

STEP-BY-STEP GUIDE FOR PROTECTION OFFICERS

PREVENTION OF AND RESPONSE TO SEXUAL AND GENDER-BASED VIOLENCE

Objectives of Guide

The objective of UNHCR's Step-by-Step Guide is to provide a formal step-by-step checklist to help protection officers and others handle incidents of sexual and gender-based violence more effectively. Acts of sexual and gender-based violence violate a number of human rights principles enshrined in international human rights instruments. These include the right to security of the person, the right to the highest attainable standard of physical and mental health, the right to freedom from torture or cruel, inhuman, or degrading treatment, and the right to life. Furthermore, the Declaration on Violence against Women, adopted by the General Assembly in 1993, and the Global Platform for Action, adopted in Beijing in 1995, expand the definition of violence against women and reiterate States' responsibility to protect women.

UNHCR has issued directives specifically targeting refugee women. These include *Sexual Violence Against Refugees: Guidelines on Prevention and Response*. In addition, the UNHCR Executive Committee Conclusions have addressed the issues of sexual and gender-based violence and general protection of refugee women. In particular, Conclusion no. 73 (XLIV) on Refugee Protection and Sexual Violence highlighted the urgent need for:

“States to respect and ensure the fundamental right of all individuals within their territories to personal security, *inter alia* by enforcing relevant national laws in compliance with international legal standards and by adopting concrete measures to prevent and combat sexual violence”

Protection officers should ensure the safety and well being of the survivor/victim. All possible avenues should be explored, including relocation to other camps in the country of asylum and resettlement to a third country in situations where the survivor/victim's physical security is threatened.

Acts of sexual violence violate basic human rights. Therefore, UNHCR staff have an obligation to intervene whenever cases are reported or suspected.

Sexual Violence Against Refugees: Guidelines on Prevention and Response, p. 30

1. For a full reading, see Universal Declaration of Human Rights 1948, Articles 3 and 5, International Covenant on Civil and Political Rights, 1966, Article 7, the International Covenant on Economic, Social and Cultural Rights, 1966, Article 12, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984, Articles 1 and 4, and the Convention on the Elimination of All Forms of Discrimination against Women, 1979.

This guide is meant to benefit all refugees who are vulnerable to sexual violence.

Refugees most at risk of being subjected to sexual violence:

- single women
- female heads of households
- unaccompanied children*
- children in foster care
- those in detention or detention-like situations

Sexual Violence against Refugees: Guidelines on Prevention and Response, Separated Children in Europe, Statement of Good Practice 2000

*Includes separated children unaccompanied by relatives who are not legal or previous customary primary care-givers.

DEFINITION OF SEXUAL AND GENDER-BASED VIOLENCE

Protection officers should be aware that sexual and gender-based violence includes a broad range of acts. Some of these are defined in current UNHCR guidelines.

The key principles that protection officers should remember are:

- Sexual and gender-based violence includes domestic violence.
- Both women and men can be targets of sexual and gender-based violence.
- Young women and minors, especially separated children, are particularly vulnerable to sexual violence.
- Male survivor/victims should be provided with support to overcome the cultural barriers that discourage them from reporting sexual violence.

- In the event that the guardian is the perpetrator of sexual violence, the child should be separated from the guardian, either through foster care or by finding alternative housing for the guardian.

Sexual violence is used to cover all forms of sexual assault, interference and exploitation, including “statutory rape” and molestation without physical harm or penetration.

UNHCR Sexual Violence against Refugees: Guidelines on Prevention and Response

THE DECLARATION ON THE ELIMINATION OF VIOLENCE AGAINST WOMEN

Domestic violence against women includes physical, sexual and psychological violence occurring in the family, including battering; sexual abuse of female children in the household; dowry-related violence; marital rape; female genital mutilation and other traditional practices harmful to women; non-spousal violence and violence related to exploitation.

Physical sexual and psychological violence perpetrated or condoned by the state, wherever it occurs.

Declaration on the Elimination of Violence Against Women

REFUGEE STATUS DETERMINATION

UNHCR's Executive Committee has denounced sexual and gender-based violence and recommends that States consider such violence during their procedures for determining refugee status.

“...strongly condemns persecution through sexual violence, which not only constitutes a gross violation of human rights when committed in the context of armed conflict and a grave breach of humanitarian law, but is also a particularly serious offence to human dignity...

“...recommends in procedures for the determination of refugee status, asylum-seekers who may have suffered sexual violence be treated with particular sensitivity.”

Executive Conclusion No. 73 (XLIV), 1993, paragraph (a)

Sexual and gender-based violence may affect the determination of refugee status both for the applicant who is a survivor and for the applicant or refugee who is a perpetrator.

When rape or other forms of sexual violence are committed for reasons of race, religion, nationality, political opinion or membership of a particular social group, it may be considered persecution under the definition of the term 'refugee' found in both the 1951 Convention relating to Status of Refugees and the Statute of the Office of UNHCR.

The protection officer should be particularly sensitive in cases where the asylum-seeker may have suffered sexual violence.

LEGAL ADVICE/INFORMATION/ REPRESENTATION

Only qualified persons should provide legal services. They will provide information, advice, and representation. All UNHCR staff who conduct interviews with survivors/victims should be familiar with UNHCR guidelines, related international laws and host country laws. For purposes of continuity and effective representation, the same staff should handle the case until its conclusion.

COMPLIANCE WITH NATIONAL CRIMINAL LAWS AND PROCEDURES

The local UNHCR legal adviser or protection officer must be familiar with national criminal and civil law on the subject of rape and sexual violence in general. Research should include a review of the relevant legal provisions, rules of criminal procedure, role of the authorities and any medical requirements.

HOW TO HANDLE A COMPLAINT

- The survivor/victim should be informed of what to expect from the legal process. Protection and community services should collaborate to ensure that the complainant is adequately informed of her rights, procedures and time involved in the legal process. Staff should be adequately prepared to answer any queries the survivor may have.
- The complainant should be counselled on the nature of the crime, the time it will take to investigate and prosecute the crime, and the possible outcomes from the judicial process.
- Staff should address the concerns and expectations of the complainant and her family regarding the judicial process, explain the role of UNHCR and collaborating agencies in the process, and the reproductive health services available to the survivor. This will include access to counselling, sexual health services for the treatment of injury and prevention of disease and unwanted pregnancy, as authorized under national laws.
- The protection officer will ensure that the survivor and perpetrator have identity cards and should work closely with local lawyers familiar with national laws and procedures concerning sexual violence.
- Once the protection officer receives an incident report, he/she should ensure that the complaint is recorded with the local police. The protection officer should also ensure that the medical report and a statement from the survivor/victim are recorded and communicated to the relevant national authorities (i.e., police or prosecutor).
- Crucial witnesses from the refugee community should comply with legal procedures by providing statements and attending court when required. Protection officers should determine if there are any specific legal provisions to protect survivors and witnesses giving testimony.
- The protection officer, working with security officers and police, should ensure that parties to sexual violence are protected against intimidation and other threats to physical security. He/she should also ensure that all refugee survivors/victims of sexual violence are accompanied to court hearings by UNHCR or implementing agency staff.

RESPECT FOR THE SURVIVOR/VICTIM

At all times the protection officer should ensure that the final decision on whether to institute legal proceedings is made by the survivor/victim.

CONFIDENTIALITY

The protection officer should ensure that the confidentiality of case files and identities of victims is respected.

STRICT CONFIDENTIALITY IS ESSENTIAL

Wherever possible, a victim's anonymity should be maintained. Written information on the victim must be kept locked and secure from others.

If confidentiality is breached, it could bring grave consequences for the victim, particularly if adequate protection is not in place. It may discourage others from coming forward.

Sexual Violence Against Refugees: Guidelines on Prevention and Response

The protection officer should ensure individual case information is shared with other multi-sectoral actors working in the SGBV programme. All information about the survivor/victim and alleged offender is privileged information and should not be disclosed to a third party without the informed consent of the survivor/victim. The only exception to this rule is when disclosure is required under national law, e.g., medical reports as evidence in support of the complaint of a sexual and gender-based violation. All efforts should be made to respect the confidentiality of the survivor/victim at all stages of the case.

CASE MANAGEMENT

The protection officer should maintain weekly case lists and circulate this information to other sectors representing health, community and security services working on cases of SGBV. Refugee witnesses should be given logistical support to attend court hearings. Regular follow-up should be maintained with local police and the judiciary on all cases.

ROLE OF THE POLICE

The police receive the complaint and conduct investigations following the legal and criminal procedures as laid out in the law. In accordance with the standard police procedures, they arrest the accused persons, conduct investigations, prepare charges, serve summonses and ensure that all potential witnesses appear in court. They advocate with the judiciary for the expeditious investigation and prosecution of SGBV cases and help the survivor/victim understand the legal and criminal process. Police officers should be sensitive to the needs of the survivor/victim for privacy, confidentiality and respect. Police should also participate in legal and rights-awareness education campaigns to benefit the refugee community.

ROLE OF THE JUDICIARY

The judiciary prepares the weekly case register, indicating which matters involve refugees as parties (complainant or accused). In accordance with standard procedures, the judiciary administers legal proceedings in cases of sexual and gender-based violence, including admitting cases, presiding at hearings and trial, summoning witnesses, and passing judgement and sentences. The judiciary should also participate in workshops and awareness raising initiatives organized by protection staff.

ROLE OF THE IMPLEMENTING AGENCY PROVIDING LEGAL SERVICES

Protection officers should identify local women's rights organizations and lawyers' associations working on SGBV issues and create partnerships to address the problems in refugee communities.

National women's organizations in host countries can play a valuable role in advocating and addressing the issue of violence against women. Contacts can be established with them and discussions initiated regarding the role they can play.

Sexual Violence Against Refugees: Guidelines on Prevention and Response

When an NGO is working with protection to support legal services, the following guidelines should apply:

- A representative of the organization will take instructions from the complainant. He/she will provide all the necessary information on the legal and criminal procedures with the objective of preparing the complainant and his/her family members for the court process.
- The representative will assist the complainant in applying for legal aid funding, if this assistance is available under national law. If this option is not available, UNHCR should ensure that budgets include an item to cover the costs of legal representation for victims of sexual and gender-based violence.
- A representative of the organization will accompany the complainant to the police station and court and be present during all interviews and court appearances.
- The representative of the organization should apply to the court for observer status in all cases so he/she will be able to address the court. This is particularly helpful in cases involving children.
- The legal representative should explore the possibility of the court hearing being conducted *in camera* to protect victims and their families from further trauma.
- The representative will accompany the complainant to court for all appearances. He/she will provide legal services and representation for the survivor until the case is completed.
- The organization shall maintain records of all cases and provide regular updates to protection staff.
- All service providers (health, security, community services) shall maintain records of persons of concern to UNHCR in strict confidence and shall not disclose any information to a third party.

FAIR TRIAL AND HUMANE TREATMENT

The accused is entitled to be treated with the rights accorded to a person whose guilt is not proven. UNHCR has an obligation to the accused to ensure that he has a fair trial and is subjected to humane treatment in the course of interrogation and incarceration.

*Sexual Violence against Refugees:
Guidelines on Prevention and Response,*

RIGHTS OF THE ACCUSED

UNHCR protection staff will ensure that the rights of an accused person are respected while in detention. Protection officers should monitor the progress of the case and pay attention to the following:

- Delays in the trial.
- Torture of the accused while in detention.
- Inhumane treatment.

The protection officer should intervene with local law enforcement agencies on behalf of the accused person.

ALTERNATIVE FORMS OF DISPUTE RESOLUTION

- Should the survivor/victim wish to pursue justice through traditional and customary laws, the protection officer should ensure that the procedures and processes are fair and just.
- In the event that they fail to provide justice in accordance with internationally accepted standards, the protection officer should advise the survivor/victim of these limitations.
- The final decision on which process and procedures will be adopted rests with the survivor/victim.
- The protection officer should monitor and keep track of cases in which traditional and customary laws are used.
- The protection officer should ensure that traditional dispute-resolution mechanisms are consistent with national laws and international human rights standards. When these alternative structures violate national law, protection officers should conduct training and awareness-raising with the community and encourage the refugee community to modify its conflict-resolution practices in accordance with international human rights standards.

TRADITIONS AND CUSTOMS OF THE REFUGEE COMMUNITY

Some refugee communities may have traditional means of responding to incidents of sexual violence within their community.

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CO-ORDINATION WITH OTHER ACTORS

A successful SGBV prevention and response strategy depends on collaboration with various service providers and host government authorities. The protection officer should ensure that an appropriate co-ordination mechanism is established involving police, community, and health workers to address SGBV issues.