

# Annex 2: International Legal Foundations and Standards

## MRM on grave violations against children in situations of armed conflict

| MRM requirements:      |   |   |
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| i. Context             | The acts must be committed in the context of and be associated with an armed conflict.  |   |
| ii. Victim             | A child or children, i.e., persons < 18 years of age  |   |
| iii. Perpetrator       | Members of state armed forces or non-state armed group (See Glossary for definition of state armed forces or non-state armed group. The MRM does not focus activities on civilians, although international practice shows that civilians may also be responsible for war crimes.)   |   |
| Violation              | Meaning for MRM purposes and types of incidents to report   | Relevant international legal references and international standards   |
| 1. Killing and maiming | <p><b>Killing:</b> Any action in the context of the armed conflict that results in the death of one or more children.</p> <p><b>Maiming:</b> Any action that causes a serious, permanent or disabling injury, or scarring or mutilation to a child.</p> <p>Killing and maiming of children as a result of direct targeting, crossfire, landmines, cluster munitions, improvised explosive devices or other indiscriminate explosive devices are included. Torture can also be reported under this category.</p> | <ul style="list-style-type: none"> <li>■ <b>International human rights law:</b> The Convention on the Rights of the Child (CRC) enshrines the rights to life, survival and development; and prohibition of torture or other cruel, inhumane or degrading treatment.<sup>1</sup></li> <li>■ <b>International humanitarian law:</b> <ul style="list-style-type: none"> <li>■ Civilians and persons hors de combat must be treated humanely. As a consequence, murder, torture, cruel or inhuman treatment, corporal punishment, and mutilation – whether committed against adults or children – are prohibited in all circumstances:<sup>2</sup></li> <li>■ Civilians must also be protected against the consequences of military operations. The parties to the conflict must at all times distinguish between civilians and combatants.<sup>3</sup> This implies that the following rules must be respected:                             <ol style="list-style-type: none"> <li>1. Attacks must not be directed against civilians.<sup>4</sup></li> <li>2. Indiscriminate attacks are prohibited.<sup>5</sup> Indiscriminate attacks are those:                                     <ol style="list-style-type: none"> <li>a) that are not directed at a specific military objective;</li> <li>b) that employ a method or means of combat which cannot be directed at a specific military objective; or</li> <li>c) that employ a method or means of combat the effects of which cannot be limited as required by international humanitarian law.</li> </ol>                                     As a consequence, indiscriminate attacks are those of a nature to strike military objectives and civilians or civilian objects without distinction.</li> <li>3. Launching an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated, is prohibited.<sup>6</sup></li> </ol> </li> <li>■ International humanitarian law also provides that children affected by armed conflict are entitled to special respect and protection.<sup>7</sup> Specific protection includes the prohibition of the pronouncement or execution of a death sentence against anyone younger than 18 years old at the time of the offence, when the offence is related to an armed conflict.<sup>8</sup></li> <li>■ <b>International criminal law:</b> In certain circumstances, the killing and maiming of children may constitute genocide, a crime against humanity and/or a war crime as provided in Articles 6, 7 and 8 of the Rome Statute of the International Criminal Court.</li> </ul> </li></ul> |

1 See also the International Covenant on Civil and Political Rights Art. 6.1 and 7; Convention Against Torture; Convention on the Rights of the Child (CRC) Art. 6 and 37.  
 2 Common Art. 3; GC I: Art. 12, 50; GC II: Art. 12, 51; GC III: Art. 13, 17, 87, 89, 130; GC IV: Art. 5, 27, 32, 147; API: Art. 75 (1); APII: Art. 4 (1); ICRC Study on Customary IHL: Rules 87, 89-92.  
 3 API: Art. 48; ICRC Study on Customary IHL: Rule 1.

4 API: Art. 51 (2); APII: Art. 13 (2); ICRC Study on Customary IHL: Rules 1-6.  
 5 API: Art. 51 (4); ICRC Study on Customary IHL: Rules 11–13.  
 6 API: Art. 51 (5)(b) and 57; ICRC Study on Customary IHL: Rule 14.  
 7 API: Art. 77; APII: Art. 4 (3); ICRC Study on Customary IHL: Rule 135.  
 8 GC IV: Art. 68 (4); API: Art. 77 (5); APII: Art. 6 (4).

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| <p><b>2. Recruitment or use of children by armed forces and groups</b></p> | <p><b>Recruitment:</b> refers to compulsory, forced or voluntary conscription or enlistment of children into any kind of armed force or armed group(s).</p> <p><b>Use of children:</b> refers to the use of children by armed forces or armed groups in any capacity, including, but not limited to, children, boys and girls, used as fighters, cooks, porters, messengers, spies or collaborators. It does not only refer to a child who is taking or has taken direct part in hostilities.<sup>9</sup></p> <p><b>A child associated with an armed force or armed group:</b> refers to any person below 18 years of age who is or has been recruited or used by an armed force or armed group in any capacity, including, but not limited to, children, boys and girls, used as fighters, cooks, porters, messengers, spies or for sexual purposes. It does not only refer to a child who is taking or has taken direct part in hostilities.</p> | <ul style="list-style-type: none"> <li>■ The recruitment or use of children by armed forces and groups is prohibited under international human rights law, international humanitarian law and international criminal law.</li> <li>■ <b>International human rights law:</b></li> <li>■ <u>Article 38 of the CRC:</u> requires that States Parties refrain from recruiting children below the age of 15 and to give priority to older children if recruiting those older than 15 but less than 18 years of age. The CRC also requires States Parties to take “all feasible measures” to ensure that those younger than 15 years of age do not take a direct part in hostilities.</li> <li>■ <u>The Optional Protocol to the CRC on the involvement of children in armed conflict:</u> adopted on 25 May 2000, strengthens the prohibition of child recruitment and participation in hostilities. It provides that:             <ul style="list-style-type: none"> <li>■ States Parties must take all feasible measures to ensure that members of their armed forces who have not reached the age of 18 years do not take <i>direct part in hostilities</i> (Art. 1).</li> <li>■ <i>State Parties shall ensure that persons who have not attained the age of 18 years are not compulsorily recruited</i> into their armed forces (Art. 2).</li> <li>■ States Parties must raise the minimum age for voluntary recruitment from 15 years to 16 years. Further, States Parties that permit voluntary recruitment into their national forces under the age of 18 years shall maintain safeguards to ensure that the recruitment is genuinely voluntary; that it is carried out with the informed consent of the person’s parents or legal guardians; that the person is fully informed of the duties involved in such military service and that the person provides reliable proof of age prior to acceptance into national military service (Art. 3).</li> <li>■ Armed groups that are distinct from the armed forces of a state should not, under any circumstances, recruit (whether on a compulsory or voluntary basis) or use in hostilities persons under the age of 18 years. States Parties shall take all feasible measures to prevent such recruitment and use, including the adoption of legal measures necessary to prohibit and criminalize such practices by non-governmental armed groups (Art. 4).</li> <li>■ States Parties must take all feasible measures to ensure that children who are already members of armed forces or groups are demobilized or otherwise released from service. They must also ensure that these children receive all appropriate assistance for their physical and psychological recovery and their social reintegration (Art. 6).</li> </ul> </li> <li>■ <u>The African Charter on the Rights and Welfare of the Child:</u> also goes further by prohibiting the <i>recruitment and direct participation in hostilities</i> of any person under the age of 18 years.<sup>10</sup></li> <li>■ <u>The International Labour Organization’s Worst Forms of Child Labour Convention 182 (1999):</u> defines “children” in Article 2 as all persons under the age of 18 years. Under the Convention, States “shall take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency,” including “forced or compulsory recruitment of children for use in armed conflict,” as per Articles 1 and 3. Recommendation 190 accompanying Convention 182 encourages states to make such recruitment a criminal offence.</li> <li>■ <b>International humanitarian law:</b></li> <li>■ In international armed conflicts, Additional Protocol 1 requires parties to the conflict to take all feasible measures in order that children who have not attained the age of 15 years do not take a direct part in hostilities and, in particular, to refrain from recruiting them into their armed forces.<sup>11</sup> In recruiting among those persons who have attained the age of 15 years but who have not attained the age of 18 years, the parties to the conflict shall endeavour to give priority to those who are oldest.<sup>12</sup> If, despite these rules, children take direct part in international armed conflicts and are captured, they are entitled to protections under the third or fourth Geneva Conventions, depending on whether</li> </ul> |
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9 See the Paris Principles and Guidelines on Children Associated with Armed Forces or Armed Groups (February 2007).

10 African Charter on the Rights and Welfare of the Child: Art. 2 and 22 (2).

11 Additional Protocol I, Article 77(2).

12 API: Art. 77 (2).

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|   |  | <p>they are members of an armed force of a State Party. In this situation, they must also benefit from the special protection accorded to them as children.<sup>13</sup> Children who have not attained the age of 15 years shall neither be recruited in the armed forces or groups nor allowed to take part in hostilities.<sup>14</sup> If, despite these rules, these children take part in hostilities, they are entitled to special protection accorded to them as children.<sup>15</sup></p> <ul style="list-style-type: none"> <li>■ <b>International criminal law:</b> The recruitment or use of children in hostilities can also give rise to individual criminal responsibility. It is a war crime under the Statute of the International Criminal Court to conscript children under the age of 15 years into the national armed forces or armed groups, or to use them to participate actively in hostilities.<sup>16</sup></li> <li>■ <b>Paris Commitments and Paris Principles:</b> are non-binding international standards developed by a broad range of stakeholders<sup>17</sup> in February 2007. The Paris Principles provide guidance for the protection and well-being of children associated with armed forces or groups, based on best practices and lessons learned from field experiences.</li> </ul>   |   |
| <p><b>3. Attacks on schools and hospitals</b></p> | <p>Attacks include the targeting of schools or medical facilities that cause the total or partial destruction of such facilities. Other interferences to the normal operation of the facility may also be reported, such as the occupation, shelling, targeting for propaganda of, or otherwise causing harm to schools or medical facilities or its personnel.</p> <p><i>Note: A ‘school’ denotes a recognizable education facility or learning site. Education facilities and learning sites must be recognized and known by the community as a learning space and marked by visible boundaries. ‘Medical facilities’ are places where the sick and wounded are collected and/or provided with health-care services.</i></p> | <ul style="list-style-type: none"> <li>■ <b>International humanitarian law:</b> requires parties to an armed conflict at all times to distinguish between civilian objects and military objects, and prohibits attacks directed against civilian objects.<sup>18</sup> Civilian objects are all objects not falling under the definition of military objectives, i.e., those failing to contribute to military action because of their nature, location, purpose or use, or whose destruction, capture or neutralization would provide no definite military advantage.<sup>19</sup> Civilian objects include schools and hospitals. Civilian objects are protected against attack, unless and for such time as they are military objectives.<sup>20</sup></li> <li>■ International humanitarian law also prohibits indiscriminate attacks,<sup>21</sup> including those:             <ul style="list-style-type: none"> <li>a) that are not directed at a specific military objective;</li> <li>b) that employ a method or means of combat which cannot be directed at a specific military objective; or</li> <li>c) that employ a method or means of combat the effects of which cannot be limited as required by international humanitarian law.</li> </ul> </li> </ul> <p>As a consequence, indiscriminate attacks are those of a nature to strike military objectives and civilians or civilian objects without distinction. International humanitarian law also prohibits the launching of an attack that may be expected to cause incidental damage to civilian objects, which would be excessive in relation to the concrete and direct military advantage anticipated.<sup>22</sup></p> <ul style="list-style-type: none"> <li>■ International humanitarian law provides that medical units, including hospitals, exclusively assigned to medical purposes must be respected and protected in all circumstances. However, medical units lose their protection if they are being</li> </ul> | <ul style="list-style-type: none"> <li>a) Date incident occurred</li> <li>b) Location (as specific as possible)</li> <li>c) Nature of attack (Did the attack take place in response to an attack from the affected facility?)</li> <li>d) Type of facility attacked (hospital, school, etc.)</li> <li>e) Entity responsible (state armed forces/non-state actor)</li> <li>f) Impact (closed, damaged but not closed, etc.)</li> <li>g) How did the attack occur? (Was it targeted on the affected facility, indiscriminate, accidental, a result of random violence or committed as part of a widespread or systematic attack against a civilian population? (Y/N))</li> <li>h) Consequences of attack (number of children killed/injured; period of time that the school was closed/affected; number of teachers/other staff killed/injured; period of time the hospital was closed or unable to operate to full capacity; number of medical/other staff killed/injured)</li> <li>i) Actions taken by governmental/other relevant authorities: (Was the matter reported to the relevant authorities? What actions have been taken?)</li> </ul> |

13 API, Art. 77 (3).

14 APII: Art. 4 (3)(c).

15 Additional Protocol II, Article 4(3).

16 Rome Statute: Art. 8 (2)(b)(xxvi) and 8 (2)(e)(vii). See also Statute of the Special Court for Sierra Leone: Art. 4 (c).

17 The guidelines were developed through participation of: States, human rights actors, humanitarian actors, development actors, military and security actors (state and non-state),

associated organizations, including UN organizations, other intergovernmental actors, national and international organizations and community-based organizations.

18 API: Art. 48 and 52; ICRC Study on Customary IHL: Rule 7.

19 API: Art. 52 (2); ICRC Study on Customary IHL: Rules 8–9.

20 Study on Customary IHL: Rule 10.

21 API: Art. 51 (4); ICRC Study on Customary IHL: Rules 11–13.

22 API: Art. 51 (5)(b) and 57; ICRC Study on Customary IHL: Rule 14.

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|  |  | <p>used, outside their humanitarian function, to commit acts harmful to the enemy.<sup>23</sup> In times of peace, States Parties and, after the outbreak of hostilities, the belligerents may also establish hospital and safety zones and localities –with a view to protecting from the effects of war – wounded, sick and aged persons, children under 15, expectant mothers and mothers of children under 7 years old.<sup>24</sup></p> <ul style="list-style-type: none"> <li>■ <b>International human rights law:</b> additional relevant provisions from the CRC, including the right to education (Art. 28, 29) and the right to health facilities (Art. 24).</li> <li>■ <b>International criminal law:</b> It is a war crime under the Rome Statute of the International Criminal Court (see Article 8 (2)b(ix) and 8(2)e(iv)), to intentionally direct attacks against buildings dedicated to religion, education, art, science or charitable purposes, or against historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives.</li> </ul>  | <p>Attacks on personnel</p> <ol style="list-style-type: none"> <li>a) Type of personnel (Medical/Education)</li> <li>b) Date incident occurred</li> <li>c) Location (as specific as possible)</li> <li>d) Age</li> <li>e) Sex (M/F)</li> <li>f) Nationality, religion, ethnicity (if applicable)</li> <li>g) What was the consequence of the attack? (killed/injured)</li> <li>h) How did the attack occur? (Was it targeted on the affected facility, indiscriminate, accidental, a result of random violence or committed as part of a widespread or systematic attack against a civilian population? (Y/N))</li> <li>i) Actions taken by governmental/other relevant authorities: (Was the matter reported to the relevant governmental authorities? What actions have been taken?)</li> </ol> |
| <p><b>4. Rape or other grave sexual violence</b></p> | <p>A violent act of a sexual nature to a child. It could include rape, other sexual violence, sexual slavery, enforced prostitution, forced marriage/pregnancy, or enforced sterilization.</p> <p><b>Rape:</b> is an act of non-consensual sexual intercourse. This can include the invasion of a body resulting in penetration, however slight, of any part of the body of the victims or of the perpetrator with a sexual organ, or of the genital or anal opening of the victim with any object or body part.</p> <p><b>Sexual violence:</b> is any sexual act, attempt to obtain a sexual act, or acts to traffic a child’s sexuality. Sexual violence takes many forms,</p> | <ul style="list-style-type: none"> <li>■ <b>International human rights law:</b> Children have a fundamental right to be protected from all forms of sexual violence and exploitation under international human rights law. Under Article 34 of the CRC, States Parties must “protect the child from all forms of sexual exploitation and sexual abuse.” Article 37 further specifies the protection of children from torture, cruel, inhuman and degrading treatment. The Optional Protocol on the sale of children, child prostitution and child pornography (2000) provides additional protection.</li> <li>■ <b>International humanitarian law:</b></li> <li>■ <b>General protection:</b> civilians and persons hors de combat, including the wounded, sick and shipwrecked members of armed forces or groups and prisoners of war, must be treated humanely. As a consequence, they must be protected, in all circumstances, against such acts as torture or cruel, inhuman, humiliating or degrading treatment.<sup>25</sup> More specifically, they must be protected against rape, enforced prostitution or any other form of sexual violence.<sup>26</sup></li> </ul> | <ol style="list-style-type: none"> <li>a) Date incident occurred</li> <li>b) Location (as specific as possible)</li> <li>c) Age of victim</li> <li>d) Sex (M/F)</li> <li>e) Nationality, religion, ethnicity (if applicable)</li> <li>f) Displaced or refugee (if applicable and known)</li> <li>g) Entity responsible (state armed forces/non-state entity)</li> <li>h) Whether the conduct was committed as part of a widespread or systematic attack against a civilian population. (Y/N)</li> <li>i) Actions taken by governmental/other relevant authorities: (Was the matter reported to the relevant authorities? What actions have been taken?)</li> </ol>  |

<sup>23</sup> GCI: Art. 19; GCIV: Art. 18; API: Art. 12; APII: Art. 11; ICRC Study on Customary IHL: Rule 28.

<sup>24</sup> GCIV: Art. 14.

<sup>25</sup> Common Art. 3; GCI: Art. 12, 50; GCII: Art. 12, 51; GCIII: Art. 13, 17, 87, 89, 130; GCIV: Art. 5, 27, 32, 147; API: Art. 75 (1); APII: Art. 4 (1); ICRC Study on Customary IHL: Rules 87, 89–92.

<sup>26</sup> API: Art. 75 (2)(b); APII: Art. 4 (2)(e); ICRC Study on Customary IHL: Rule 93.



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|                            | <p>including rape, sexual slavery and/or trafficking, forced pregnancy, sexual harassment, sexual exploitation and/or abuse, and forced abortion.</p>   | <ul style="list-style-type: none"> <li>■ <b>Specific protection:</b> International humanitarian law also provides that children affected by armed conflict are entitled to special respect and protection. Children must be the object of special respect and must be protected against any form of indecent assault.<sup>27</sup> To this end, if arrested, detained or interned for reasons related to the armed conflict, they must be held in quarters separate from those of adults, except where families are accommodated as family units.<sup>28</sup></li> <li>■ <b>International criminal law:</b> Rape and other forms of sexual violence constitute war crimes and, if it is being committed as part of a widespread or systematic attack against a civilian population, a crime against humanity (Article 7 (1)g, 8(2)b(xxi and xxii) and 8(2)e(vi) of the Rome Statute of the International Criminal Court).</li> </ul>   |  |
| <p><b>5. Abduction</b></p> | <p>The unlawful removal, seizure, capture, apprehension, taking or enforced disappearance of a child either temporarily or permanently for the purpose of any form of exploitation of the child. This includes, but is not limited to, recruitment in armed forces or groups, participation in hostilities, sexual exploitation or abuse, forced labor, hostage-taking or indoctrination. If a child is recruited by force by an armed force or group, this is considered as two separate violations – abduction and recruitment.</p> | <ul style="list-style-type: none"> <li>■ <b>International human rights law:</b> The CRC (Art. 35) explicitly prohibits the “<i>abduction of, the sale of or traffic in children for any purpose or in any form.</i>” Abductions for explicitly sexual purposes would also violate other international human rights law provisions. For example, abduction for the purpose of forced marriage would violate the International Covenant on Civil and Political Rights, which declares free and consensual marriage to be a protected right. Optional Protocol II to the CRC addresses the sexual exploitation of children, and requires States Parties to prohibit the sale of children, child prostitution and child pornography, all common purposes for the abduction of children. Abduction of children for the purpose of using those children in armed forces and groups would violate international law as forced recruitment of children by armed forces or groups. The abduction of a child for the purpose of exploitation is also prohibited as child trafficking. Under the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (Art. 3), child trafficking means the recruitment, transportation, transfer, harbouring or receipt of persons for the purpose of exploitation. Forms of exploitation prohibited by international humanitarian law include sexual exploitation,<sup>29</sup> slavery and the slave trade in all their forms,<sup>30</sup> uncompensated or abusive forced labour<sup>31</sup> and the recruitment of children.</li> </ul> | <ul style="list-style-type: none"> <li>a) Date incident occurred</li> <li>b) Location where abduction occurred (as specific as possible)</li> <li>c) Age of victim</li> <li>d) Sex (M/F)</li> <li>e) Nationality, religion, ethnicity (if applicable)</li> <li>f) Displaced or refugee (if applicable and known)</li> <li>g) Entity responsible (state armed forces/non-state actors)</li> <li>h) Whether the conduct was committed as part of a widespread or systematic attack against a civilian population. (Y/N)</li> <li>i) Method of abduction</li> <li>j) Aim of the abduction (form of exploitation)</li> <li>k) Actions taken by governmental/other relevant authorities: (Was the matter reported to the relevant governmental authorities? What actions have been taken?)</li> </ul> |

<sup>27</sup> API: Art. 77; APII: Art. 4(3); ICRC Study on Customary IHL: Rule 135.

<sup>28</sup> GCIV: 82 (2); API: Art. 77(4); ICRC Study on Customary IHL: Rule 120.

<sup>29</sup> API: Art. 75 (2) (b); APII: Art. 4 (2) (e); ICRC Study on Customary IHL: Rule 93.

<sup>30</sup> APII, Art. 4 (2)(f); ICRC Study on Customary IHL: Rule 94.

<sup>31</sup> GCIII Art. 49-57; GCIV, Art. 51–52 (51(2) on children), and 95; ICRC Study on Customary IHL: Rule 95.

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|  |  | <ul style="list-style-type: none"> <li>■ <b>International humanitarian law:</b> Abduction of children is contrary to the obligation to treat civilians humanely.<sup>32</sup> In some cases, abduction of children may amount to hostage taking. There is hostage-taking when:             <ul style="list-style-type: none"> <li>■ a person seizes or detains another person</li> <li>■ threatens to kill, to injure or to continue to detain this person</li> <li>■ in order to compel a third party to do or abstain from doing any act as an explicit or implicit condition for the release of the hostage.<sup>33</sup></li> </ul> </li> <li>■ <b>International criminal law:</b> enforced disappearances may amount to a crime against humanity as defined in Article 7 (2) (i) of the Rome Statute of the International Criminal Court, if they are committed for purposes otherwise prohibited (such as sexual slavery, use in armed forces).</li> </ul>  | <p><b>Releases</b></p> <ul style="list-style-type: none"> <li>l) Date incident occurred</li> <li>m) Age</li> <li>n) Sex (M/F)</li> <li>o) Nationality, religion, ethnicity (if applicable)</li> <li>xxi. Displaced or refugee (if applicable and known)</li> <li>xxii. Armed group responsible (state armed forces/non-state entity)</li> <li>p) Means of release (escape, release, etc.)</li> <li>q) Duration of abduction</li> <li>r) Actions taken by governmental/other relevant authorities: (Was the matter reported to the relevant governmental authorities? What actions have been taken?)</li> </ul>  |
| <p><b>6. Denial of humanitarian access</b></p> | <p>The intentional deprivation of or impediment to the passage of humanitarian assistance indispensable to children’s survival, by the parties to the conflict, including wilfully impeding relief supplies as provided for under the Geneva Conventions; and significant impediments to the ability of humanitarian or other relevant actors to access and assist affected children, in situations of armed conflict.</p> <p>The denial should be considered in terms of children’s access to assistance as well as humanitarian agencies’ ability to access vulnerable populations, including children.</p> <p>There is a need to break down different types of constraints on</p> | <ul style="list-style-type: none"> <li>■ <b>International human rights law:</b> The CRC provides multiple relevant provisions relating to children’s right to humanitarian assistance, including:             <ul style="list-style-type: none"> <li>■ <u>Directly:</u> Article 22 of the CRC and relevant provisions under refugee law provides additional special protection for refugee children, including that States Parties are obligated to ensure that refugee children “receive appropriate protection and humanitarian assistance.”</li> <li>■ <u>And indirectly:</u> <ul style="list-style-type: none"> <li>■ Article 6 relating to each child’s inherent right to life and obligations of State Parties to “ensure to the maximum extent possible, the survival and development of the child.”</li> <li>■ Article 24 of the CRC further articulates every child’s right to “the enjoyment of the highest attainable standard of health and ... to ensure that no child is deprived of his or her right of access to such health-care services.”</li> <li>■ Article 27 of the CRC also recognizes the right of every child “to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development.”</li> </ul> </li> </ul> </li> </ul> | <p><b>1. Number of cases of exclusion of groups from assistance:</b></p> <ul style="list-style-type: none"> <li>a) Type of aid denied</li> <li>b) Number of persons under the age of 18 years affected</li> <li>c) Location (as specific as possible)</li> <li>d) Nationality, religion, ethnicity (if applicable)</li> <li>e) What are the humanitarian consequences of access constraints? For example, are particular subgroups of the population especially affected? Are especially vulnerable individuals being cut off from essential life-saving aid?</li> <li>f) Displaced or refugee (if applicable and known)</li> <li>g) Entity responsible for denial (state armed forces/non-state entity)</li> <li>h) Type of barrier imposed (Administrative</li> </ul> |

<sup>32</sup> Common Art. 3.

<sup>33</sup> International Convention Against the Taking of Hostages: Art. 1. In IHL, hostage taking is prohibited under Common Art. 3; GCIV: Art. 34 and 147; API: Art. 75 (2)(c); APII: Art. 4 (2)(c); ICRC Study on Customary IHL: Rule 96.

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|  | <p>access and their consequences into specific patterns, in order to address the restriction. E.g. it is insufficient to report that access is impeded by 'insecurity'. There are many different types of insecurity involving different actors with various purposes and motivations.</p> <p>Upon reporting, country teams should provide information on the types of constraints; which humanitarian actors were affected; which relief goods could not get through; and also on the nature of the impact on the civilian population.</p> <p>The types of restrictions to report include the actual denial of medical aid, food, education, other essential supplies into areas; instances where children have died as they have not been allowed to cross checkpoints in ambulances to obtain essential or emergency medical care (which is to be reported as two separate violations); threats to and killing/injuring of humanitarian workers; and other significant impediments to humanitarian agencies that affect access to children.</p> | <ul style="list-style-type: none"> <li>■ Article 38 of the CRC echoes respect for the rules of international humanitarian law applicable to children and, among other things, notes that State Parties are obligated to ensure the protection and care of children who are affected by an armed conflict.</li> <li>■ <b>International humanitarian law:</b></li> <li>■ <i>Access to civilians in need:</i> Under international humanitarian law, the parties to the conflict must allow and facilitate rapid and unimpeded passage of humanitarian relief for civilians in need, subject to their right of control. Such relief must be impartial in character and conducted without any adverse distinction.<sup>34</sup> The parties to the conflict must also ensure that authorized humanitarian relief personnel enjoy the freedom of movement that is essential to the exercise of their functions. Movements may be temporarily restricted only in case of imperative military necessity.<sup>35</sup></li> <li>■ <i>Special attention to children:</i> In relief operations, children are entitled to special attention. They must be provided with the care and aid they require.<sup>36</sup> In international armed conflict, the parties to the conflict must notably endeavour to conclude local agreements for the removal from the besieged or encircled areas, of wounded, sick, infirm and aged persons, children and maternity cases, and for the passage of medical personnel and medical equipment to such areas.<sup>37</sup> They must also permit the free passage of all consignments of essential foodstuffs, clothing and tonics intended for children under 15, expectant mothers or maternity cases.<sup>38</sup> In distributing humanitarian aid to the civilian population under the control of a party to the conflict, priority must be given to such persons as children, expectant mothers, maternity cases and nursing mothers, who under the fourth Geneva Convention and Additional Protocol I of 1977 are to be accorded privileged treatment or special protection.<sup>39</sup></li> </ul> | <p>– roadblocks, lack of visas; Conditionality<br/>– military escort)</p> <p>i) Actions taken by governmental/other relevant authorities: (Was the matter reported to the relevant authorities? What actions have been taken?)</p> <p><b>2. Organizations blocked from providing assistance</b><br/>Name of organization</p> <p>a) What are the implications of access constraints for the operations of the organization? (e.g., affect on programme quality: assessments and monitoring of distributions vs. remote management; financial implications: costs associated with payments at checkpoints, implications of import duties for operational budgets, etc.)</p> <p><b>3. Commitment of party to conflict to allow passage of humanitarian assistance?</b><br/>Y/N<sup>41</sup></p> |
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34 GCIV: Art. 23; API: Art. 70 (2); See also APII: Art. 18 (2); ICRC Study on Customary IHL: Rule 55.

35 API: Art. 71(3); ICRC Study on Customary IHL: Rule 56.

36 GCIV: Art. 24 (1); API: Art. 77 (1); APII: Art. 4 (3).

37 GC IV: Art. 17.

38 GC IV: Art. 23.

39 API: Art. 70 (1).

41 Yes or no answer, followed by description of status of different groups.

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|  |  | <ul style="list-style-type: none"> <li>■ <b>International criminal law:</b></li> <li>■ Article 8(2)b(xxv) of the Rome Statute of the International Criminal Court notes, “Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Conventions,” may constitute a war crime. Although the war crime speaks of “starvation,” the commentaries state that there was agreement that it would not just be denial of food that could amount to starvation, but also of any other objects indispensable to the survival of the civilian population.</li> <li>■ Further, Article 8 (iii) of the Rome Statute of the ICC notes that, “Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict,” may also constitute a war crime.</li> <li>■ See also the <b>Guiding Principles on Internal Displacement</b>, Principle 25, Para. 3,<sup>40</sup> which notes that, “all authorities concerned shall grant and facilitate the free passage of humanitarian assistance and grant persons engaged in the provision of such assistance rapid and unimpeded access to the internally displaced.” Further, Principle 30 notes that, “all authorities concerned shall grant and facilitate for international humanitarian organizations and other appropriate actors, in the exercise of their respective mandates, rapid and unimpeded access to internally displaced persons to assist in their return or resettlement and reintegration.”</li> </ul> |  |
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<sup>40</sup> See Section IV – Principles relating to humanitarian assistance.



# Annex 2: International Legal Foundations and Standards

## International legal instruments

- Security Council Resolutions 1261 (1999), 1314 (2001), 1379 (2001), 1460 (2003), 1539 (2004), 1612 (2005), 1882 (2009), 1998 (2011) and 2068 (2012) on children and armed conflict; and 1888 (2009) and 1960 (2010) on sexual violence in armed conflict
- The Convention on the Rights of the Child (1989) and its Optional Protocol on the Involvement of Children in Armed Conflict (2000)
- The Rome Statute of the International Criminal Court (1998)
- International Labour Organization (ILO) Convention 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (1999)
- The Geneva Conventions (1949) and their two Additional Protocols (1977)
- Convention on Cluster Munitions (2008)
- International Covenant on Civil and Political Rights (1966)
- Convention Against Torture (1984)
- Convention on Cluster Munitions (2008)
- Convention on Certain Conventional Weapons (CCW) (1980) (particularly Protocol II and V)
- Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction (1997)
- United Nations Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the UN Convention against Transnational Organized Crime (2001)
- General Assembly Resolution 46/182 on Strengthening of the coordination of humanitarian emergency assistance of the United Nations (1991)

## Regional legal instruments

- The African Charter on the Rights and Welfare of the African Child (1999)
- Economic Community of West African States (ECOWAS) Convention on Small Arms and Light Weapons, their Ammunition and other Related Materials (2006)

- Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and other Related Materials (1997)
- Nairobi Protocol for the Prevention, Control and Reduction of SALW in the Great Lakes Region and the Horn of Africa (2004)
- Protocol on the Control of Firearms, Ammunition and Other Related Materials in the Southern African Development Community (SADC) Region (2001)
- European Union Code of Conduct for Arms Exports (1998)

### International standards and norms

- The Paris Commitment to Protect Children from Unlawful Recruitment or Use by Armed Forces or Armed Groups (2007)
- The Paris Commitments and Principles to Protect Children from Unlawful Recruitment or Use by Armed Forces or Armed Groups (2007)
- The Paris Principles and Guidelines on Children associated with Armed Forces or Armed Groups (2007)
- UN Guidelines on justice in matters involving child victims and witnesses of crime (2005)
- UN Programme of Action to Prevent, Combat, and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (2001)
- UN Rules for the protection of juveniles deprived of their liberty (1990)
- UN Standard Minimum Rules for the administration of juvenile justice (1985)
- Inter-agency Integrated Disarmament, Demobilization and Reintegration Standards (2006)
- UN Guidelines for Gender-Based Violence Interventions in Humanitarian Settings Focusing on Prevention of and Response to Sexual Violence in Emergencies, September 2005
- IASC Guidelines on Mental Health and Psychosocial Support in Emergency Settings (2007)