

PROTECTION • GUIDELINE

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Introduction

This guideline introduces codes that should be observed by humanitarian aid workers in fields. Normally, protection is referred to as “all activities intended to secure sufficient protection of rights of individuals in accordance with norms and ideas established in the international conventions.” It covers all the projects related to humanitarian assistance rather than a specific activity. Therefore the scope is very broad but this guideline mainly focuses on socially vulnerable people by summarizing the considerations to them and explaining the provisions on the ground as well as issues to be noted in the field.

With victims of conflicts or earthquakes, or in the field prone to famine and landmines, due the nature of humanitarian assistance to save as many lives as possible, the humanitarian agencies can be occupied by responding to the large number of healthy people coming to receive distribution. This guideline lists the socially vulnerable groups who could be excluded from assistance and special considerations for them, hoping to help the activities in such situation. We hope that all projects including food and commodity distribution and hygiene, and do not exclude beneficiaries and those services are provided with a view to secure their equal rights.

Behind these, there is an emerging idea called “rights based approach.” This has been discussed by the international organizations, national assistance agencies and NGOs since 1990’ s. In addition, the sexual exploitation by some humanitarian workers in West Africa in 2002 triggered the needs for tighter implementation of codes of conducts for humanitarian workers.¹ This called the needs of humanitarian aid workers to revise their own attitudes towards protection of beneficiaries and incorporate them into the programs.

In such global trends, this guideline was developed by NGOs who saw the significance of studying the international norms (conventions and declarations) and guidelines adopted by the international organizations and NGOs and implementing guidelines that can be really utilized by Japanese humanitarian NGOS in the field. Using the NGO study group by the Ministry of Foreign Affairs, we studied and researched the issues through workshops with experts (5 times), field investigation (in South Sudan) to reflect the realities of the humanitarian assistance into the guideline, and the symposium for better guideline.

The guideline here is a general note. Further practice and study will be required to be

¹ Secretary-General’s Bulletin, Special measures for protection from sexual exploitation and sexual abuse (ST/SGB/2003/13) is one of them.

applied to the field. However we hope that this will be of your reference and assistance in activities.

I. Overview

1 What is protection?

There is no internationally established definition of protection; however it is referred to as “all activities intended to secure sufficient protection of rights of individuals in accordance with norms and ideas established in the international conventions (i.e. human rights, humanitarian and refugee laws). Any human rights and humanitarian agencies must perform these activities without bias, regardless of race, nationality, language and gender.”²

Protection can be mainly categorized into three. First is physical protection to secure basic freedom and physical safety. Second is social protection to guarantee material needs, education, and health and so on. The third category is legal protection which means that the person is registered with an authority and permitted to stay in the place. It is important that a new born baby is properly registered.

Protection in broad sense does not articulate any specific project. Rather it shall incorporate protection in terms of guaranteeing rights when executing an individual project such as food distribution and hygiene maintenance. The broad protection refers to efforts aiming to establish a system that ensures the rights of beneficiaries and protect socially vulnerable people without excluding them from food distribution. The narrow protection often refers to protection of the vulnerable or legal protection.

2 Overview of internationally established conventions and standards

Next, we would like to look at “internationally established conventions and standards” which play the basic role of protection.

Convention is an agreement between states or state and an international organization.³ It is sometimes referred to as Covenant or Protocol. Convention is legally binding and binds only States who had ratified/participated to it through a formal procedure. (Ratification means a process that a State provides the final confirmation and agreement to the Convention after its signature, while participation means a process that a State provides the final confirmation and agreement to the Convention without its signature.) In international humanitarian activities, it is necessary to

² This understanding on protection was agreed among the participants in a workshop (Ecogia Seminars on Protection for information) held by ICRC in 1999. The definition is quoted in other documents including See Strengthening Protection in War: A Search for Professional Standards (Geneva: ICRC) 2001, pgs. 28-37

³ From a Japanese dictionary (Daijirin)

understand what Conventions the State in question has ratified to/acceded with in relation to protection. One needs to note that there are regional Conventions (i.e. Africa Refugee Convention⁴)

Declaration has no legal binding force. It applies to all the States and the ratification is not required. Declaration does not bind States legally, however it is recognized as an important instrument as a Convention for aid workers to use for protection.

Summary

	Target	Legal binding	Positioning in protection activities
Convention	<u>Contracting Parties</u> (effective for States who had ratified or acceded the Convention)	Yes	If the State in question is a contracting party to specific Conventions, then such Conventions can be used as instruments guiding principles for States. (i.e. CRC, CEDAW, Refugee Convention)
Declaration	Legally none, but synonymously applied to <u>all States</u>	No	Can be referred to in the State in question as an instrument that value had been recognized by many States. (i.e. The Universal Declaration of Human Rights)

Conventions and Declarations which are related to protection can be categorized into three as follows:

- i) International Human Rights Law – secure every person's dignity –
International Human Rights Law is comprised of conventions and declarations regarding human rights as well as international and domestic mechanisms and procedures to implement those conventions and declarations.⁵ The core of the International Human Rights Law is; The Universal Declaration of Human Rights in December 1948, International Covenant on Economic, Social and Cultural Rights and International Covenant on Civil and Political Rights which state general human rights protection. These instruments are collectively referred to as International Bill of Rights. There are other several human rights conventions as follows among others:
 - ✓ Convention on the rights of the child
 - Defines a child as a person under the age of 18 and states guarantee of comprehensive rights (including life, development, non discrimination, access to education, best interests, protection from abuse, expression of

⁴The official name is "OAU Convention Governing the Specific Aspects of Refugee Problems in Africa"

⁵From "Textbook Kokusai Jinkenho" (Hiromi Abe, Tadashi Imai, Toshiaki Fujimoto by Nihon Hyoronsha)

opinion).

- ✓ Convention on the Elimination of All Forms of Discrimination against Women
 - Calls for elimination of discrimination against women
 - States guarantee of equality between men and women, equal participation, elimination of discrimination in education and employment, the State's responsibility to secure capacity development and improvement of women, elimination of role based bias against women.
- ✓ International Convention on the Elimination of All Forms of Racial Discrimination
 - States equality of all races
 - Defines racial discrimination as “any distinction, exclusion, restriction or preference based on race, color, descent, or national or ethnic origin” and prohibits any discrimination in political, social and any other fields.
- ✓ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
 - Defines torture as any act by which severe pain or suffering inflicted on a person for such purposes as obtaining from him or a third person information or a confession by a public official or other person acting in an official capacity.
 - States prohibition of refoulement that a person should not be expelled to a country where are substantial grounds for believing that he would be in danger of being subjected to torture.
- ii) International Humanitarian Law – in case of armed conflict -

It is an international law which states humanitarian treatment of injured or sick combats, hostages, and unarmed civilians. Four Geneva Conventions in 1949 and Two Protocol Additional to the Conventions is the core and including other conventions and customary laws, these are referred to as International Humanitarian Law.⁶

All persons not taking part in armed conflict can be protected (any discrimination based on sex, age, religion, race and any other criteria is not permitted). The following is listed as scope of protection. In addition to hospitals, specific buildings and objects have to be protected (Article 53 of 1977 Additional Protocol and others).

 - objects indispensable to the survival of the civilian population (i.e. drinking water installations, agricultural areas)

⁶Japan Red Cross Website (<http://www.jrc.or.jp/about/humanity/about.html>)

- historic monuments
 - places of worship
 - works and installations containing dangerous forces (i.e. dams, dykes and nuclear electrical generating stations)
- iii) International Refugee Law – non-refoulement of refugee to the country of origin he/she could be subject to torture -
- Refers to the series of laws including Convention relating to the status of refugees (1951) and Protocol relating to the status of refugees (1967). The refugee law defines refugee as a person who “is outside of the country of his nationality and is unable to return owing to fear of persecution based on race, nationality, religion, membership of a particular social group or political opinion” and states rights for refugees (including principles of non discrimination and welfare).

A list of major conventions and extracts of provisions by category, such as women and child are attached at the bottom of this document for your reference.

II. What should be commonly protected for all people

Below are what should be protected commonly for all people based on the field practice, in addition to the conventions and declarations. State has the primary responsibility for such protection. However the international organizations and NGOS should provide supplementary protection to States for those who cannot be protected by his/her own national State due to his/her flight from the State or when the State is overwhelmed by the large number of victims of conflicts or earthquake. The following activities are very significant in such cases.

2-1. Right to life with dignity

i) Secure life, liberty and safety

Anyone has the right to safety without being threatened of his/her life and liberty including following:

- ✓ Not to be killed arbitrary (including abolition of death penalty)
- ✓ Not to be detained/imprisoned arbitrary (without legally defined procedure)⁷

⁷Reference:

*Universal Declaration of Human Rights Article 3 (Right to life, liberty and physical safety)

*ICCPR Article (right to life), Article 9(liberty of person and procedure of arrest or detention)

ii) Secure adequate standard of life

Anyone has the right to live healthy life both mentally and physically including:

- ✓ Right to be free from hunger⁸
- ✓ Right to a standard of living adequate for the health and well-being including food, clothing and housing⁹
- ✓ Right to enjoy physical and mental health¹⁰
- ✓ Right to education without discrimination and primary and compulsory education at free of charge¹¹

iii) Free from Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Right not to be subject to torture, other cruel treatment or abuse including following:

- ✓ Prohibition of torture and cruel or degrading treatment or punishment¹²
- ✓ Prohibition of abuse and killing of hostages¹³

2-2. Non discrimination

Everyone has the right to be treated equally without discrimination. Humanitarian assistance should provided equally¹⁴ regardless of race, color, sex, language, religion or faith, political or other opinions, nationality, race or social origin, legal or social status,

⁸Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty

•CRC Article 6 (right to life) , Article 37(b) (treatment of child deprived of liberty) 、

•Geneva Convention Common Article 3 (in case of armed conflict)

Geneva Convention Protocol I Article 54(Protection of objects indispensable to the survival of the civilian population)

Geneva Convention Protocol II Article 4(1) (basic guarantee), Article 14(Protection of objects indispensable to the survival of the civilian population)

⁹Reference: ICESCR Article 11(2)

⁹Universal Declaration of Human Rights Article 25, ICESCR Article 11(1), CRC Article 27

¹⁰ICESCR Article 12, CRC Article 24

¹¹CEDAW Article 10, CRC Article 28

¹²Reference: CAT, ICCPR Article 7

¹³Reference: Fourth Geneva Convention Article 27

¹⁴Reference:

•Universal Declaration of Human Rights Article 2(No distinction on rights and freedom)

•ICCPR Article 26 (Equal protection of the law)

•CRC Article 6 (right to life) , Article 37 (b) (treatment of child deprived of liberty)

Geneva Convention Common Article 3 (in case of armed conflict)

Geneva Convention Protocol I Article 54(Protection of objects indispensable to the survival of the civilian population)

Geneva Convention Protocol II Article 4(1) (basic guarantee), Article 14(Protection of objects indispensable to the survival of the civilian population)

age, disability, property, family, and other similar standards.¹⁵

[Column 1] Relationship between various issues in fields (culture, tradition, religion, politics, etc) and implementation of protection

“Rights” which are the core of protection are applicable for anyone, however not everyone understands them well. Therefore it is important to take an approach which is easier to be accepted and understood by the beneficiaries. For example, asking the honored leader in the region (the father of the village, religious leader) to talk about rights or utilizing an act or drama could be effective.

However, if a traditionally inherited method (for example, female generalization or young age marriage against her will (details to be noted later)) is the subject issue for protection, then we need an approach to convince such leaders.

[Column 2] Photo shooting of beneficiaries

Photos from fields which can show the environment and needs of the assistance for beneficiaries are essential, especially in regions like Japan which are located far from conflicts. This is often required as accountability of the organization who implements the project.

One needs to understand the situation and various cultural backgrounds of the beneficiaries when taking photos of them (some may not like to be in photos due to their customs). We think it is necessary to get approval from the beneficiaries and explain the purpose as much as possible (in case of the child, approval from the parent/guardian).

It is also important to represent the person in the photo as “a human being with dignity, not as an object without hope.”¹⁶

III. Details

Next, we will look at the background and characteristics of groups in need of protection and what types of protection are required, focusing on individual conventions.

3-1. Child

1) Why do we need protection for child?

The child, by reason of his physical and mental immaturity, needs special safeguards

¹⁵ Principle 4, “Guiding Principles on Internal Displacement”

¹⁶ The Code of Conduct for the International Red Cross and Red Crescent Movement and NGOs in Disaster Relief Principle 10 (the International Federation of Red Cross and Red Crescent Societies and the ICRC)

and care, including appropriate legal protection, before as well as after birth.¹⁷

2) What should be protected for the Child

The following shall be protected for the child. The international law defines the child as a person under the age of 18, however domestic laws normally precedence over international laws. It is important to check the age definition of the child in the domestic laws.

- i) to be with his/her family
 - Not to be separated from the family against his/her will
 - To reunify the separated child and parent
 - ✓ Confirm the family at the time of registration so that the child will not be separated from the family.
 - ✓ Refer a separated family to a special agency (normally ICRC, International Committee of the Red Cross) to enable large scale search of the family (if necessary, cross boarder search). Especially when the situation stabled and repatriation is possible, the through search can be performed.
 - ✓ In case the parent is detained for some reason, ensure that the child has opportunities to meet the parent.
 - ✓ These rules do not apply if the child is abused by the parent. The child needs to be protected under due process.¹⁸

- ii) Secure access to education
 - ✓ Access to education needs to be guaranteed for everyone
 - ✓ Primary education shall be provided at free of charge
 - ✓ The same level of school facilities and teachers as men shall be provided to women. The same school curriculum and right to take same exams as men shall be guaranteed for women¹⁹

¹⁷ "Convention on the rights of the child" (1959)

¹⁸ Reference: Provisions

- ICCPR Article 17(1) (protection of privacy)
- CRC Article 9 (prohibition of separation from parents), Article 10 (reunification of family)
- Geneva Convention relative to the Protection of Civilian Persons in Time of War, Article 26 (enquiries of families), Article 49 (transfer or evacuations)
- 1st Additional Protocol to Geneva Conventions, Article 74 (Reunion of dispersed families)
- 2nd Additional Protocol to Geneva Conventions, Article 4(3)b (basic guarantee)

¹⁹ Reference: Provisions

- ICESCR Article 13 (Education), Article 14 (compulsory primary education at free of charge)
- CRC Article 28 (Education)

iii) Not to be subject to sexual violence and abuse

(See Colum 4 for sexual exploitation by humanitarian aid staffs)

- ✓ Take preventative measures to domestic violence through education and campaigns to both children and adults
- ✓ Assign a person who will be in charge of measures in case of violence/abuse
- ✓ Child who was subject to abuse needs to be protected and if necessary separated from the parents based on his/her desire
- ✓ Thoroughly ensure through contracts and trainings that NGO staffs will not be involved in any abuse²⁰

iv) Not to force labor (protection from forced labor and exploitation)

- ✓ Protect children from worst forms of labor (forced labor, debt bondage, serfdom, child soldier (forced recruitment), criminal acts such as human trafficking, prostitution, pornography, and trafficking of drugs, and any other dangerous labor (excessive, long hours or night labor)
- ✓ Not to make children under minimum age work (see the table below)
- ✓ NGOs shall not employ children under the minimum age as well as not to make such children work²¹

【Table: Relationship between age and labor】

* The criteria for the minimum age in the table is not to be below the age of completing the compulsory education.*

	12	13	14	15	16	17	18
Minimum age			△(can be admitted for developing country)	○			

•CEDAW Article 10 (elimination discrimination in the field of education)

²⁰ Reference: Provisions

•CRC Article 19 (Protection from abuse, Article 34 (Protection from sexual exploitation)

•1st Additional Protocol to Geneva Conventions Article 77 (Protection of children)

²¹Reference : Provisions

•CRC Article 32 (Protection from economic exploitation), Article 38 (Protection from armed conflict)

•ILO Convention concerning Minimum Age for Admission to Employment (C138), Article 2 (Minimum Age), Article 3 (Minimum Age for special work), Article 4(Exclusion from special work), Article 5(Special rules for insufficiently developed member country)

•ILO Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (C182), Article 2 (Child), Article 3 (Worst forms of child labor)

•Protocol I to Geneva Conventions, Article 77 (Protection of children)

Minimum age for employment likely to jeopardize the health, safety or morals of young persons								<input type="radio"/>
Light work (under certain criteria)	Δ (can be admitted for developing country)	<input type="radio"/>						

ILO C138 Minimum Age Convention (1976)

- v) Protection from Physical Danger (armed conflict, violence)
 - ✓ Pay full attention for children not to be exposed to danger within camps and assistance fields
- vi) Not to be involved in general conflict (including those who do not have a direct part in hostilities)
 - ✓ The child does not take part in hostilities²²
 - ✓ Children under the age of 18 should not to be recruited into national military service
 - ✓ If a child between the age of 15 and 17 is to be recruited to the national force, the eldest child should be selected first (If the State has ratified the Convention on the Rights of the Child.)
 - ✓ Take measures to prevent children being recruited into armed forces at camps and assistance fields²³
- vii) Children shall be included into assistance
 - ✓ Appropriately understand the needs of children through registration in order for not to exclude children from distribution
 - ✓ Pay full attention not to exclude child headed households from assistance
- viii) Protection from infectious diseases

²²CRC Protocol II states that special protection is required for children under the age of 18 years old and children should not be involved in hostilities. CRC states the age as under 15 years old but NGOs are required to provide measures with maximum respect for the intention of CRC (unified prohibition of involvement into hostilities for children under the age of 18 years old.)

²²Reference:

- CRC Article 38 (Protection from armed conflicts)
- Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict
- The Rome Statute of the International Criminal Court Article 8 (War Crime)

²³Reference:

- CRC Article 38 (Protection from armed conflicts)
- Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict
- The Rome Statute of the International Criminal Court Article 8 (War Crime)

- ✓ Take preventative measures within camps and assistance fields that children are not affected by infectious diseases (immunization and provision of mosquito nets)
 - ✓ Through preventative measures against infectious diseases transmitted by animals such as mouse and mosquito (education to parents is very important)
 - ✓ Educate them on hygiene (for example how to use toilets) to have correct understanding of infectious diseases and prevent them
- ix) Not to be subject to human trafficking (attention shall be paid for fostering too)
- ✓ Understand the number of children through registration and pay attention to entry into the camps and fields in order for children not to be sold in return of money and foods.
 - ✓ Parents (or legally defined person in charge) should have the primary responsibility of upbringing the child, otherwise (if the child is separated from or abused by the parents) the State should provide special protection and assistance.
 - ✓ It should be ensured that fostering is arranged only by the supervising authority. The authority shall confirm the opinion of the child and secure the best interests of the child.²⁴
- ✘ See “Column 4: Forced Marriage of Children”
- x) Not to be rejected for a nationality (especially for refugees)
- ✓ Within camps and fields, register the child at the time of birth and provide the information to the local government in charge of registration if necessary
 - ✓ Especially when the child is born as a refugee outside of the country, coordinate with relevant government agencies (normally, departments of State and Justice) for the child not to be stateless²⁵
- xi) The voice of children to be reflected in program development/the best interests of children shall be considered
- ✓ Provide opportunities to listen to the voice of children for program

²⁴Reference:

- Optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography
- CRC Article 18 (Primary responsibility of parent on upbringing and State's assistance), Article 19 (Protection from abuse, neglect and exploitation of parents), Article 20 (Protection of child derived of family environment), Article 21 (Adoption)

²⁵Reference:

- CRC Article 7 (Right to a name and nationality)
- Convention on the Reduction of Statelessness

development (✘ See section for assessment)

- ✓ For all program development, the best interests of children are primary concerned.²⁶

3) Children who require special care

i) Children separated from the parents or caregiver

There are many cases children were bereaved from the parents due to conflicts and casualties, separated from the parents during their flight and have no caregiver and left alone or have to fill the role as a head of the household. The lack of caregiver especially increases the risks as follows:

- ✓ Sexual exploitation and abuse
- ✓ Recruitment into military service
- ✓ Child labor (including work for foster parents).
- ✓ If detained and no opportunity to express his/her opinion was given, the child may be more likely to be subject to torture or any other worst form of violence.
- ✓ Discriminated and denied access to food, temporary shelter, housing, health care service and education
- ✓ Especially unaccompanied/separated girls have high risks of being exposed to gender based violence (including domestic violence)
- ✓ No access to appropriate identification, registration, age determination, documentation, family tracking, guardian or legal advice
- ✓ If the child is a refugee, he/she can often be rejected the entry to the country or subject to detention at border. For other cases, the entry may be permitted, but access to asylum procedure may be rejected or the application may be processed without consideration to the age or gender.
- ✓ Difficult to be unified with the family
- ✓ Even when the child is recognized as a refugee, only a temporary residence permit is given (for example, limited to repatriation before reaching 18 years old)
- ✓ Lack of effective repatriation programs

For doing so, the following measures are required. The best interests for

²⁶Reference:

•CRC Article 3 (best interests of the child), Article 12 (right to express views)

children in the context of the culture and customs need to be selected.

- ✓ Track the family. No fostering shall be arranged before the completion of such tracking.
- ✓ Prohibition of discrimination
- ✓ Consider the best interests of the child when setting measures and ensure that the State assigns a authorized guardian for the child swiftly.²⁷
- ✓ Protect children from risks of being subjected to sexual exploitation (share information on organized crimes including human trafficking with children and guardians and take measures to protect them from such threat)
- ✓ Incorporate the child's opinions in every step of identifying a guardian
- ✓ Strict implementation of non-refoulement. The child should not be returned to a State where there is substantial risk of danger for the child (i.e. insufficient provision of food or health care service, possible involvement into hostilities)²⁸

ii) Disabled children

It is said that majority of disabled children in developing countries do not go to school and lack literacy. Disability includes not only physical but also mental disability.

There are following protection risks for children with disabilities

- ✓ Damage to disabled children based on customs such as killing (i.e. some cultures consider that a child with disability "dishonors the family" as a gypsy's warning. Such disabled child may be organizationally killed by a designated person in the community.)
- ✓ No birth registration
- ✓ Abuse (including sexual abuse. It is said that the disabled child has a risk of being a victim of abuse at 5 times higher than that of a child

²⁷ The guardian or adviser should have the necessary expertise in the field of Childcare. Agencies or individuals whose interests could potentially be in conflict with those of the child's should not be eligible for guardianship. In the case of a separated child, guardianship should regularly be assigned to the accompanying adult family member or non-primary family caretaker unless there is an indication that it would not be in the best interests of the child to do so, for example, where the accompanying adult has abused the child. (The Committee on the Rights of the Child – General Comment No.6 (2005) Treatment of Unaccompanied and Separated Children outside their country of origin.

²⁸ Reference:

- CRC General Comment No. 6 (2005)
- Treatment of Unaccompanied and Separated Children Outside their Country of Origin

without disability.)

- ✓ Extremely low access to education/employment
- ✓ Spread of forced sexual sterilization
- ✓ Various forms of economic exploitation including worst forms of child labor as well as drug trafficking and begging
- ✓ Become street children
- ✓ Become victims of sexual exploitation
- ✓ Forced institutionalization and separation from parents

The following counter measures are required

- ✓ Early location of disabled children and provision of treatment and rehabilitation through registration and improved health care
- ✓ Training to parents or caregiver of children to enhance their understanding about disabilities and treatment
- ✓ Provide equal opportunities for education, vocational training and employment²⁹

iii) Ex-child combatants (including girls)

The Convention on the rights of the child prohibits child's direct involvement in hostilities. The Rome Statute of the International Criminal Court states using the children to participate actively in hostilities as a war crime. Despite these, according to UNICEF's estimate, there are 250,000 child soldiers in the world. In addition to the conflict, there are women who are forced to be the subject of sexual exploitation. However the International Criminal Court jurisdiction says that claims for crimes against children under the age of 18 will not be dealt with.

Many of the child combatants had taken parts in hostilities and carried out cruelties, therefore the issue is very complicated that they are victims as well as criminals of abduction or abuse. For this, ex-child combatants are often labeled as "killer" and find it difficult to be adopted into families and local communities, having no place to return to and isolated. As a result, many of them became street children in urban areas and recruited as child combatants again if disarmament has not fully taken place. Social integration of ex-child combatants is a serious issue.

²⁹ Reference:

- CRC General Comment No. 9 (2006)
- The rights of children with disabilities.

The international law prohibits recruitment of child into military service, therefore there is no provision expressly stating about reintegration of ex-child combatants. However in order to secure substantial protection required for all children, the following measures are necessary for ex-child combatants.

- ✓ Encourage the community of origin to accept ex-child combatants (persuade local communities).
- ✓ Provide treatment and rehabilitation for mental recovery
- ✓ Provide access to education
- ✓ Provide vocational training and employment for children to be economically self-sufficient in the future³⁰

iv) Unaccompanied child family

✘See section for unaccompanied children

3-2 Women

1) Introduction : Why do we need protection for women?

Discrimination against women is extensive and in situations of poverty women have the least access to food, health, education, training and opportunities for employment and other needs.³¹ Therefore they require special protection.

Column 3: Sexual Exploitation by humanitarian aid staffs

In February 2002, UNHCR and Save the Children UK carried out the joint study and published a report on sexual violence and exploitation against refugee children in West Africa (Liberia, Guinea and Sierra Leone).³² The investigation was requested by UNHCR and confirmed the sexual exploitation against beneficiaries by several humanitarian aid workers using their positions. The report included detailed preventative measures including how to operate camps.

UNHCR has already released a framework on prevention and improvement

³⁰Reference:

•CRC Article 38 (Protection from armed conflicts), Article 39 (Recovery and reintegration)
•Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (CRC-OPAC) Article 2 (Prohibition of recruitment into armed forces), Article 3 (minimum age for the voluntary recruitment), Article 6(3) (Legal and other measures)

³¹ CEDAW: Preamble

³² "Investigation into sexual exploitation of refugees by aid workers in West Africa Note by the Secretary-General"(A/57/465)

measures for abuse against refugees in the same region as follows.

- ◇ Increase safety and international presence (permanent staffs and offices) in refugee camps
- ◇ More women staff
- ◇ Establish a reporting mechanism where refugees can make complaints to Senior UNHCR staffs
- ◇ Request refugee camp leaders to report abuse by aid workers to Senior UNHCR staffs
- ◇ Revise designs of camps to guarantee safety and privacy
- ◇ Improve distribution mechanism for distribution goods and services are not to be used as tools for exploitation.
- ◇ bring assistance levels meet up to a minimum standards and basic needs
- ◇ Take measures that refugees can easily access to the legal system.
- ◇ Identify refugee girls who could be victims of sexual exploitation (single parent, unaccompanied, street children), and ensure she has access to sufficient assistance, education, medical care and vocational training for independence.
- ◇ Implement an education campaign against sexual exploitation and report the result.
- ◇ Teach refugee children about their rights
- ◇ Provide farming land for refugees' independence if possible.
- ◇ Encourage State parties to implement "Convention on the Rights of the Child" (the three states have ratified already).

Reference: <http://www.unhcr.or.jp/news/press/pr020226.html>; Asmita Naik, "Protecting children from the protectors: lessons from West Africa," *Forced Migration Review*, No.15, pp.16-19.

2) What needs to be protection for women

- i) Secure the equal opportunity for education as men
 - ✓ Secure the health and well-being of families, including information and advice on family planning.³³
 - * Refer to 3-1. Section on the Child

- ii) Not to be subject to sexual violence and abuse

³³ Reference:

•CEDAW Article 10 (Elimination of discrimination in education)

(* Refer to “Column 3: Sexual Exploitation by Humanitarian Aid Workers)

- ✓ Take preventive measures for abuse in the family through education and campaign targeted to both children and adults
- ✓ Assign a person to be in charge in case of violence and abuse
- ✓ Abused child needs to be separated and protected from the parent if necessary upon confirmation of his/her will
- ✓ Ensure that NGO staffs would not be involved in abuse, through contracts and trainings.³⁴

iii) Secure opportunity to work

- ✓ The right to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work without discrimination.³⁵

iv) Protection from physical danger (conflict, violence)

- ✓ Take security measures and pay full attention for women not to be exposed to danger within the camps and fields.³⁶

v) Women should not be excluded from assistance

- ✓ To prevent women being excluded from food distribution, etc, understand their needs correctly through registration
- ✓ Pay special attention to a woman led household for not being excluded from assistance.

vi) Not to be subject to human trafficking

- ✓ Understand the number of women through registration and pay attention to comings and goings of the people to the camps to avoid women being subject to trafficking in return of money or food.³⁷

vii) Not to be discrimination in health care

- ✓ Ensure that women are not discriminated in health care service

³⁴ Reference:

•CRC Article 19 (protection from abuse), Article 34 (protection from sexual abuse)

³⁵ Reference:

•CEDAW Article 11 (Elimination of discrimination in employment)

³⁶ Reference:

•Declaration on the Elimination of Violence against Women

³⁷ Reference:

•CEDAW Article 6 (Suppression of exploitation from traffic and prostitution)

(including family planning)

- ✓ Secure adequate service during pregnancy and lactation period and adequate nutrition during pregnancy, confinement and the post-natal period³⁸

viii) Reflect voice of women into program development

- ✓ Establish opportunities to listen to women's opinions when developing a program (*Refer to assessment section)
- ✓ Enhance opportunities for women's involvement (ideally, 50% of the participants should be women)

3) Women who require special attention

i) Isolated women

Women are people who require special protection. Isolated women especially have no one to protect them and care about the social and economic situation and have to do everything alone. However in a region or country where women's position is traditionally lower than men's, most of women do not have experience in activities outside of their house such as economic activities, education or access to public facilities. Or women are restricted to perform such role, therefore they are often incapable of doing so when they are alone. Not being able to perform such necessary actions could have adverse effect on the person's life.

In many cases, women do not have sufficient education. Even though they are willing to generate income, lack of knowledge and skills forces them to be involved in unskilled works. This lowers their standards of life. It is possible that they could be involved in sex industry to secure their income and foods. On the other hand, in regions where polygamy is permitted, women may take the position as the second or third wife to secure protection of life.

Economic activity is not the only problem surrounding an isolated woman. There is possibility of being involved into crimes because she is alone. A woman could be a victim of rape because she has no caregiver. Also, in a refugee camp where a man is traditionally assumed to be a householder, women cannot go through proper registration process because of her gender and are unable to receive required assistance goods.

³⁸ Reference:

•CEDAW Article 12 (Elimination of discrimination in health care)

ii) Women Householders (especially new ones)

Under conflicts, there are cases that an elder woman has to look after the family members because her parents or husband have been killed or lost. In Rwanda conflict in 1994 where 800,000 people were killed in one week., there were reports that young women who had lost parents or husbands had to look for their young brothers and children. Some could be raped on their escape and got pregnant.

As of 1998, there were about 60,000 children whose parents were killed or lost and look after the families. According to a report by UNICEF and World Vision, half of them were girls and there were over 300,000 children who were being looked after by young “householders” including the afore mentioned girls. It was reported that they have not received education or healthcare service and could be subject to sexual abuse and were not even permitted to inherit land and house their parents had left for them.³⁹

iii) Women with disabilities/illness

It was difficult to understand the situation of women with disabilities or illness because they hardly go out of the houses. Under the social environment where public talk on women specific illness is not welcomed, the issue is hardly exposed and not noticed by aid workers. In addition, they are more likely to be exposed to domestic and domestic violence as well as sexual exploitation.

In case of an emergency that requires protection, women specific needs are overlooked and the issue could be serious due to childbirth or women’s disease.⁴⁰

iv) Women as victims of sexual violence

Rape is one form of sexual violence. It is only in the last decade that the issue of sexual violence came to surface. Before then, women could not even raise their voice. Even if they did, it was difficult to try the criminals under Criminal Law. In some regions, rape is not considered as a crime against an individual woman. Rather, a woman who claimed for being a rape victim may be asked to bring multiple witnesses, or could be subject to punishment, for example she could be accused of adultery or prostitution, let alone being provided with any relief measures. The victim can often be subject to discrimination rather than protection by families and many victims cannot bring the fact to the public.

Such violence is more apparent under conflicts. In Rwanda or former Yugoslavia,

³⁹ UNHCR “Destiny of a woman” “Refugees” 1998, No.4, pp18

⁴⁰Reference:

•Convention on the Rights of Persons with Disabilities (Preamble)

women are raped as a part of systematic violence and such violence is more apparent during conflicts. In Rwanda and the former Yugoslavia, women were raped as a part of systematic violence with an attempt to damage women and their communities psychologically. Such sexual violence can be carried out not only by the anti-government force but also by the government force and police to damage the women in the other side.

v) Pregnant women

Women during pregnancy and lactation have physical burden and need special protection. Especially during pregnancy and lactation, they need to secure adequate nutrition. In addition, adequate service needs to be provided (if necessary at free) pregnancy, confinement and the post-natal period.⁴¹

Column 4: Forced Marriage

In many parts of the world, children become victims of forced prostitution as well as forced marriage. For many cases, the price is based on the age, look and whether she is a virgin or not. In South Sudan, more than 14,000 men, women and children were abducted and forced into slavery between 1986 and 2002. Of which, women and girls were subject to rape and forced marriage.⁴² The parents of the girl may receive cattle such as cows in return and the girl is positioned as a “product.” In South Asia and African countries, there is a custom to pay money or provide goods to the groom’s family from the bride’s family as dowry for marriage. In some cases where the money is insufficient or not paid, the bride could be killed or abused in return, which has become a social issue. The States who have such custom stress that dowry is a “tradition” for them, conflicting with opinions that this is a violation of women’s rights and crime.

Such situation often comes from an environment that women’s position is relatively low and they are requested to follow men under the social custom. Furthermore, low employment rate and earned income among women hinders them from becoming independent and forces them to subservient to men.⁴³ The parents who should protect the girl’s life can be decision makers of forced marriage; therefore the girls do not know how to escape from that. The UN Human Rights Committee noted that regarding

⁴¹ Reference:

•CEDAW Article 12

⁴² <http://www.antislavery.org/homepage/antislavery/award/slaverysudan2006.htm>

⁴³ Human Rights Watch, The Human Rights Watch Global Report on Women’s Human Rights, 1995, p.196.

forced marriage in Sudan, it is necessary to set a minimum age for marriage to secure free choice of husband.⁴⁴ Today Sudan is in progress of making a law to restrict marriage under the age of 18 years old.

There are some cases that developed countries admit girls or young women who claimed asylum for reasons of running from forced marriage. In a court decision made in Canada in 1999, an Albanian woman who had been forced into engagement at the age of 10, abducted and become subject to violence for the purpose of marriage, was recognized as a refugee (T97-06758). The court concluded that the forced marriage at the age of 10 was in violation of the Universal Declaration of Human Rights as well as ICESR and there was reasonable ground for persecution because there was no protection by the authority.

⁴⁴ ICCPR (International covenant on civil and political rights), CCPR/C/79/Add.85, "Consideration of Reports Submitted by States Parties under Article 40 of the Covenant", 11 November 1999, para.11.

Column 5: Gender Based Violence (GBV)

CEDAW (Committee on the Elimination of Discrimination against Women) defines gender based violence (hereinafter referred to as GBV) as “violence directed against a person on the basis of gender or sex.”⁴⁵ It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty.⁴⁶ 1993 Declaration on the Elimination of Violence against Women defines violence against women under Article 1 as “any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.” Article 2 categories such violence into three.

- (a) 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;
- (b) Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution;
- (c) Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.

Sex or gender based violence can occur in various places of life including home, community and culture. For example;

- Sex without consent
- Sex with juvenile
- Rape
- Forced marriage
- FGM
- Involuntary prostitution
- Domestic violence
- Sexual harassment

⁴⁵ General Recommendation No.19 Violence against Women (11th Session, 1992)

⁴⁶ UNHCR, Sexual and Gender-Based Violence against Refugees, Returnees and Internally Displaced Persons: Guidelines for Prevention and Response (2003), pp.10-11.

There are various reasons for those actions, but it can be said that these are often generated in societies with gender inequality, authority held by men, lack of respect for human rights. Under (armed) conflict, women and children are more exposed to risks of being subject to violence.

Column 6: Female Genital Mutilation

WHO (World Health Organization) defines FGM (Female Genital Mutilation) as 'female circumcision', comprises all procedures involving partial or total removal of the external female genitalia or other injury to the female genital organs whether for cultural or other non-therapeutic reasons.⁴⁷ FGM is practiced in 28 African countries, Bahrain, Yemen, Oman, UAE in Middle East, Indonesia, Malaysia, Sri Lanka and some other Asian countries. WHO estimates that about 100 million to 140 million girls are victims of FGM.⁴⁸ In many cases, FGM is practiced against girls at the age of between 5 years old to 14 years old or young women between 7 days old to pre-marriage by special practitioner or midwife. In Egypt, it is practiced by a medical doctor, therefore hygiene is maintained. Still, it is violence against women.

FGM was referred to as Female Circumcision. However it was often confused with male circumcision and derogates the nature of FGM, therefore many agencies today use the term FGM. FGM is considered as a symbol of women's inferior position and gender inequality, as well as damages women mentally and physically.^{49 50} (See column below)

FGM is considered to be prohibited under f Preamble of Universal Declaration of Human Rights, Articles 1(3), 55(c) of UN Charter, Preamble, Articles 1, 2, 3, and 4 of CEDAQ, Preamble and Article 24 of CRC, and Preamble of CAT as prohibition of sexual discrimination, as well as Articles 1, 3 and 25 of UDHR, Articles 1 and 2(a) of CEDAW, Article 19(1) of CRC as right to physical dignity and healthy life, and prohibition of

⁴⁷ WHO categories FGM into the following four:

Type I - excision of the prepuce, with or without excision of part or all of the clitoris;

Type II - excision of the clitoris with partial or total excision of the labia minora;

Type III - excision of part or all of the external genitalia and stitching/narrowing of the vaginal opening (infibulation);

Type IV - pricking, piercing or incising of the clitoris and/or labia; stretching of the clitoris and/or labia; cauterization by burning of the clitoris and surrounding tissue;

scraping of tissue surrounding the vaginal orifice (angurya cuts) or cutting of the vagina (gishiri cuts);

⁴⁸ UNICEF Innocenti Research Centre, Innocenti Digest: Changing A Harmful Social Convention: Female Genital Mutilation/Cutting, 2005, p.3.

⁴⁹ Opinion by Inter African Committee (IAC) an organization working to eliminate GM. IAC is a network of FGM Elimination Organizations in 28 countries in Africa.

⁵⁰ After effect of FGM includes bleeding, shock, infectious diseases, and difficulty in urination. Many are reported to have died from shock caused by bleeding. In many cases, the parents have took the body and gone missing. The longer time after effect includes continuous bleeding, incontinence and surgery by a person without medical knowledge can cause infection or keloid formation. Or some have difficulty in sex due to the pain or suffer from sever pain during laboring. Especially in countries where Type III FGM is conducted, the baby is taken out by cutting the suture part but it failed and took several days. As a result, there are many cases that the mother and baby die from excessive bleeding. The investigation by WHO in 2001 and 2003 for 28,393 pregnant women in 28 obstetrician and gynecologist facilities in 6 countries (Burkina Faso, Ghana, Kenya, Nigeria, Senegal and Sudan) reported adverse effect of FGM on laboring. Recently, its impact on HIV/AIDS infection has been reported.

See, WHO, "Female genital mutilation and obstetric outcome: WHO collaborative prospective study in six African countries," Lancet 2006; 367: 1835-41.

torture under CAT. Especially, Article 24 of CRC calls States Parties to abolish traditional practices prejudicial to the health of children. State Parties have strongly requested FGM to be abolished as FGM is conducted against women under the age of 18 and this is in violation of the rights of the child who require adult's protection.

Case: A girl who can no longer go to school

US NGO "Equality Now" introduced a case of 12 years old girl from Mali, Fanta. Fanta was 5 years old when she was genitally mutilated. In the course of the mutilation her urethra was damaged as a consequence of which she became incontinent. She has had to drop out of school as her fellow pupils, who could not bear the smell of her incontinence, made fun of her. In the village she spends her time washing her clothes that are repeatedly soiled by the ceaseless flow of urine. Without corrective surgery her condition, compounded by lack of an education, heralds a bleak future.

Reference: Equality Now, "Mali: Calling for a Law Against Female Genital Mutilation (FGMM)," Women's Action 25.1 (July 2004).

3-3 Refugees and Internally Displaced Persons

1) Introduction: Why do we need protection for refugees?

Refugees are people who could not receive protection by their own countries and escaped to another country due to persecution on the grounds of race, religion, political opinion and so on. Since refugees are unable to receive protection by their own government, another State needs to provide protection after their flight.

Normally, the status of refugee is declared after the individual screening by the asylum government. However in the event of mass flight, they can be protected as Prima Facie refugees.

On the other hand, internally displaced persons are people derived of their homes but those who have not crossed the border due to various reasons and staying within their own country. They may have wider reasons of the flight than those of refugees, including natural disaster and conflicts.

Difference in definitions between refugee and internally displace person

	Document	Definition	Conventions and laws to be referred for protection	UN Agency in charge of protection
Refugee	• Refugee convention	<input checked="" type="checkbox"/> Individual <input checked="" type="checkbox"/> Outside of the country	<input checked="" type="checkbox"/> Conventions ratified by an asylum	UNHCR

	<ul style="list-style-type: none"> Refugee Protocol *In Africa, "OAU Convention Governing the Specific Aspects of Refugee Problems in Africa" may be applied 	<input checked="" type="checkbox"/> Having fear of persecution on the following grounds <ul style="list-style-type: none"> Race Religion Nationality Membership of a particular social group Political opinion 	country (especially Refugee Convention and HR conventions) <input checked="" type="checkbox"/> Domestic laws of an asylum country	
Internally Displaced Person (IDP)	Guideline on IDP	<input checked="" type="checkbox"/> Individual or group <input checked="" type="checkbox"/> Inside the country <input checked="" type="checkbox"/> Flight based on the following grounds <ul style="list-style-type: none"> Armed conflict Generalized violence Violation of human rights Natural or man made disaster 	<input checked="" type="checkbox"/> International human rights convention ratified by the country where IDP stays <input checked="" type="checkbox"/> Domestic laws	To be performed by UNHCR or UNICEF under cluster approach (i.e. UNICEF for Pakistan earthquake)

[Those who cannot be refugees]

- Person who will not be protected: committed a crime against peace, war crime and crime against humanity
- Person who has committed a serious crime (including political crime) before seeking asylum as a refugee
- Person who acted against the purpose and principles of the United Nations.

[Those who cease to receive protection as refugees]

- Person who acquired a new nationality
- Person whose circumstances in connection with which he has been recognized as a refugee have ceased to exist (i.e. end of the military government who persecuted the refugee.)⁵¹

2) What should be protected for refugees

The following should be protected for refugees. Unless otherwise specified, these are basic principles which should be protected by the government of the asylum country,

⁵¹Reference:

- Refugee Convention, Article 1C (Cessation Clause)
- Refugee Convention, Article 1F (Exclusion Clause)
- The Rome Statute of the International Criminal Court Article 8 (War Crime)

rather than being provided by assistance NGOs. For example, provision of the right to employment may be difficult to be guaranteed in some countries with mass influx of refugees and high unemployment rate, and there are countries that are not meeting these rights. In such case, NGOs should cooperate with the relevant parties and approach and continue talking to the authority to meet the principles as much as possible. This could be one form of protection activities.

- i) Returned to a country where the persecution may occur against his will
 - ✓ Approach the government of the asylum country not to implement far too strict border control due to their political instability and mass influx of refugees.
 - ✓ For securing of non-refoulement, humanitarian agencies should take measures to prevent a situation where refugees are forced to return due to lack of food assistance, etc.⁵²
- ii) Guarantee the minimum standard of life as a human being
 - ✓ Secure the life in the country/place of asylum (guarantee of food distribution, housing, public education, etc).
 - ✓ Not to be punished for requesting protection and daily commodities.
 - ✓ The above should be applied without any discrimination on religion, race, etc.⁵³
- iii) Not to be punished only for illegal entry
 - ✓ Refugees are people who were forced to flight, therefore they should not be punished by the authority just for entering the country without passport or visa.⁵⁴
- iv) Unfair restriction on freedom of movement
 - ✓ Freedom of movement of refugees within camps should not be unfairly restricted (i.e. not allowed to go out of a camp)
 - ✓ Especially, not to be unfairly detained due to a means of asylum or escape.
 - ✓ If detained in the legal procedure, an assistant organization may

⁵²Reference:

- Refugee Convention Article 33 (Prohibition of expulsion or return)
- CAT Article 3 (Prohibition of expulsion or return)
- CRC Article 22 (Protection of refugee child)
- Guiding Principles on Internal Displacement Principle 6

⁵³Reference:

- Refugee Convention Articles 3 to 33 (Prohibition of expulsion or return)
- Guiding Principles on Internal Displacement Principle 3

⁵⁴Reference:

- Refugee Convention Article 31 (Refugees unlawfully in the country of refuge)

approach the authority to release the refugee.⁵⁵

- v) Work permit (especially self employed)
 - ✓ Acknowledge the right to work for all refugees
 - ✓ The authority shall ensure the most favorable treatment as possible regarding the right to be independent and involved in agriculture, industrial, manufacturing and commercial activities.⁵⁶
- vi) Secure physical safety (i.e. attack at the time of border crossing)
 - ✓ As an assistant organization, pay the latest attention to the refugees in camps and fields in order for them not to be exposed to danger when crossing the border.

3) Refugees who need special attention

- i) Vulnerable refugees including women and children
 - ✓ Protection shall be provided in accordance with the situation of women and children.
 - *See sections for women and the child.
- ii) Refugees with disabilities/illness
 - ✓ Disability or illness shall be properly understood and appropriate treatment shall be provided.⁵⁷
 - *See section for people with disabilities and illness
- iii) Refugees with special damage from persecution (both physical and mental)
 - ✓ Appropriate treatment shall be provided based on the understanding on the particular fact that persecution in the country of origin including torture can cause physical and mental damage.
- iv) Minority refugees (ethnicity, religion, etc)

⁵⁵ Reference:

- ICCPR Article 9 (liberty of person and procedure of arrest or detention)
- CRC Article 37 (Treatment of child deprived of liberty)
- Refugee Convention Article 31 (Refugees unlawfully in the country of refuge)

⁵⁶ Reference:

- ICSEER Article 6 (right to work)
- Refugee Convention Article 17 (Wage-earning employment), Article 18 (Self-employment), Article 19 (Liberal professions)

⁵⁷ Reference:

- Geneva Convention relative to the Protection of Civilian Persons in Time of War Article 16 (Particular protection and respect), Article 17 (Local agreement for escape and passage), Article 18 (Civilian hospitals), Article 19 (Protection of civilian hospitals)
- Geneva Convention Protocol I Articles 8 to 20 (Wounded, sick and shipwrecked), Articles 21 to 31 (Medical vehicles)
- Geneva Convention Protocol II Articles 7 to 12 (Wounded, sick and shipwrecked)

- ✓ Attention shall be paid to the refugees not to be discriminated against other majority races and excluded from food distribution and other services.
- ✓ Secure practice of their own religion, culture and customs.

*See section for minorities

- v) Isolated refugees (urban refugees, those who cannot access to a community, etc)

Unlike distribution in refugee camps, they are separated in cities and it is difficult to understand the situation.

- ✓ Take consideration on securing access for equal distribution of information and assistance and not to exclude people from those. (For example, provision of transportation fee for them to visit an NGO, or visit their homes).

- vi) Detained refugees (without freedom of movement)

- ✓ Check if the situation of the detention center meets the international standards. If not, take actions for improvement.
- ✓ Be concerned with the fact that the risk of deportation increases if monitoring is not performed properly.⁵⁸

- vii) Refugees near the border

It is necessary to ensure that a person wishing to escape can apply to the person in charge from the country of escape at the border and be protected.

- ✓ Monitor the border to make sure that people wishing to escape will not be returned against their will.⁵⁹

3-4 Minorities (Social minorities)

1) Introduction: Why do we need protection for minorities?

Minorities are people who belong to a social minority group including national, ethnic, religious, linguistic or other minorities. They have specific laws, values and customs different from the majority of the society. Still these are not often recognized and their rights are not guaranteed as much as those of the majority in the State.

⁵⁸Reference:

- ICCPR Article 10 (treatment of persons deprived of liberty and accused)
- CAT
- Standard Minimum Rules for the Treatment of Prisoners
- Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment

⁵⁹Reference:

- Refugee Convention Article 33 (Prohibition of expulsion or return)
- CAT Article 3 (Prohibition of expulsion or return)
- CRC Article 22 (Protection of refugee child)

Some minorities are regarded as taboo in outcasts in assistance areas and subject to severe discrimination by civilians, therefore they may be invisible to foreign aid workers. However these are the people who are in the most need of protection. Efforts to identify the invisible are required.

2) What should be protected minorities?

- i) Not to be subject to harassment
 - ✓ Ensure that they are not subject to hatred and hate speech on the ground of belonging to a minority group.
 - ✓ Especially, ensure not to agitate racial discrimination and violence.⁶⁰
- ii) Secure equal access to assistance
 - ✓ Secure equal access to assistance without discrimination⁶¹
- iii) Respect minority specific culture, custom, religion, etc
 - ✓ Secure the rights to enjoy his own culture, practice his own religion and use his own language.
 - ✓ Exercise of these rights should basically be left to the person
 - ✓ Acknowledge the right to an ethnic education (establish and operate a private education facility for their own ethnicity).⁶²
- iv) Not discrimination over exercise of rights guaranteed within the country (right to vote, election, access to court, education, etc)
 - ✓ The rights to equal treatment in the Court, protection from violence, exercise of political rights and other civil rights (freedom of movement, return to his/her own country, nationality, marriage, inheritance, etc).
 - ✓ Social rights (choice of occupation, right to housing, right to health care)⁶³
- v) No unfair discrimination in the society (housing, employment, marriage, etc)
 - ✓ Indigenous people should not be forced to leave from their land or region
 - ✓ Indigenous people's right to own, develop and manage the traditionally

⁶⁰Reference:

•ICERD Article 4 (Prohibition of discrimination and propaganda based on ideas in superiority of one race)
•Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities

⁶¹Reference:

•ICERD Article 5 (Equality before the law, non discrimination of the right)

⁶²Reference:

•Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities
•Framework Convention for the Protection of National Minorities

⁶³Reference:

•ICERD Article 5 (Equality before the law, non discrimination of the right)

utilized land.⁶⁴

3) Minorities who require special attention

- i) Minority with faith, custom or ethnicity which could be legally punished within the country or people who belong to such group

A person belonging to a religion which is not legally admitted in the country of stay (for example a religious minority belonging to a heretical sect) may be subject to mistreatment or abuse by civilians when the practice was disclosed. Or the person could be punished in the country of the stay. Therefore special consideration is required to secure a safe place to continue the desired practice as much as possible.

- ii) Minority who are not legally permitted to stay in the country (not registered)

For example, some people may not be recognized as citizens of the country because they do not practice the national religion, and the birth of their children cannot be registered. This may result in the situation of statelessness, leaving no country for them to return to. In such situation, it is important to take actions to the country involved not to cause stateless persons.

- iii) Minority who are not protected by the State of residence and subject to severe discrimination in a private sector

For example, there are people like outcast who are subject to severe discrimination by the civilians due to their customs. It is important to secure their access to assistance without discrimination.

3-5 Persons with disabilities/illness

1) Introduction: Why do we need protection for persons with disabilities/illness?

The term “person with disabilities” means any person unable to ensure by himself or herself, wholly or partly, the necessities of a normal individual and/or social life, as a result of deficiency, either congenital or not, in his or her physical or mental capabilities. Particularly in areas in need of humanitarian assistance, more persons acquired disabilities due to conflicts, landmines or earthquakes.

2) What should be protected for persons with disabilities?

- i) To be protected from exploitation, discriminatory abuse and cruel treatments

⁶⁴Reference:

UN Draft Declaration on the rights of indigenous people

- ✓ In order to prevent the occurrence, take all appropriate measures to protect persons with disabilities not to be received above treatments on the basis of disability.⁶⁵
- ii) Living independently and being included in the community
 - ✓ Secure socially active participation of persons with disabilities living with persons without disabilities, without being isolated in the community⁶⁶
- iii) Secure equal access to assistance
 - ✓ To secure equal access by persons with disabilities to clean water services, and to secure access to appropriate and affordable services, devices and other assistance for disability-related needs⁶⁷
- iv) No unfair discrimination in society (including employment and marriage)⁶⁸
 - ✓ Ensure that persons with disabilities are treated equally as an individual without discrimination

3) Persons with disabilities who require special attention

- i) It needs to be noted that, out of the above listed socially vulnerable people (women, child, minorities, elderly), persons with disabilities are the most vulnerable and subject to multiple discriminations.⁶⁹

Column 7: Rights of persons with illness

There are a number of guidelines on HIV/AIDS. Three principles are referred here. It is important to establish and respect similar principles for other illnesses.

- i) Test for infectious diseases shall never be forced and such test shall be performed upon adequate consent of the person.
- ii) For any assistance, consult with the person and protect the confidentiality.
- iii) Ensure that assistance is not rejected due to illness (especially infectious disease)⁷⁰

3-6 Older persons

1) Introduction: Why do we need protection for older persons?

The World Health Organization (WHO) defines persons over the age of 65 as older

⁶⁵ Reference: UN Convention on the rights of persons with disabilities Article 16

⁶⁶ Reference: UN Convention on the rights of persons with disabilities Article 19

⁶⁷ Reference: UN Convention on the rights of persons with disabilities Article 28

⁶⁸ Reference:

ICESR General Comment No.5

UN Convention on the rights of persons with disabilities Article 5

⁶⁹ Reference: UN Convention on the rights of persons with disabilities Articles 6&7

⁷⁰ Reference: UN Committee on the Rights of the Child, General Comment No.3 (2003) HIV/AIDS

persons. However in many areas with humanitarian assistance, the definition is often lowered to persons over the age of 55 (i.e. South Sudan). Older persons need special consideration due to decline of their motor ability and decreased memory from aging. On the other hand, they should be respected in many cases because of their knowledge and age. They have huge potential for contribution to community.

2) What should be protected for older persons

- i) Access to assistance in accordance with their specific needs as older persons
 - ✓ To be able to receive special assistance in accordance with their own needs. For example they may not be able to eat the normal food distributed due to lack of their tooth (or weak tooth) from aging, or they may not be in need of wheel chair because of difficulty in walking.
- ii) Protection from abuse
 - ✓ To be able to live life with dignity, free from physical and mental abuse
- iii) Secure equal access to assistance
 - ✓ Ensure equally and fair distribution of assistance regardless of their age, sex, race, ethnic background, and disability and etc.
 - ✓ Practical access to older persons, who are bedridden and unable to walk to receive distribution, is required.⁷¹

3) Older persons who require special attention

- i) Isolated older person
 - ✓ Since the person is not accompanied by an adult who can take care of him/her and left alone, he/she could be easily excluded from assistance.
 - ✓ The person may be suffering from loneliness without any support
- ii) Older person upbringing the grandchild
 - ✓ Older persons may be upbringing the grandchildren who lost the parents from HIV/AIDS and other reasons. This could bring more burden to older persons.
- iii) Older persons with disabilities/illness
 - ✓ It could be difficult for them to have access to and receive assistance that meets their needs. Needs attention since illness specific to older persons are often overlooked during assessment.

⁷¹Reference:

•United Nations Principles for Older Persons

IV. Prescription

i) Registration⁷²

- Registration is a very effective tool to prevent deportation and child soldier being forced into army, ensure access to basic rights and reintegration of family and understand whether the person requires special consideration or not.
- For this, it is necessary to collect as much information as possible and judge the need of special protection for the beneficiary.
- Understand the existence of disabilities/illness and the treatment (including mental disabilities) and make arrangement for inquiry if medical care is required.
- Registration should not end at the time of camp arrival. It should be conducted at the time of birth and other necessary stages of life and understand the people with special consideration as noted above and ensure to collect and maintain appropriate information based on their needs.
- For the child, the following information should be collected to make judgment over risks in protection.
 - ✓ Presence of families or guardian (needs of searching a guardian).
- Confirm that a new born baby is registered by the government or assistance agency without discrimination.
- Registration of women should be performed by women as much as possible in order to understand the needs of women
- For refugees, it is important to distinguish between combatants and non-combatants
 - ✓ Combatant who was involved in a war crime cannot receive protection as a refugee
- Minorities require special care on registration items since it may be difficult to acquire their background information and could cause unnecessary conflict and discrimination
- Pre-training and through confidentiality obligation for persons in charge (inform about prohibition of discrimination and bias)

ii) Ensure that people have access to assistance without discrimination

- All people have access to adequate distribution without discrimination
- It is effective to confirm whether the person has access to the same level of

⁷² Reference:

•Conclusion on Registration of Refugees and Asylum-seekers (No. 91 (LII) - 2001)

assistance as other beneficiaries without discrimination through monitoring

- iii) Secure safe places for people of concern
 - Secure security of camp or place of stay
 - Secure privacy as much as possible (consider the balance with infrastructure development)
 - It is effective to establish a place where children can gather safely alone and play for their protection (NGO's effort on play ground for children is one example)
 - It is effective to establish a place where women can gather safely alone and exchange information for their protection (in many cases, kitchens and washing rooms)
- iv) Prepare environment which prevents sexual exploitation and abuse (consider location of toilet/shower and lighting)
 - Prepare the environment with consideration to secure adequate privacy where people can use toilet and shower comfortably (an external person has access to the facility in case of problems such as sexual exploitation).
- v) Secure place, resource and method that a person can escape to in case of trouble
 - Secure a place that a woman or child can run to when he/she was subject to violence (for example, a place like Women Center or Child Medical Clinic). In such place, a protection officer should confirm the facts and refer to a medical staff if necessary (for treatment and, if requested, confirmation of the facts). The protection officer or the person in charge needs to notify the relevant parties.
 - A female officer should respond to an appeal made by a female victim
 - In addition to these, it is necessary to secure a point of contact in case of discrimination and severe human rights violation as well as violence.
 - If the victim belongs to a group like minority which is not recognized by the government, it is effective to assist and refer the case to authority to handle.
 - It is important to secure accessibility in accordance with their needs such as disabled or elderly at the time of reporting.
- vi) Prevention of infectious disease
 - It is necessary to take appropriate measures to prevent any infectious diseases through vaccination and raising awareness
- vii) Inform the community (including beneficiaries) of their rights
 - Inform about their rights and obligations as well as measures to recover such rights in case of violation in an understandable manner through education or

information campaigns.

- Take measures to share information among all members of the community. It is extremely important to set directions to eliminate bias and harmful practices for persons with disabilities, children and women.⁷³
 - ✧ One example is to use “Child Day” or “Woman Day” in the country effectively, conduct a ceremony and issue a leaflet which helps their understanding.
- Inform the situation of refugees and internally displaced persons and develop an environment in the host community with better understanding and cooperation.
- ✘ It is important to take an approach which can be understood by the community, without violating the core concept of protection.

viii) Empower themselves

- Assist them to learn about their rights and be able to exercise their rights freely (political, social, economical and other rights)
- Provide opportunity for employment or vocational training
- For this, secure equal access to people in difficulty such as women, persons with disabilities and older persons

ix) Secure opportunity for participation

- Secure opportunity for participation for women to express their opinions at the time of decision making in the community and such opinions should be reflected (The ultimate goal is that women account for 50% of the participants).
- Secure means of participation for them to be involved in decision making of issues that influence themselves
- It is effective to secure various opportunities for beneficiaries, for example contributing to the community as a volunteer if requested
- Secure means of participation for minorities to take part in the State's decisions in its political, economical and social systems.
- Secure rights for minorities to maintain their political, economical and social systems.

x) Grasp the needs

- It is important to listen to opinions of the beneficiaries including children. When implementing a project which could influence children and beneficiaries, they should participate to the assessment in order for their opinions to be

⁷³Reference: UN Convention on the rights of persons with disabilities Article 8

reflected in the planning and development.

- xi) Secure opportunity for education
 - Establish infrastructure and other means to secure the child's opportunity for education as their basic rights even during their flight and after repatriation
 - Take consideration that women and other minorities are not excluded from such opportunity.
- xii) Secure an adult's access to employment
 - Secure access to employment regardless of disabilities or race
- xiii) Secure freedom of movement
 - Secure an environment where people can move without restriction as much as possible
- xiv) [Refugees] Monitor to prevent incidents near the border
 - Stay and monitor the border area to secure a person in need of protection can enter into the country without any problem

IV. Responsibilities of humanitarian aid workers

- Compliance in Code of Conduct
 - Comply with code of conduct in his/.her own department or organization
- Bring the issue of protection to the core of the organization and develop awareness of rights
- Coordination with relevant agencies
 - Like other projects, coordination with relevant parties is extremely important
 - Coordination among government parties in the project, regional government as well as UNHCR who sets protection as its primary mandate, ICRC who tracks the family and their safety, NGOs, research agencies is important.
- SGBV Prevention
 - Strict prevention of SGBV from time of employment including the contract
 - Regularly remind SGBV issues SGBV Prevention
- Needs of protection training
 - Provide trainings for staffs to understand what should be protected.
 - Inquire relevant parties in case of a problem with protection. Training on Protection
- While establishing the principles for protection, consider various situations in the fields for their implementation (culture, tradition, religion, politics, etc)