [or] sex,”²⁴³ and governs all parties in an internal conflict, including non-governmental forces.²⁴⁴ The purpose of this

Strengthening Legal Protection in Internal Conflicts, 3 I.L.S.A. J. INT’L COMP. L. 491, 491 (1997)).

235. MCCOUBREY, *supra* note 233, at 282.

236. Babafemi Akinrinade, *International Humanitarian Law and Conflict in Sierra Leone*, 15 NOTRE DAME J.L. ETHICS & PUB. POL’Y 391, 417 (2001).

237. *Id.* at 434.

238. William L. Sanders Jr. & Yuri G. Mantilla, *Human Dignity Denied: Slavery, Genocide, and Crime Against Humanity in Sudan*, 51 CATH. U.L. REV. 715, 727 (2002).

239. Geneva Convention Relative to the Protection of Civilian Person in Time of War, art. 3 (1), *entered into force* Oct. 21, 1950, 75 U.N.T.S. 287, 288.

240. *Id.*, 75 U.N.T.S. at 290.

241. William M. Walker, *Making Rapists Pay: Lessons from the Bosnian civil war*, 12 ST. JOHN’S J. LEGAL COMMENT. 449, 459 (1997).

242. Akinrinade, *supra* note 236, at 408.

243. Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts, art. 2, 1125 U.N.T.S. 609, 611 [hereinafter Additional Protocol II].

244. Akinrinade, *supra* note 236, at 419.

protocol is also to prohibit parties to the conflict from treating civilians inhumanely.²⁴⁵ Article 4 of the Protocol rearticulates portions of Common Article 3 and states that acts such as “violence to the life, health and physical or mental well being of persons . . . such as torture” are prohibited against civilians in conflicts of a non-international nature.²⁴⁶

The recent decision from the *Akayesu*²⁴⁷ case from the ICTR expanded how advocates for women can interpret Common Article 3 and Additional Protocol II to address violence against women.²⁴⁸ The ICTR determined that violations of Common Article 3 and Additional Protocol II committed or ordered by an individual person regardless of whether the person was a state or non-state actor, military commander or subordinate were within its jurisdiction.²⁴⁹ Since the *Akayesu* decision, it is possible for a non-military person to be convicted of sexual assault as a violation of Common Article 3 and Additional Protocol II even when physical contact does not occur, but was coerced and sexual in nature such as forcing a person to do activities while naked.

Internally displaced civilian women and girls who are sexually assaulted by a state or non-state actor in a camp, in a country that is experiencing internal armed conflict can assert their legal rights under Common Article 3 and can argue for the broader protections based on Additional Protocol II and

245. *Id.* at 419-20.

246. Additional Protocol II, *supra* note 243, 1125 U.N.T.S. at 612.

247. Mr. Akayesu was a mayor of a city in Rwanda, was found guilty of sexual assault against women who sought shelter in a police building. Jocelyn Campanaro, *Women, War, and International Law: The Historical Treatment of Gender-based War Crimes*, 89 GEO. L.J. 2557, 2584 (2001) (citing *Akayesu*, *supra* note 55, para. 688)).

248. The ICTR specifically defined rape in *Akayesu* as “a physical invasion of a sexual nature, committed on a person under circumstances which are coercive.” Askin, *supra* note 56, at 109 (quoting from *Akayesu*, *supra* note 55, paras. 597, 599). The ICTR further defines sexual violence as “any act of a sexual nature which is committed on a person under circumstances which are coercive.” *Id.* This definition of sexual violence includes rape and is not limited to physical contact but includes forcing a person to do activities while naked as sexual violence. *Id.* n.59.

249. *Akayesu*, *supra* note 55, art. 4, 6. The ICTR also expanded the jurisdiction of Common Article 3 and the Additional Protocol II by finding that an individual can be criminally responsible for a violation of international humanitarian law regardless of the person’s connection with the state. See Askin, *supra* note 56, at 110. Additionally, the ICTR reasoned that it is appropriate to assert jurisdiction over Common Article 3 because it is viewed as customary international law, the court also viewed certain provisions of Additional Protocol II as “emerging customary law”, primarily Article 4 of Additional Protocol II. *Akayesu*, *supra* note 55, paras. 609, 610. However, it was unnecessary for the ICTR to assert that Article 4 of Additional Protocol II in this case because Rwanda ratified Additional Protocol II in 1984. *State Parties & Signatories (ICRC)*, available at <http://www.icrc.org/ihl.nsf/WebNORM?OpenView&Start=1&Count=150&Expand=53.1#53.1>.

the *Akayesu* case as persuasive, non-binding international law. Under these provisions, internally displaced women can assert their rights to be free of sexual bartering, domestic violence, sexual assault, and rape. The *Akayesu* decision is particularly important in the case of women and girls who participate in sexual bartering in the camps because women and girls may not be freely participating in sexual bartering, rather they are providing sex under involuntary, coercive situations. It is unclear whether Common Article 3, Article 4 of Additional Protocol II and the *Akayesu* decision would prohibit violence against women by another displaced person in the camp. However, it is certain that the above provisions would prohibit government military and non-military personnel and opposition military personnel from committing violence against internally displaced women.

In addition to the Additional Protocol II's prohibition of physical violence against civilians in non-international conflicts, Article 17 of the Additional Protocol II suggests how civilians should be treated if they are displaced during the conflict. Article 17 specifically states, "all possible measures shall be taken in order that the civilian population may be received under satisfactory conditions of shelter, hygiene, health, safety, and nutrition."²⁵⁰ Additionally, Article 17 prohibits displacement of civilians for non-military reasons, but allows the forcible displacement of civilians to occur when it is necessary to protect them from combat areas or "when imperative military reasons exist."²⁵¹

Some scholars argue that criminal liability does not attach if a person is found to violate Additional Protocol II or even Common Article 3.²⁵² However, these arguments were made prior to the *Akayesu* case, which demonstrated that criminal liability can attach to violations of Common Article 3 and Article 4 of Additional Protocol II. Still, it is unclear whether criminal liability attaches to violations of other articles in Additional Protocol like Article 17. Therefore, Article 17 is more effective if it is used in conjunction with other international binding and non-binding documents to argue that basic international rights are guaranteed to women in the camps.

Finally, Article 18 of the Additional Protocol states that a relief agency can provide supplies that are essential for survival as long as the agency is humanitarian, impartial in nature and has the consent of the country in conflict.²⁵³ Article 18 is directed toward the obligations of the humanitarian organization rather than the concerned state, that is, the state under Article 18

250. Additional Protocol II, *supra* note 243, 1125 U.N.T.S. at 616.

251. Carey, *supra* note 234, at 266. Military reasons are defined as non-political reasons. *Id.* at 266-67.

252. Michael P. Roch, *Forced Displacement in the Former Yugoslavia: A Crime under International Law?*, 14 DICK. J. INT'L L. 1, 17 (1995).

253. Additional Protocol II, *supra* note 243, 1125 U.N.T.S. at 616.

is not required to allow the humanitarian aid in the country unless it promises to act in a neutral or impartial way.²⁵⁴ This Article may help internally displaced women get the assistance they need because it recognizes that states are concerned about the UN and international aid agencies providing assistance to the opposition forces and interfering in its internal affairs. Article 18 provides a mechanism for states to have some agreement from the UN and international community that those providing the assistance will not take sides in the conflict, but will only provide the necessary aid.

In sum, Common Article 3 and Article 4 of Additional Protocol can help internally displaced women assert their rights in camps to be free of physical violence. In particular, the *Akayesu* decision will be a valuable asset to advocates for internally displaced women. It remains to be seen whether Articles 17 and 18 of the Additional Protocol can be as helpful to internally displaced women.

254. MCCOUBREY, *supra* note 233, at 273.

b. The International Criminal Court (“ICC”)

Based, in part, on the jurisprudence of the two existing international criminal tribunals, as discussed earlier,²⁵⁵ the ICC prohibits intentional attacks on civilians during international²⁵⁶ and internal armed conflict.²⁵⁷ In general, the ICC’s jurisdiction is similar to that of the Rwandan and Yugoslav tribunals in that the statute uses the principles of individual criminal responsibility for violations of humanitarian law in internal conflicts²⁵⁸ and international conflict, respectively. Specifically, the ICC has “jurisdiction over persons for the most serious crimes of international concern,”²⁵⁹ including genocide, crimes against humanity, and war crimes.²⁶⁰ Another aspect of ICC jurisdiction is that it is “complementary to national criminal jurisdictions.”²⁶¹ This means that the ICC will not prosecute a case unless all domestic remedies are exhausted or unavailable.²⁶² The ICC also has jurisdiction over nationals of non-party states if the national commits genocide, a crime against humanity or war crimes in a state that is a party to the ICC²⁶³ and the state does not or is unable to prosecute the crime.

The ICC statute prohibits specific types of sexual violence, such as rape, enforced prostitution, and forced pregnancy in armed conflict of an international and non-international nature.²⁶⁴ It is important to note that the ICC statute prohibits parties in an international conflict from intentionally

255. See discussion *supra*, section I.C.3.

256. Rome Statute of the International Criminal Court, art. 8(2)(b)(i), U.N. Doc. A/CONF.183/9 (1998), available at http://www.un.org/law/icc/statute/99_corr/1.htm [hereinafter Rome Statute].

257. *Id.* art. 8(2)(c).

258. Arturo Carrillo-Suarez, *Hors De Logique: Contemporary Issues in International Humanitarian Law as Applied to Internal Armed Conflict*, 15 AM. U. INT’L L. REV. 1, 113 (1999). Rome Statute, *supra* note 256 at art 25(3) (stating “a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person (a) Commits such a crime, whether as an individual, jointly with another or through another person, regardless of whether that other person is criminally responsible; (b) Orders, solicits or induces the commission of such a crime which in fact occurs or is attempted; (c) For the purpose of facilitating the commission of such a crime, aids, abets or otherwise assists in its commission or its attempted commission, including providing the means for its commission.”).

259. Rome Statute, *supra* note 256, art. 1.

260. *Id.* art. 5.

261. *Id.* at Preamble.

262. David Tolbert, *The International Criminal Tribunal for the Former Yugoslavia: Unforeseen Successes and Foreseeable Shortcomings*, 26 FLETCHER F. WORLD AFF. 7, 18 n.5 (2002).

263. Madeline Morris, *The Jurisdiction of the International Criminal Court Over Nationals of Non-Party States*, 6 ILSA J. INT’L COMP. L. 363 (2000).

264. See Rome Statute, *supra* note 256, art. 8 (2)(b)(xxi)-(xxii); *id.* art. 8(2)(e)(vi).

stopping humanitarian aid or forcibly starving civilians,²⁶⁵ but does not explicitly prohibit these activities in internal armed conflict.

The ICC statute explicitly states that the court has the power to adjudicate the specific sex crimes as “war crimes in particular when committed as part of a plan, policy or as part of a large-scale commission of such crimes.”²⁶⁶ One scholar noted that the use of the phrase “in particular” should be interpreted as a compromise between some drafters of the statute who argued for a broad interpretation of who commits war crimes and others who argued for a more limited interpretation of who is liable for war crimes.²⁶⁷ Thus, the phrase “in particular” highlights that the court will focus on those individuals who commit war crimes as part of a plan or policy but will not exclude those who act independently of a larger plan or policy and commit the same sex crimes during an internal armed conflict.

For the purposes of this research, if an individual²⁶⁸ rapes or commits an act of sexual violence against an internally displaced woman, or orders or helps another to commit the crime, the internally displaced woman could take her claim to the ICC as long as the state where the woman lives is a party to the ICC and she has exhausted all domestic remedies or the domestic remedies are unavailable. In reality, it will be difficult for an internally displaced woman to actually file her claim with the ICC because she may not have access to legal expertise. Instead, the ICC’s explicit prohibition of sex crimes may serve more as a deterrent than as an advocacy tool because an individual can no longer sexually assault an internally displaced woman in a camp with impunity.

C. *The United Nations*

No specific UN agency exists to serve and protect internally displaced persons. The UNHCR protects internally displaced persons when the General Assembly requests it to do so.²⁶⁹ Officially UNHCR’s criteria to provide humanitarian assistance to internally displaced persons includes the following:

265. See Rome Statute, *supra* note 256, art. 8 (2)(b)(xxv) (defining war crime as “intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including willfully impeding relief supplies as provided for under the Geneva Conventions”).

266. *Id.* art. 8(1).

267. See WILLIAM A. SCHABAS, AN INTRODUCTION TO THE INTERNATIONAL CRIMINAL COURT 44 (2001).

268. For purposes of this research, an individual under Article 25 of the Rome Statute can be interpreted as another displaced person, government military or non military agent, rebel or a representative from a UN agency or international organization.

269. See Lee, *supra* note 5, at 529; see also Bemba Donkoh, *A Half-Century of International Refugee Protection: Who’s Responsible, What’s Ahead?*, 18 BERKELEY J. INT’L L. 260, 263 (2000) (in 2000, UNHCR was providing assistance to 17 million refugees and 5 million internally displaced persons).

“1) There must be a specific request for involvement from the Secretary General or a competent United Nations organ . . . ; 2) The need to undertake additional activities should be a natural extension of the mandate of the Office (of UNHCR) . . . ; and 3) The concerned state should in principle consent to the UNHCR’s involvement.”²⁷⁰

1. State Sovereignty vs. International Intervention

The doctrine of non-intervention is arguably the most important principle of international law that affects internally displaced persons because it influences whether the UN can protect them or not. Article 2(7) of the UN Charter articulates this doctrine. This article states that “Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state.”²⁷¹ States frequently cite Article 2(7) to assert their right to govern their internal affairs without interference from the UN and its member states. The general principle of state sovereignty implies that the UNHCR and other UN agencies must have the consent of the concerned state before an agency can intervene. Additionally, a state may use this doctrine to bar the UN and international humanitarian organizations from providing humanitarian assistance to internally displaced persons.

In contrast, the UN Charter also includes articles that describe its mandate to promote human rights and international peace under Article 55(c)²⁷² and Chapter VII.²⁷³ Using these articles, and in particular Chapter VII as its legal basis, the UN Security Council can issue a resolution and intervene in a state’s domestic affairs without the state’s consent if the Security Council determines that a threat to international peace exists. The Security Council uses international humanitarian and human rights law in its decisions²⁷⁴ and has

270. Richard Plender, *The Legal Basis of International Jurisdiction to Act With Regard to the Internally Displaced*, 6 INT’L J. REFUGEE L. 345, 350 (1994).

271. BROWNLEE, *supra* note 41, at 108 (one international scholar described a sovereign state, as one that has a legal personality with rights and power over its territory).

272. “The United Nations shall promote . . . universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.” UNITED NATIONS CHARTER, art. 55(c).

273. Chapter VII gives the UN Security Council a mandate to “determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 [use of economic sanctions, severing diplomatic ties . . .] and 42 [use of military force], to maintain or restore international peace and security.” UN Charter at ch. VII.

274. Paul Freedman, *International Intervention to Combat the Explosion of Refugees and Internally Displaced Persons*, 9 GEO. IMMIGR. L.J. 565, 574 (1995) (citing S.C. Res. 918, U.N. SCOR, 49th Sess., at 4, U.N. Doc. S/Res/918 (1994); S.C. Res. 794, U.N. SCOR, 47th Sess. at 3, U.N. Doc. S/Res/794 (1992)).

interpreted violations of human rights as well as external and internal displacement in a country as threatening international peace and security.²⁷⁵ UN Security Council resolutions are binding international law.²⁷⁶ As binding international law, the state must abide by the resolution or face sanctions or military action as suggested in Articles 41 and 42 of the UN Charter.

In reality, the Security Council almost never passes such resolutions. One of the few examples of the Security Council taking this type of action was in the early 1990s when Iraq was violating the rights of the Kurdish people in northern Iraq. At that time, the Security Council issued Resolution 688, citing that Iraq's actions against the Kurds were a threat to international security.²⁷⁷ Based upon this resolution, the UN and international humanitarian organizations were legally allowed to intervene in Iraq's domestic affairs and provide humanitarian aid without Iraq first giving its consent.

The argument for international intervention without the consent of the state is controversial. Traditionally, states have successfully argued that territorial sovereignty supercedes humanitarian interests.²⁷⁸ However, with the rise of international human rights norms and the occurrence of humanitarian disasters where the UN and international humanitarian organizations were unable to provide immediate assistance such as in Rwanda and the former Yugoslavia, many scholars now argue that humanitarian interests should supercede the territorial interests of the sovereign state. One refugee scholar noted that "in rare and exceptional cases, the prohibition of intervention must be taken not to preclude humanitarian action,"²⁷⁹ that is, humanitarian intervention should be considered as an exception to the doctrine of non-intervention. Additionally, other scholars argue that along with its sovereign right to territorial integrity, a state also has a duty to protect those within its jurisdiction²⁸⁰ and when a state fails to uphold this duty it loses its right to claim territorial sovereignty.²⁸¹

Yet, establishing an exception to the principle of non-intervention when humanitarian concerns exist may not be so simple. In Somalia during the early

275. *Id.* at 576.

276. CHARLESWORTH & CHINKIN, *supra* note 10, at 172.

277. Freedman, *supra* note 274, at 581-82. Note the resolution does not specifically refer to the suffering of Kurdish women, rather the resolution refers to Kurdish population generally. S.C. Res. 688, UN Doc. S/Res/688 (1991) available at <http://www.un.org/docs/scres/1991/scres91.htm>.

278. Ibrahim J. Gassama, *World Order in the Post-Cold War Era: The Relevance and Role of the United Nations after Fifty Years*, 20 BROOK. J. INT'L L. 255, 279 (1994) (citing LELAND M. GOODRICH et al., CHARTER OF THE UNITED NATIONS 66-72 (1969)).

279. Plender, *supra* note 270, at 355.

280. *Id.* at 144. Scholars dispute whether a state does in fact lose its right to territorial sovereignty if it does fulfill its duty to take care of those within its jurisdiction.

281. Nancy D. Arnison, *International Law and Non-Intervention: When do Humanitarian Concerns Supersede Sovereignty?*, 17 FLETCHER F. WORLD AFF. 199, 207 (1993).

1990s, the UN initially limited its intervention to humanitarian aid but later found that it could not effectively provide aid because Somalia lacked a state structure and as a result, other non-humanitarian aid agencies like the UNDP began working in Somalia.²⁸² Moreover, when international intervention is strictly limited to protecting internally displaced persons it has been difficult for the UN agency or international organization providing the aid to restrict the aid to non-military personnel. For example, in Liberia in 1996, rebels forcibly took food that humanitarian organizations had given civilians.²⁸³ These examples illustrate why states are hesitant to allow any type of intervention into a country in the first place.

2. UNHCR & Internally Displaced Persons

Even though the UNHCR does not have a mandate to assist internally displaced persons and must contend with issues of sovereignty, the agency has been concerned about the situation of the internally displaced since the early 1990s. In 1994, UNHCR's Executive Committee specifically issued one of its conclusions on the situation of the internally displaced.²⁸⁴ In this conclusion, the committee noted that many of the circumstances that cause populations to move are the same for internally displaced persons as for refugees and that "the problems of both refugees and the internally displaced often call for similar measures with respect to prevention, protection, humanitarian assistance, and solutions."²⁸⁵ The committee also noted that in many instances, refugees and internally displaced populations are side by side and it "is neither reasonable nor feasible to treat the categories differently in responding to their needs for assistance and protection."²⁸⁶ Yet while these Executive Committee conclusions are helpful in identifying the many similarities between the two groups, they fail to address the barrier that sovereignty presents in providing adequate aid to internally displaced people and fail to suggest possible solutions to overcome the problems that sovereignty creates for internally displaced people.

This new attention to the needs of the internally displaced has led to new scholarship on how to balance the needs of the internally displaced with a state's sovereign right to govern its internal affairs. In 1992, the Representative of the Secretary-General for Internally Displaced Persons released a non-binding document entitled Guiding Principles on Internal

282. Gassama, *supra* note 278, at 295-96.

283. Leslie E. Schafer, *Learning From Rwanda: Addressing the Global Institutional Stalemate in Refugee Crises*, 6 IND. J. GLOBAL LEGAL STUD. 315, 328 n. 91 (1998).

284. *Internally Displaced Persons, Conclusion by the Executive Committee*, UNHCR, 45th Sess., No. 75, U.N. Doc. A/AC.96/839 (1994).

285. *Id.* para. b.

286. *Id.* para. g.

Displacement.²⁸⁷ This document combines principles from human rights, refugee and humanitarian law and satisfies many of the criticisms feminist scholars have about international law. The document covers general principles, principles relating to protection from and during displacement and principles relating to humanitarian assistance.²⁸⁸

Internally displaced women can assert their rights under the Guiding Principles document because it sets forth specific principles that the state and the humanitarian organizations should follow and makes particular reference to the needs of women. For example, Principle 4 of the document pays specific attention to segments of the internally displaced populations that have special needs such as “unaccompanied minors, expectant mothers, mothers with young children, female heads of household, persons with disabilities and elderly persons.”²⁸⁹ Principle 18 states that internally displaced persons have the right to “an adequate standard of living . . . regardless of the circumstances . . . [and that] competent authorities shall provide internally displaced persons with and ensure safe access to food, water, shelter, clothing, medical services and sanitation.”²⁹⁰ Furthermore, Principle 19 notes that the UN and international humanitarian organizations need to pay particular attention to women’s health needs. The above principles are helpful in reminding states and humanitarian organizations about which groups are particularly vulnerable. In addition, the right to an adequate standard of living and attention to healthcare may help women assert these basic rights.

In addition to specifically identifying the needs of women, the Guiding Principles document also addresses the need to include internally displaced women in decision-making roles. For example, Principle 18, section 3 states that “special efforts should be made to ensure the full participation of women in the planning and distribution of these basic supplies.”²⁹¹ This principle is particularly helpful to internally displaced women because it empowers them and helps to ensure that camp decisions will better reflect the needs of women such as how food is distributed and where latrines are located.

The Guiding Principles specifically describe and prohibit types of violence that women face while they are displaced. Principle 11 mentions that internally displaced persons “shall be protected in particular against: (a) Rape, mutilation, torture, cruel, inhuman or degrading treatment or punishment, and other outrages upon personal dignity, such as acts of gender-specific violence, forced prostitution and any form of indecent assault; (b) . . . sexual

287. GUIDING PRINCIPLES, *supra* note 15.

288. *Id.*

289. *Id.* principle 4(2).

290. *Id.* principle 18(1), (2).

291. *Id.* principle 18(3).

exploitation.”²⁹² These specific references to the types of violence internally displaced women experience increase awareness and promote prevention of violence against women. It also helps women who experience physical violence to identify what has happened to them and increases the chance that they will seek some type of assistance.

The Guiding Principles also describe how those providing humanitarian assistance to internally displaced persons should behave. Principle 27 states that international humanitarian organizations should regard the “protection needs and human rights of internally displaced persons and . . . respect relevant international standards and codes of conduct.”²⁹³ This principle reminds aid workers that the UN will hold them accountable for their actions and that they are not free to take advantage of the vulnerable persons they are supposed to protect.

Finally, the document addresses the issue of sovereignty and reinforces the argument that the promotion and observance of human rights may supercede state sovereignty. Principle 25 notes that a country cannot arbitrarily withhold its consent to humanitarian aid if it does not provide assistance to the internally displaced itself. In particular, the Representative for Internally Displaced Persons argues that a country’s failure to take care of its internally displaced persons is equivalent to the country abdicating its right to protect them.²⁹⁴

The Guiding Principles document is an important step forward for internally displaced persons. All of these principles address the many potential problems internally displaced women face. In addition, the document is written using binding/involuntary language, using “shall” instead of “may.” The use of mandatory rather than permissive language is important in that it does not give a country or humanitarian organization a choice as to whether to provide aid or not, rather it requires that they provide aid to the internally displaced. It also gives specific instructions about how to include women in the decision-making process and has clear examples of what human rights for the internally displaced persons mean, such as “the right to an adequate standard of living” or “the right to dignity.” Even though the Guiding Principles are non-binding, the document helps internally displaced women because international humanitarian organizations and UN agencies that work with internally displaced persons can apply the principles stated in the document when they deliver aid and protection to the camps.

VI. CONCLUSION

292. GUIDING PRINCIPLES, *supra* note 15, principle 11(2)(a), (b).

293. *Id.* principle 27(1).

294. Elizabeth E. Ruddick, *The Continuing Constraint of Sovereignty: International Law, International Protection, and the Internally Displaced*, 77 B.U.L. REV. 429, 462 (1997).

Violence against women in refugee and internally displaced camps is pervasive. In an ideal world, violence against women in camps might stop if one treaty existed that would govern all the needs and affirm all the rights of refugee and internally displaced women. This treaty would include a specific provision such as Article 1(f)(c) of the Refugee Convention so that displaced persons who violated the fundamental rights of women in a camp would not be protected under the treaty. The treaty would also use the rape and sexual assault definitions from the *Akayesu* case so that women and girls who are coerced into sexually bartering for survival can assert their right to be free from this type of abuse. This treaty would also mandate a specific UN agency similar to the UNHCR, to coordinate humanitarian efforts with the concerned country, international humanitarian organizations and camp administrators. The treaty would employ the principles outlined in the Guiding Principles document on internal displacement. The inclusion of these principles would inform the UN and international aid organizations of the specific issues facing women in the camps and help them to implement possible solutions such as reorganizing the housing or providing counselors for victims of violence. Finally, this treaty would include a provision similar to Article 18 of Additional Protocol II so that the UN and international aid organizations would promise to limit intervention to the delivery of humanitarian aid. This type of provision would ease the state's concern about the possibility that humanitarian aid would interfere with its ability to govern.

Until this treaty is written and ratified, the UN and international humanitarian organizations must continue to develop and expand programs such as the Kenyan mobile court so that refugee and internally displaced women who experience violence in a camp can find redress. Those adjudicating refugee status should consider excluding refugees who persecute the human rights of other refugees under Article 1(f)(c) of the Refugee Convention. Employees of the UN and international aid organizations must be held accountable for abusing women and girls in the camps. More attention must be paid to eradicating the structural violence women experience in the camps, because structural violence establishes the foundation for physical violence to occur. Finally, the UN, its member states and human rights advocates must advance the argument that when people are displaced they have a right to humanitarian aid and protection. Refugee and internally displaced women have the right to and need the help of the UN, its member states, and international advocates and organizations to protect their fundamental rights and freedoms.