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AN OVERVIEW OF HUMAN RIGHTS VIOLATIONS OF VULNERABLE GROUPS IN CONFLICT-SETTINGS: CURRENT TRENDS AND PATTERNS**

SUMMARY: 1. Introduction. - 2. The interaction between human rights violations and conflict. - 2.1. Human rights violations as causes and consequences of violent conflict. - 2.2. Human rights violations as transformers of conflict dynamics. - 2.3 Human rights violations and demands for accountability. - 3. Human rights violations against vulnerable groups in conflict-settings. - 3.1. The notion of vulnerability and the selection of vulnerable groups. - 3.2. Children. - 3.2.1. International legal and policy framework: a special focus on EU instruments. - 3.2.2. Human rights violations committed against children in conflict-settings. Trends and patterns. - 3.3. Women. - 3.3.1. International legal and policy framework: a special focus on EU instruments. - 3.3.2. Human rights violations committed against women in conflict-settings. Trends and patterns. - 3.4 Refugees and IDPs. - 3.4.1. International legal and policy framework: a special focus on EU instruments. - 3.4.2. Human rights committed against refugees and IDPs. Trends and patterns. - 3.5. Indigenous People. - 3.5.1. International legal and policy framework: a special focus on EU instruments. - 3.5.2. Human rights violations committed against indigenous peoples. Trends and patterns. - 4. Conclusions.

1. Introduction

In the twenty-first century, violence and conflict continue to be at the heart of some of the worst human rights violations across the globe. Increasingly and devastatingly targeted by the perpetrators of violence, civilian population accounts for the vast majority of the victims of the world's conflicts. In this context, the EU has acknowledged having a «political and moral responsibility to act to avoid the human suffering and the destruction

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of resources caused by violent conflicts».¹ The success of the European integration has been seen as giving the legitimacy to the EU to pursue a conflict-prevention objective towards third countries.

The EU current legal framework provides that respect for human rights and fundamental freedoms is a core value and legal obligation of the EU and it guides Union actions in the international scene.² In this sense, the general provisions on the EU's external action (Title V of the Treaty of the European Union) have mandated the EU to «consolidate and support democracy, the rule of law, human rights and the principles of international law»,³ on the one hand, and to «preserve peace, prevent conflicts and strengthen international security»,⁴ on the other hand. As part of the external action of the EU, CSDP operations should be used for «peace-keeping, conflict prevention and strengthening international security».⁵

On 25 June 2012, the Council adopted its Strategic Framework and Action Plan for Human Rights and Democracy («Strategic Framework»), as a roadmap to mainstream human rights into «all areas of its external action without exception».⁶ For the implementation of the Strategic Framework, the Action Plan urges to «reflect human rights in conflict prevention and crisis management activities», specifically by means of «systematically include human rights, child protection, gender equality- and IHL where relevant - in the mandates of EU missions and operations».⁷ Since the first EU crisis management operation in 2003,⁸ best practices have been identified on incorporating human rights and gender considerations in planning and implementation. However, it is necessary to develop a more systematic focus on human rights in the EU's conflict prevention, crisis management and peace building efforts.⁹ Particularly, there is little mention of the role that human rights play within EU policies and how human rights protection can also be seen as part of a wider goal of conflict prevention and contribute to the effectiveness of CSDP operations.¹⁰

Against this backdrop, this paper is part of a research study dealing with «Human Rights Violations in Conflicts»¹¹ which aims at providing an overview of human rights violations of vulnerable groups in violent conflict and crisis settings. The term «conflict» is taken in this article in the broad sense of situations of organised collective violence, and thus is not necessarily limited to the legal understanding of the term under international humanitarian law. The notion of «crisis» has not been uniformly defined in the existing literature, but it is generally understood as including complex humanitarian emergencies,

¹ EU Programme for the Prevention of Violent Conflicts (EU Council Doc. 9537/1/01 REV 1, 7 June 2001, available at <http://register.consilium.eu.int>.

² Art. 3 (5) TEU.

³ Art. 21 (2) (b) TEU.

⁴ Art. 21 (2) (c) TEU.

⁵ Art. 41 (1) TEU.

⁶ Council of the European Union, *EU Strategic Framework on Human Rights and Democracy*, cit., p. 2.

⁷ *Ibidem*. 12.

⁸ The EU Police Mission (EUPM) in Bosnia and Herzegovina (BiH) was the first ESDP's mission, launched on 1 January 2003.

⁹ FRAME Project *Human rights in EU external relations and internal policies*, 2013, Annex I, Part B, 19, available at <http://www.fp7-frame.eu/>.

¹⁰ FRAME Project *Human rights in EU external relations and internal policies*, cit. Annex I, Part B, 28.

¹¹ The study forms part of a research package (Work Package number 10) integrating a large collaborative research project under the title «Fostering Human Rights Among European (External and Internal) Policies» (FRAME).

whether derived or not from conflict situations as well as scenarios of socio-political unrest.

Regarding the focus on human rights violations of particularly vulnerable groups in conflict/crisis-settings, a minimum list of social groups that are systematically more affected by conflict/crisis situations than other groups within society is possible to identify through international law and practice. This paper provides a specific focus on the list of vulnerable groups which has been identified in the EU Strategic Framework and in EU conflict/crisis management policies: namely, children, women, refugees and internally displaced persons (IDPs) and indigenous peoples. Those groups have been selected because they represent different approaches of vulnerability: inherent (children), gender-based (women) group-based (indigenous peoples), and depending on a specific status (IDPs and refugees).

As regards the methodology, this essay follows a hybrid approach, mixing disciplinary approaches, policy and legal analyses, and provides data compiled by existing databases and human rights reports. In particular, several illustrations of current data on patterns, perpetrators and trends of serious human rights violations committed against selected vulnerable groups are presented.

The paper is structured into three sections. Section one is focused on the relationship between human rights violations and conflict. Section two first explains the notion of vulnerability and how this notion relates to the selected vulnerable groups. It then presents an overview of serious human rights violations against those groups taking into account the legal and policy framework with a particular focus on EU instruments. Finally, some preliminary conclusions and recommendations are provided.

2. The interaction between human rights violations and conflict

Human rights and conflict are inextricably linked. There are diverse viewpoints on the relationship between human rights and conflict that correspond to three schools of thought: the «human rights approach», the «conflict resolution perspective» and the «humanitarian law approach».¹² The first one is dominant among individuals and organizations that work to promote respect for human dignity and that stress the importance of exposing the truth about governmental abuses and bringing an end to injustices; the second one is commonly espoused by those who focus on resolving, managing, preventing, or transforming violent conflict, whether through negotiation and mediation or through the threat or use of military force and other coercive measures. Finally, the «humanitarian law» approach is inspired by the corpus of international humanitarian law concerning the conduct of war and the protection of civilians during armed conflict. It is characteristic of relief agencies and other organizations, especially those administered by the United Nations, that work in the field to assist populations hit by violent conflict.¹³ In the last decade these three schools of thought have increasingly converged and have been able to complement each other's work. Nonetheless the great

¹² FRAME Project, *Human rights in EU external relations and internal policies*, cit. p. 5-8.

¹³ *Ibidem*. p. 5.

challenge still remains: «how to integrate these perspectives in a manner that best responds to the nature of conflict in today's world.»¹⁴

Therefore, the relationship between human rights violations and violent conflict can be characterized as complex, dynamic and multi-dimensional.¹⁵ Complexity refers to the diversity of «interplay between human rights violations and conflict and the role of human rights violations as causes, consequences, or transformers of ongoing conflict dynamics».¹⁶

An alternative perspective on the relationship between human rights and conflict is the central role that human rights protection can play in transition through negotiation processes towards peace and democracy. From this angle, «human rights protections and accountability for past abuses are also often claimed to be essential to peacemaking and peace-building».¹⁷

2.1. *Human rights violations as causes and consequences of violent conflict*

Human rights violations are usually both causes and consequences of conflict, intertwined among other factors. Parlevliet uses the metaphor of an iceberg to illustrate the notion that human rights violations can be both causes and consequences of violent conflict.¹⁸ The top of the iceberg represents human rights violations as symptoms of violent conflict. The bottom of the iceberg symbolizes violations of human rights as causes of conflict: exclusion of minorities, uneven access to resources, discrimination and non-participation in public affairs. They represent «situations where denial of human rights are embedded in the structures of society and governance, in terms of how the State is organised, how institutions operate and how society functions».¹⁹ The two levels of the violent conflict/rights relationship interact with one another on an ongoing basis.

Although there is no prototypical root cause leading to violence, a crucial dimension of the factors fuelling violence is the lack of satisfaction of human needs, and of protection and fulfillment of human rights, which analysts have connected to causes of violent conflict.²⁰ From a human rights perspective the role of grievances over the real or perceived denial of rights as a driver of conflict has been stressed. When considering internationally recognized human rights, some studies have highlighted that «violations of civil and political rights are more obviously linked to conflict than abuses of economic and social rights. Discrimination and violations of social and economic rights function as underlying causes, creating grievances and group identities that may lead to violence. In contrast,

¹⁴ *Ibidem.* p. 19.

¹⁵ G. E. FRERKS, *Human Rights Violations and Contemporary Violent Conflict: an Inquiry into Causes and Remedies*, in I. BOEREFIJN (ed.), *Human Rights and Conflict: Essays in Honour of Bas de Gaay Fortman*, 2012, p. 67ss.

¹⁶ C. L. SRIRAM, O. MARTÍN-ORTEGA, J. HERMAN (Eds.), *War, Conflict and Human Rights. Theory and Practice*, 2014, p. 3.

¹⁷ *Ibidem.* p.7.

¹⁸ M. PARLEVLIET, *Rethinking Conflict Transformation from a Human Rights Perspective*, 2009, available at http://www.berghof-handbook.net/documents/publications/parlevliet_handbook.pdf (accessed 22 March 2014), p. 6.

¹⁹ *Ibidem.* p. 5.

²⁰ G. E. FRERKS, *Human Rights Violations and Contemporary Violent Conflict: an Inquiry into Causes and Remedies*, cit., p. 68. According to the Observatorio de Paz y Conflictos, in 2012 «most of the conflicts were driven by opposition to a particular government or state system, or related to identity and self-government demands» Escola de Cultura de Pau (ECP), *Alerta 2013! Report on conflict, human rights and peacebuilding*, 2013, available at <http://escolapau.uab.es/img/programas/alerta/alerta/13/alerta13i.pdf> (accessed 30 May 2014), p. 2.

violations of civil and political rights are more clearly identifiable as direct conflict triggers. When populations are unsettled by long-standing inequalities in access to basic needs and political participation, government repression may trigger violent conflict.²¹

Social, economic or political exclusion of certain groups is therefore a central way of analyzing the impact of rights denials.²² Research suggests that violent conflicts have grown out of the existence of systematic discriminations, different access to education or health care, limited freedom of expression or religion, language, gender, etc. Even if those human rights abuses are considered minor, particularly in comparison with international crimes, «this kind of violations can still generate real grievances and social unrest».²³

The role of the State in addressing these kinds of violations is of paramount importance. In functional States, such grievances may be handled through legal and institutional means. However in fragile, weak, corrupt or collapsed and collapsing States such conflict is more likely to become violent. Recent reports from the Organization for Economic Co-operation and Development (OECD) acknowledge the tendency to recognize the «multidimensional aspects of fragility» and the «overarching importance of the social contract between citizens and the State».²⁴

2.2. Human rights violations as transformers of conflict dynamics

Human rights violations are not only causes and consequences of violent conflict, they are also «potentially transformers of conflicts and may make their already difficult resolution an even greater challenge».²⁵ It can be the case that the initial causes that may have been present as the instigators of conflict are overwhelmed by other drivers of violence based on grievances and recriminations, resulting from the conflict and human rights violations conducted by parties to it, be they rebel groups or State actors.

2.3. Human rights violations and demands for accountability

Human rights may emerge as a central concern in negotiations in a number of ways highlighting antagonist positions on the negotiation table and even becoming serious obstacles to peace negotiations. In particular, it is common to see that perpetrators of serious human rights violations and international crimes, whether part of armed groups or the government, press for blanket amnesties or at least for their own protection raising problems of

²¹ O. N. THOMS, J. RON, *Do Human Rights Violations Cause Internal Conflict?*, 2007, vol. 29 (3) *Hum. Rights Quart.* 674, 701.

²² Research conducted by the Global and Social Development Research Center (GSDRC) on Rights, Conflict and Fragile States can be consulted at <http://www.gsdr.org/go/topic-guides/human-rights/rights-conflict-and-fragile-states#frag> (accessed 20 April 2014).

²³ C. L. SRIRAM, O. MARTÍN-ORTEGA, J. HERMAN (eds.), *War, Conflict and Human Rights. Theory and Practice*, cit., p. 5.

²⁴ OECD, *Improving International Support to Peace: The Missing Peace, Conflict and Fragility*, 2012.

²⁵ C. L. SRIRAM, O. MARTÍN-ORTEGA, J. HERMAN (eds.), *War, Conflict and Human Rights. Theory and Practice*, cit., p. 6.

impunity.²⁶ In these settings there remain important tensions between the pursuit of accountability and the pursuit of peace agreements.

One may refer to recent peace agreements to confirm that either they set accountability to one side, or explicitly grant amnesties for one or more parties. In this regard the Comprehensive Peace Agreement concluded in 2005 to resolve the conflict in Sudan between the Northern government and the Sudanese People's Liberation Army (SPLA) should be noted. Other examples are the Lomé Agreement in Sierra Leone in 1999, or the 2006-2008 Juba Peace Talks between the Government of Uganda and the Lord Resistance's Army (LRA) seeking to put an end to the conflict in Northern Uganda. During this negotiation the Ugandan Government made frequent calls for the withdrawal of the arrest warrants issued by the International Criminal Court (ICC) after the referral of the situation.²⁷ As the ICC refused to withdraw the arrest warrants, the LRA returned to the battlefield and the peace talks collapsed. Therefore, «the pursuit of accountability may hamper not only peace negotiations, but also peace implementation, where those who face accountability return to violence».²⁸

3. *Human rights violations against vulnerable groups in conflict-settings*

The whole catalogue of human rights may be significantly affected during armed conflict. Civilians are affected in many ways by violent conflict, whether as direct victims of death, injury, rape and forcible displacement or as indirect victims through conflict-induced increases in disease, hunger and malnutrition. Unfortunately, research on the changing face of humanitarian crisis indicates mega-catastrophes in the near future,²⁹ with devastating impacts for the most vulnerable populations in post-conflict countries.³⁰

Contemporary conflicts are characterized by a growing trend of «one-side violence» which is inflicted on civilians.³¹ The focus of this notion is the use of force against civilians caused by government or by non-state actors. The case of Syria is representative of civilian people suffering the worst atrocities and repeated violations of international humanitarian

²⁶ Tensions in this area are represented by the arguments of the European Court of Justice (Grand Chamber) in the recent judgment on *Marguš v. Croatia* (no. 4455/10) delivered on 27 May 2014, concerning the conviction, in 2007, of a former commander of the Croatian army of war crimes against the civilian population committed in 1991.

²⁷ Arrest warrants were issued for LRA leader Joseph Kony and four others. See the warrant of arrest of Joseph Kony at the website of the ICC <http://www.icc-cpi.int/iccdocs/doc/doc97185.pdf> (accessed 10 June 2014).

²⁸ C. L. SRIRAM, O. MARTÍN-ORTEGA, J. HERMAN (eds.), *War, Conflict and Human Rights. Theory and Practice*, cit., p. 8.

²⁹ F. M. BURKLE, J. G. MARTONE, P. G. GREENOUGH, *The Changing Face of Humanitarian Crisis*, 2014, vol. XX issue II *Brown Jour. W. Aff.* 25. The challenges highlighted by these authors are «climate change, decreasing biodiversity, resource scarcities, armed conflicts», p. 25.

³⁰ These commentators stress that: «One out of every 170 people on the planet is already a refugee or an internally displaced person due to war or disaster. Many are in post-conflict areas that have less than 10 percent of the public health resources they had prior to the conflict. Research is evidencing an increase in indirect deaths and illnesses from a lack of water, sanitation, food, shelter, health access and availability, and energy infrastructures. In such settings, the risk of returning to war within a decade is over 50 percent.» See F. M. BURKLE, J. G. MARTONE, P. G. GREENOUGH, *The Changing Face of Humanitarian Crisis*, cit., p.34.

³¹ One-sided violence is defined as: «The use of armed force by the government of a State or by a formally organized group against civilians which results in at least 25 deaths in a year». Source: UCDP, available at <http://www.pcr.uu.se/research/ucdp/definitions> (accessed 20 April 2014).

and human rights law with the use by the Syrian regime of chemical weapons, missiles and incendiary weapons against civilians, or attacks against humanitarian and medical targets. In this context, the impact and experience of conflict is not the same for all civilians, but can vary enormously among the members of different groups considered as «more vulnerable» than others to the devastating consequences of conflicts.³²

3.1. *The notion of vulnerability and the selection of vulnerable groups*

The use of the term «vulnerable groups» is subject to numerous debates, as there is no universal definition of this concept. If we come back to the primary signification of the concept of vulnerability, the word «vulnerable» is a derivative from the Latin word *vulnus* which means «wound». Vulnerability can be considered as a universal trait of our human condition.³³ According to Brian S. Turner, this vulnerable human nature is the common basis of human rights: human beings own rights because of their inherent vulnerability.³⁴

Notwithstanding this universal condition, vulnerability is also driven by context.³⁵ A condition of vulnerability may exist prior to a conflict or crisis, or may be generated by those situations.³⁶ The concept which assumes that vulnerabilities exist prior to the conflict, embedded in broader power relations, will determine differently the opportunities of specific groups to counteract the dynamics and impacts of the conflicts.³⁷ The vulnerable groups in a specific conflict setting will therefore depend on the context of the conflict, on its components, on its actors, its causes and consequences.³⁸

Current challenges and critics around the notion of «vulnerable groups» have been acknowledged. Academic literature warns against creating stigma, further marginalising groups and reinforcing the «victim-narrative» by focusing policies and interventions on labelled vulnerable groups, rather than on the various factors that render certain groups

³² See R. C. CARPENTIER, *Women, Children and Other Vulnerable Groups»: Gender, Strategic Frames and the Protection of Civilian as a Transnational Issue*, in *Int. St. Quart.*, 2005, 49, pp. 295-334.

³³ FRAME, *Fostering Human Rights Among European Policies, Report mapping legal and policy instruments of the EU for human rights and democracy support*, cit., p. 127.

³⁴ B. S. TURNER, *Vulnerability and Human Rights*, 2010, p. 1.

³⁵ See, e.g., M. A. FINEMAN, *The Vulnerable Subject: Anchoring Equality in the Human Condition*, 2008, *Yale Jour. Law Fem.* 1, p. 10.

³⁶ International Labor Organisation, *In Focus Programme on Crisis Response and Reconstruction (IFP/CRISIS)*, 1 January 2003, available at http://www.ilo.org/wcmsp5/groups/public/@ed_emp/@emp_ent/@ifp_crisis/documents/presentation/wcms_116758.pdf (accessed on 9 April 2014), p. 4.

³⁷ J. K. MOHAMMAD, *Social Vulnerability and Conflict Elements of a Regional Conflict Vulnerability Analysis in West Africa*, in IBRAHIM et al. (eds) *Effective Strategies for Peacebuilding in West Africa*, 2009, available at http://www.academia.edu/255508/Social_Vulnerability_and_Conflicts_Elements_of_a_Regional_Conflict_Vulnerability_Analysis_RCVA_in_West_Africa (accessed 9 April 2014), p. 2-3.

³⁸ The United Nations Office for Risk Disaster Reduction, *Issues of Vulnerability with Specific Reference to Gender in the Asia-Pacific: Post-2015 Framework for Disaster Risk Reduction*, 19 July 2003, available at <http://www.preventionweb.net/files/34051backgroundpaperonissuesofvulnerabil.pdf> (accessed on 9 April 2014), p. 3-4.

vulnerable.³⁹ In this regard, the EU Strategic Framework on Human Rights and Democracy 2012 has stated its commitment to the promotion of «the rights of children, persons belonging to minorities, indigenous peoples, refugees, migrants and persons with disabilities» and «the rights and empowerment of women in all contexts through fighting discriminatory legislation, gender-based violence and marginalisation».⁴⁰ The International Committee of the Red Cross (ICRC) follows this approach, as explained in its paper «Women in war: a particularly vulnerable group?»

«The ICRC identifies *vulnerable* people so that, after assessing a given situation and the problems involved, it can focus on giving help to those who need it most. In order to assess vulnerability, it must consider how exposed people are to a specific risk, problem or abrupt change in situation, then take into account their coping mechanisms and resilience. The vulnerability of various groups – men, women, children and elderly people – will vary according to the *nature* of the problem and its consequences, the *extent* to which these groups are exposed to, its *impact* on these groups and their *ability* to overcome it».⁴¹

In the approach of the ICRC, vulnerability is therefore not acknowledged *a priori* but after an analysis of vulnerability factors and how groups are actually coping with it. Furthermore, these factors are not separated but can interact, as individuals can be part of different groups and encompass different categories. Indigenous women or disabled children, for example, are likely to face different types of discrimination. This paper provides a specific focus on the list of vulnerable groups which has been identified in the EU Strategic Framework and in EU conflict/crisis management policies: namely, children, women, refugees and internally displaced persons and indigenous peoples. Those groups have been chosen because they represent different approaches of vulnerability: inherent (children), gender-based (women) group-based (indigenous peoples), and depending of a specific status (IDPs and refugees).

3.2. *Children*

3.2.1. *International legal and policy framework: a special focus on EU instruments*

The international concern about the impact of armed conflict on children's rights is clearly identified within the framework of international conventions,⁴² UN Security Council Resolutions and internationally agreed principles and guidelines on the subject «children and armed conflict».⁴³ Following-up on the 1996 Graça-Machel (1996) milestone survey,

³⁹ FRAME, *Fostering Human Rights Among European Policies, Report mapping legal and policy instruments of the EU for human rights and democracy support*, cit., p. 128.

⁴⁰ Council of the European Union, *EU Strategic Framework on Human Rights and Democracy*, 25 June 2012, 11855/12, available at https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/131181.pdf (accessed 20 April 2014), p. 2.

⁴¹ ICRC, *Women in war: a particular vulnerable group?*, 2007, available at <https://www.icrc.org/eng/resources/documents/feature/2007/women-vulnerability-010307.htm>.

⁴² In particular, the Geneva Conventions and its Additional Protocols and the 1989 Convention on the Rights of the Child (CRC).

⁴³ Such as the Paris Principles and Paris Commitments. As it has been noted, «the Paris Principles of 2007 deal with children associated with armed groups. The Principles call for community-based inclusive

the Security Council adopted seven resolutions between 1999 and 2009, which have progressively developed a concrete policy framework aimed at protecting children in the context of armed conflict. Adopted on the 26th July 2005, Resolution 1612 marked a turning-point in the Security Council's approach to the issue.

The European Union has recognized children affected by armed conflict as one of its top human rights priorities, as indicated in the 2012 Strategic Framework and Action Plan on Human Rights and Democracy⁴⁴ and as identified in the European Union's Action Plan on Children's Rights in External Action (2008).⁴⁵ Specific guidelines on children in armed conflict were developed by the EU in 2003 and revised in 2008, addressing the needs of children in armed conflict but also highlighting the ongoing impunity of the crimes committed against them.⁴⁶

This child-focused policy is also provided through crisis management initiatives of the EU and in the EU Common Security and Defense Policy (CSDP) operations, where a Checklist for the integration of the protection in children affected by armed conflict is incorporated.⁴⁷ The checklist «seeks to ensure that child rights and protection concerns are systematically addressed from the early planning through the implementation» of European Security and Defence Policy (ESDP) operations.⁴⁸

3.2.2. *Human rights violations committed against children in conflict-settings. Trends and patterns*

Children are the primary victims of war atrocities. The continuum of conflict and armed violence requires that children protection needs are addressed at all stages: pre-, during and post-conflict, thus delivering with urgency a continuum of protection approach

programming that recognizes the different needs of children, yet understands that the long term interest of children is integrally linked to the well-being of their families and their communities. These Principles call for long term commitments on the part of the donor community and for a greater understanding of what is sustainable in the context of conflict-ridden societies». See International Bureau for Children's Rights, *Children in Armed Conflict*, 2010, available at http://www.essex.ac.uk/armedcon/story_id/000911.pdf (accessed 30 May 2014), p. 330. For the text of the Principles and Commitments, see UNICEFF, *The Paris Commitments to Protect Children Unlawfully Recruited or Used by Armed Forces or Armed Groups* («The Paris Commitments»), and *Principles and Guidelines on Children Associated with Armed Forces or Armed Groups* (February 2007), available at <http://www.unicef.org/emerg/files/ParisPrinciples310107English.pdf> (accessed 30 May 2014).

⁴⁴ Council of the European Union, *EU Strategic Framework and Action Plan on Human Rights and Democracy*, cit.

⁴⁵ Commission, *The European Union's Action Plan on Children's Rights in External Action* (Staff Working Document) COM, 2008, 55 final, SEC, 2008, p. 135.

⁴⁶ Council of the European Union, *EU Guidelines on Children and Armed Conflict*, 2003, Doc. 15634/03 at <http://www.consilium.europa.eu/uedocs/cmsUpload/GuidelinesChildren.pdf> (accessed 30 May 2014); revised *EU Guidelines on Children and Armed Conflict*, 2008, Doc. 1019/08 at <http://consilium.europa.eu/uedocs/cmsUpload/10019.en08.pdf> (accessed 30 May 2014).

⁴⁷ Council of the European Union, *Checklist for the Integration of the Protection of Children Affected by Armed Conflict into ESDP Operations*, 2006, Doc. 9767/03 available at <http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%209767%202006%20INIT> (accessed 20 May 2014); the Checklist has been revised in 2008, see Doc. 9822/08 at <http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%209822%202008%20INIT> (accessed 30 May 2014).

⁴⁸ Council of the European Union, *Draft General Review of the Implementation of the Checklist for the Integration of and Protection of Children affected by Armed Conflict into ESDP Operations*, 2008, 9822/08, p. 9.

which considers the role of all the actors involved in this continuum.⁴⁹ It is documented that about 50% of the people currently displaced by armed conflict and violence are children,⁵⁰ and children and young people constitute the majority demographic in conflict-affected areas and fragile States.⁵¹

According to the 2014 Annual Report of the UN Secretary-General on Children and Armed Conflict (reporting on the year 2013),⁵² information about most serious violations committed against children in situations of armed conflict occurred in 23 countries (see Map 1). Along similar lines, the Secretary-General's Special Representative on Children and Armed Conflict has stressed that the rights of children are being violated in conflict situations with total impunity, especially in Iraq, Syria, South Sudan, Nigeria and the Central African Republic.⁵³

The trends identified in the 2014 UN Secretary-General report worsen the figures of the previous year by observing «a significant spike in the killing and maiming of children in several situations, including in Afghanistan and Iraq».⁵⁴ Particularly relevant in view of the gravity of the violations committed against children are the conflict and humanitarian crisis in Syria; in the Central African Republic, where the recruitment and use of children became endemic throughout 2013; in South Sudan, where it is reported the use of children by State and non-state armed groups; in northern Nigeria, where attacks on schools and school girls have been intensified, conducted by the extremist group Boko Haram.⁵⁵ More recently, the Resolution adopted by the UN Human Rights Council (UNHRC) on 24 July 2014, the UNHRC referred to the violations of international human rights and fundamental freedoms arising from the Israeli military operations carried out in the Occupied Palestinian Territory that «may amount to international crimes, directly resulting in the killing of more than 650 Palestinians, most of them civilians and more than 170 of whom are children».⁵⁶

⁴⁹ Wilton Park Conference report, *Protecting children affected by armed conflict: advancing the agenda of the last 10 years*, WP1151 (March 2012), available at <https://www.wiltonpark.org.uk/wp-content/uploads/wp1151-report.pdf> (accessed 30 June 2014), p. 1.

⁵⁰ For instance, the effects of the Syrian conflict and humanitarian and regional crisis on displaced children. In addition, the current deteriorating situation in Iraq and its impact on children, correspond to the child majority figures indicated. See *Syria crisis*, monthly report by UNICEFF available at <http://childrenofsyria.info/wp-content/uploads/2014/06/UNICEF-Syria-Regional-Crisis-Humanitarian-SitRep-Syria-Jordan-Lebanon-Iraq-Turkey-Egypt-12Jun2014.pdf> (accessed 1 July 2014).

⁵¹ This is the case in Gaza that can be cited as a very current example (July 2014) of the devastating effects of armed conflict on children. The Special Representative of the Secretary-General for Children and Armed Conflict, Leila Zerrougui, has condemned in the strongest terms the killing of at least twenty one children and the injuring of many more during Israel's ongoing military operation in the Gaza strip. See <http://childrenandarmedconflict.un.org/press-release/special-representative-condemns-killing-children-in-fighting-gaza-israel/> (accessed on 12 July 2014). See also Statement by UNICEF Executive Director Anthony Lake on impact of violence on children in Gaza and Israel at http://www.unicef.org/media/media_74262.html (accessed 14 July 2014).

⁵² UN General Assembly-Security Council, *Report of the Secretary-General on Children and Armed conflict*, 2014, A/68/878-S/2014/339, available at http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2014/339 (accessed 10 June 2014).

⁵³ See Press release *Child rights being violated in conflict situations with total impunity, says UN official* (1 July 2014) at <http://www.un.org/apps/news/story.asp?NewsID=48180#.U9evRmOeGmS> (accessed 10 July 2014).

⁵⁴ UN Secretary-General, *Report of the Secretary-General on Children and Armed conflict*, cit., par. 2.

⁵⁵ *Ibidem*.

⁵⁶ UNHRC, *Ensuring respect for international law in the Occupied Palestinian Territory, including East Jerusalem* (July 2014) A/HRC/RES/S-21/1, available at <http://www.ohchr.org/EN/HRBodies/HRC/SpecialSessions/Sess ion21/Pages/21stSpecialSession.aspx> (accessed 26 July 2014), par. 2.

The figures of children not attending primary school due to the fact that they live in countries that are afflicted with conflict and poverty are as high as 28 million, which represents a rate of 78% compared to an overall rate of 93% for other poor non-conflict affected countries.⁵⁷

The six grave violations that has been identified by the UN Secretary-General are the following ones: (1) the recruitment or use of child soldiers; (2) the killing or maiming of children; (3) the rape and other grave sexual abuse of children; (4) the attacks against schools and hospitals; (5) the abduction of children, and (6) the denial of humanitarian access for children.

1. Recruitment or use of child soldiers. Recruitment is defined as «the compulsory, forced or voluntary conscription or enlistment of children into any kind of armed forces or organised armed group(s)»⁵⁸. The different fields of international law, specifically international humanitarian law, as well as international criminal law and human rights law are referenced in the development of legal standards on child soldiers and children and armed conflicts (CAACs). The difficulty with IHL in this context of protection of children's rights is the lack of a strong mechanism for monitoring their rights.

2. - Killing or maiming of children. Killing or maiming is as «any action that results in the death or serious injury – such as scarring, disfigurement or mutilation – of one or more children. While often intentional, maiming can also result from wounds caused by bullets in a crossfire or detonation of antipersonnel landmines».⁵⁹ The right to life is specifically guaranteed by the CRC which stipulates that every child has an inherent right to life and that State parties must ensure to the maximum extent possible the survival and development of the child.⁶⁰ Besides this general protection, children also enjoy special protection under the Geneva Conventions, «including an obligation that all parties to a conflict prioritise the welfare during hostilities of vulnerable groups, including children».⁶¹

3. - Rape and sexual abuse of children. The Security Council, in its resolution 1820 on «Women, Peace and Security» recognised for the first time that «sexual violence, when used or commissioned as a tactic of war in order to deliberately target civilians or as a part of a widespread or systematic attack against civilian populations, can significantly exacerbate situations of armed conflict and may impede the restoration of international peace and security».⁶² Rape and other forms of sexual violence during armed conflict are prohibited under the Geneva Conventions and their Additional Protocols. Child-specific provisions of these treaties specifically forbid sexual violence against children.⁶³

⁵⁷ UNESCO, *The hidden crisis: Armed conflict and Education* (UNESCO, 2011), available at <http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/ED/pdf/gmr2011-UNESDOC.pdf> (accessed 10 June 2014), p. 2.

⁵⁸ UN Expert of the Secretary-General, *Report of the expert of the Secretary-General Ms. Graça Machel submitted pursuant to General Assembly resolution 48/157 on the «Impact of Armed Conflict on Children* (26 August 1996), A/51/306.

⁵⁹ *Ibidem*. p. 21.

⁶⁰ Articles 6 and 37 UN Convention on the Rights of the Child.

⁶¹ Articles 23, 24, 38, 50, 76 and 89 Geneva IV; Article 70 and 77 AP I; Article 4 AP II.

⁶² UNSC Resolution 1820 (2008) adopted by the Security Council at its 5916th meeting on 19 June 2008, available at http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1820%282008%29 (accessed 20 May 2014).

⁶³ Article 27(2) Geneva IV; Article 75(2), 76(1), 77(1) AP I; Article 4(2)(e) AP II—which specifically adds «rape» to the list of forms of indecent assault. See also: Customary Rule 93, ICRC, *Customary International*

4. - Attacks against schools. The targeting of civilian objects is prohibited under the IV Geneva Convention, emphasizing the importance of schools and hospitals to the civilian population and especially for children.⁶⁴ A child's right to education and to health is also enshrined in the Convention on the Rights of the child (CRC) and the application of the conventions should cover both times of war and times of peace.⁶⁵

5. - Abduction of children. The abduction of children is a serious violation of their rights and is commonly associated with other violations such as recruitment into armed groups; sexual exploitation or abuse; disappearances, indoctrination for hostage taking purposes. In legal terms, two separate violations may be occurring simultaneously, so for example, a case of recruitment by force, is considered in terms of abduction and recruitment.⁶⁶

6. - Denial of humanitarian access for children. The denial of humanitarian access is usually referred as comprising «blocking the free passage or timely delivery of humanitarian assistance to persons in need, including children».⁶⁷ In terms of conflict situations, the IV Geneva Convention and its Additional Protocols have specific provisions that prohibit the denial of humanitarian access to children and also prohibit attacks on humanitarian workers assisting children.⁶⁸

3.3. *Women*

3.3.1. *International legal and policy framework: a special focus on EU instruments*

In situations of armed conflict as defined under IHL, women enjoy the general protection afforded to civilians,⁶⁹ as well as specific protection in their capacity of women civilians or women combatants.⁷⁰ However, the limitations of some aspects of the Geneva regime concerning the unique impact of armed conflict on women have brought the UN Security Council to develop a policy framework under the so-called agenda on «women, peace and security» that has evolved over the last thirteen years. The first milestone of this framework was Resolution 1325 (2000), adopted on 31 October 2000,⁷¹ which urges all actors to increase the participation of women and incorporate gender perspectives in all United Nations peace and security efforts. It was followed by Resolutions 1820, 1888,

Humanitarian Law. Volume I: Rules, Cambridge, 2009, p. 323. Child-specific provisions: Article 77 AP I; Article 4 (3) AP II.

⁶⁴ Articles 11, 18 Geneva Convention IV and Article 48 AP I.

⁶⁵ Articles 24 and 28 CRC.

⁶⁶ UNICEF, *Machel Study 10-year review, «Children in armed conflict in a changing world»* (UNICEF April 2009), available at http://www.unicef.org/publications/files/Machel_Study_10_Year_Strategic_Review_EN_030909.pdf (accessed 30 May 2014).

⁶⁷ Machel study strategic review, p. 24.

⁶⁸ Articles 23, 142 Geneva IV; Articles 54, 70, 77 AP I; Articles 14, 18 AP II.

⁶⁹ Like all civilians, women are protected both against abusive treatment by the Party to the conflict in whose power she finds herself and against effects of hostilities: «A civilian is any person who does not belong to the armed forces» (Article 50 AP I).

⁷⁰ See Articles 14, 25(4), 29(2), 88 (2) (3) GC III and Articles 25, 75 (5), 76 (2), 97 and 108 AP I.

⁷¹ UNSC Resolution 1325 (2000) adopted by the Security Council at its 4213th meeting, on 31 October 2000. It is available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N00/720/18/PDF/N0072018.pdf?OpenElement> (accessed 20 May 2014).

1960, 2106 and 2122. Another contribution from the UN should also be noted in terms of authoritative interpretation of the standards under IHRL, as the CEDAW Committee approved General recommendation no. 30 on women in conflict prevention, in conflict and post-conflict situations.

In line with the UN agenda, the EU has contributed to the implementation of UN Security Council resolution 1325 through the EU Comprehensive Approach on the implementation of UNSC Resolutions 1325 and 1820,⁷² which was adopted on 2008 in response to assessed shortcomings of the previous EU policy.⁷³ This EU Strategy aims at improving exchange of practices among the various EU members and also with non-EU countries. It also contains a pledge by the EU to adopt a tripartite approach based on: a) policy dialogue: integration of women, peace and security issues; b) gender mainstreaming: above all in crisis management and long-term development strategies; c) specific activities to protect, support and empower women.⁷⁴ In addition, the Council also approved the Implementation of UNSCR 1325 as reinforced by 1820 in the context of European Security and Defence Policy in 2008.⁷⁵

Apart from this initiative, the EU has adopted other instruments such as the EU Task Force on Women, Peace and Security; the pilot program on Women, Peace and Security in Kosovo, Timor-Leste and Liberia in collaboration with the UN;⁷⁶ and the development of a set of indicators to measure the implementation of the Comprehensive Approach.⁷⁷ Finally, on 1 February 2012, the European Commission, the United Nations Entity for Gender Equality and the Empowerment of Women (UN Women) and the United Nations Development Program (UNDP) announced the start of a multi-country initiative to enhance women's participation in peace-building and post-conflict planning and economic recovery. The initiative which is in line with the EU Policy on women, peace and security, is funded by the EU Instrument for Stability.⁷⁸

⁷² Council of the European Union, Comprehensive approach to the EU implementation of the United Nations Security Council Resolutions 1325 and 1820 on women, peace and security (1 December 2008) 15671/1/08 REV 1, available at http://www.consilium.europa.eu/ueDocs/cms_Data/docs/hr/news187.pdf (accessed 20 May 2014).

⁷³ A study prepared for the Slovenian EU Council Presidency, co-financed by Austria, dealt with the EU strategy on women in armed conflicts: Enhancing the EU Response to Women and Armed Conflict with particular Reference to Development Policy. The findings of this study revealed some shortcomings such as an insufficient appreciation of the complexity of this issue and a lack of clear indicators for the coherent supervision of European strategies. See A.SHERRIFF, K.BARNES, *Enhancing the EU Response to Woman and Armed Conflict with particular reference to development policy Study for the Slovenian EU Presidency*, Discussion Paper No. 84 (April 2008), available at <http://www.europarl.europa.eu/document/activities/cont/200805/20080507ATT28495/20080507ATT28495EN.pdf> (accessed 20 May 2014).

⁷⁴ Austrian Development Agency, *Focus: Women, Gender and Armed Conflict* (October 2009), available at <http://www.oecd.org/social/gender-development/44896284.pdf> (accessed 20 May 2014).

⁷⁵ Council of the European Union, *Implementation of UNSCR 1325 as reinforced by UNSCR 1820 in the context of ESDP*, 2008, 15782/3/08, available at <http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2015782%202008%20REV%203> (accessed 6 June 2014).

⁷⁶ See European External Action Service, *EU supports Women's Participation in Peacebuilding and Post-Conflict Planning* (Press Release) at http://eeas.europa.eu/ifs/docs/20120201_pressrelease_eu-undp_en.pdf (accessed 6 June 2014).

⁷⁷ Council of the European Union, *Indicators for the Comprehensive approach to the EU implementation of the United Nations Security Council Resolutions 1325 and 1820 on women, peace and security*, 2010, 11948/10, available at <http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2011948%202010%20INIT> (accessed 6 June 2014).

⁷⁸ The funds consist of a 1.5 million euros grant. See Press release *EU supports Women's Participation in Peacebuilding and Post-Conflict Planning*, EU-UNDP (1 February 2012) at

3.3.2. *Human rights violations committed against women in conflict-settings. Trends and patterns*

Owing to pre-existing discriminatory legal frameworks and practices, women and girls are more vulnerable to conflict-related violations. According to estimates, women represent approximately 80% of casualties of wartime. In 2012, 48% of the refugee population was women and girls, a trend that has also been constant over the last 10 years. The situations of armed conflict and post-conflict create a whole spectrum of security threats for women and girls, posing them to heightened risks of serious human rights violations.⁷⁹

In addition, in conflict and post-conflict settings, women often face extra barriers in order to fully participate in all aspects of the political process. The implementation of States parties' obligations to ensure women's equal representation in political and public life at national and at international level requires measures to address the broader context of gender discrimination and inequality in conflict affected areas.

Taking into consideration the patterns and practices identified in the different reports and recommendations of the CEDAW Committee, the reports of the Special Rapporteur on violence against women and the Secretary-General Reports on Women, Peace and Security, it is possible to identify the most serious conflict-related violations of women's human rights as sexual violence; trafficking; other threats against personal safety; and denial of humanitarian aid and social services.

1. - Sexual violence. As commented by the UN Secretary General, the «term «conflict-related sexual violence» refers to rape, sexual slavery, forced prostitution, forced pregnancy, forced sterilization and any other form of sexual violence of comparable gravity perpetrated against women, men or children with a direct or indirect (temporal, geographical or causal) link to a conflict.⁸⁰ Security Council Resolution 2106 (2013), designed for the first time, a comprehensive approach and framework to prevent conflict-related sexual violence. In April 2013, the countries of the Group of Eight adopted the historic Declaration on Preventing Sexual Violence. On the sidelines of the sixty-eighth session of the General Assembly 144, UN Member States endorsed the Declaration of Commitment to End Sexual Violence in Conflict at an event co-chaired by the UN Secretary General Special Representative on Sexual Violence in Conflict and the Secretary for Foreign Affairs of the United Kingdom.⁸¹

The devastating effects of sexual violence in armed conflict for women and girls have been documented in the UN monitoring reports on the implementation of the agenda «women, peace and security» for the last years, particularly since the adoption of indicators.⁸² Recent annual reports of 2013 and 2014, by the UN Secretary-General and the

http://eeas.europa.eu/ifs/docs/20120201_pressrelease_eu-undp_en.pdf (accessed 20 May 2014).

⁷⁹ See *Commission on the Status of Women, Report on the fifty-seventh session* (4-15 March 2013), *Economic and Social Council Official Records*, 2013, Supplement No. 7, UN Doc E/2013/27-E/CN.6/2013/11 at http://www.un.org/ga/search/view_doc.asp?symbol=E/2013/27 (accessed 20 May 2014).

⁸⁰ UNSC, *Report of the Secretary-General on conflict-related sexual violence* (13 March 2014) S/2014/181.

⁸¹ See report to the UN Secretary General A/68/633.

⁸² The UN Secretary General has acknowledged the limitations of this information as providing accurate data is still in need of improvement due to deficits in the systematization of the information linking gender and

Special Rapporteur for Violence against Women document alarming figures on sexual violence, the highest ones corresponding to the situations of South Sudan, Syria, Central African Republic and Colombia.⁸³ The Secretary General has also highlighted «the omnipresence of such violence in Democratic Republic of Congo, in Syria, in Northern Mali and in Central African Republic».⁸⁴

Notable advancements were introduced by the UN Security Council Resolutions on women, peace and security, especially by Resolution 2106, as it is the first to establish an accountability regime for acts of sexual violence. In compliance with this framework, the UN Secretary General Report on sexual violence lists «parties to conflict that are credibly suspected of committing or being responsible for patterns of rape and other forms of sexual violence in situations of armed conflict». However, in situations of armed conflict, the distinction between State and non-State actors is quite challenging, as sometimes States use non-state actors to commit human rights violations.⁸⁵

2. - Human trafficking. Human trafficking is a form of gender-based violence that when linked to an armed conflict increases the level and consequences of violence, as it benefits from the breakdown of political, legal, economic and social structures. There is increasing evidence on the relationship between armed conflict and human trafficking.

3. - Other serious threats against personal safety. According to the ICRC, these threats encompass «dangers, acts of violence or threats thereof against members of the civilian population not or no longer taking a direct part in hostilities. Violence – physical or mental harm – includes: killing, summary and arbitrary execution, torture and mutilation, cruel, inhuman and degrading treatment». In the context of armed conflicts, women face specific threats depending on each specific conflict, the parties involved, the conflict background and its primary targets or victims.⁸⁶

4. - Denial of humanitarian aid. The total breakdown of State public services and infrastructure is one of the major and direct consequences of armed conflict, resulting in the lack of delivery of essential services to the population. This entails a serious threat to the welfare of women and their families, and has an enormous impact on the provision of humanitarian aid.⁸⁷

conflict. See UNSC, *Report of the Secretary-General on women and peace and security* (4 September 2013) S/2013/525 at http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2013/525 (accessed 30 June 2014), p. 3-4.

⁸³ On 25 April 2014, the Security Council held its annual debate on «Women, peace and security and sexual violence in conflict» where the UN Special Representative of the Secretary-General on Sexual Violence in Conflict, Zainab Hawa Bangura, presented harrowing reports of wartime rape and other forms of conflict-related sexual violence.

⁸⁴ UNSC, *Report of the Secretary-General on women and peace and security*, cit., p. 3-4.

⁸⁵ See J. BAUER, A. HÉLIE, *Documenting Women's Rights Violations by Non-State Actors*, International Centre for Human Rights and Democratic Development and Women Living Under Muslim Laws, 2006, available at <http://www.wluml.org/sites/wluml.org/files/import/english/pubs/pdf/misc/non-state-actors.pdf> (accessed 30 June 2014), p. 64.

⁸⁶ ICRC, *Addressing the Needs of Women Affected by Armed Conflict. An ICRC Guidance Document* (ICRC, March 2004), available at http://www.icrc.org/eng/assets/files/other/icrc_002_0840_women_guidance.pdf (accessed 20 May 2014), p. 17.

⁸⁷ UNSC, *Report of the Secretary-General on Women and Peace and Security* (16 September 2009) S/2009/465, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N09/503/63/PDF/N0950363.pdf?OpenElement> (accessed 20 May 2014), par. 15.

3.4. *Refugees and IDPs*

3.4.1. *International legal and policy framework: a special focus on EU instruments*

The establishment of the Office of the United Nations High Commissioner for Refugees (UNHCR) took place in 1950, introducing the international refugee protection system along with the Convention relating to the Status of Refugees (known as the Refugee Convention). In 1967, the Convention was supplemented by the 1967 Protocol and regional systems of protection of refugees have also been introduced such as the Cartagena Declaration on Refugees.⁸⁸ Regarding the protection of IDPs, the first step adopted by the UN was the appointment of Francis M. Deng from Sudan as the first Representative of the UN Secretary-General on internally displaced persons.⁸⁹ One of the most important contributions of his mandate was the development of international standards for internally displaced persons known as the UN Guiding Principles on Internal Displacement.⁹⁰ The Principles identify the rights and guarantees relevant to the protection of the internally displaced in all phases of displacement.

Progress has been established with regards to the normative framework protecting the rights of IDPs, with the UN Guiding Principles on Internal Displacement, the emergence within customary law reflective of their guidance, and with some regional and sub-regional organizations» normative frameworks, such as the African Union»s Convention for the Protection and Assistance of IDPs in Africa (Kampala Convention) of 2009.

The International Convention on the Status of Refugees has been ratified by 145 States, including all the EU Member States.⁹¹ The Migrant Workers Convention however has been neither signed nor ratified by any European State.⁹² Finally, the EU has issued a Directive on minimum standards for giving temporary protection in the event of a mass influx of displaced persons.⁹³ However, the maximum temporary protection that can be

⁸⁸ The UN Convention and Protocol relating to the Status of Refugees are available at <http://www.unhcr.org/3b66c2aa10.html> (accessed 14 June 2014). The Cartagena Declaration is available at <http://www.unhcr.org/45dc19084.html> (accessed 14 June 2014). This Declaration is a non-binding agreement adopted by the Colloquium on the International Protection of Refugees in Latin America, Mexico and Panama, held at Cartagena, Colombia, from 19-22 November 1984.

⁸⁹ In 1992, the Secretary-General of the United Nations, at the request of the UN Commission on Human Rights (now the UN Human Rights Council) appointed Francis M. Deng of Sudan as the first Representative of the UN Secretary-General on internally displaced persons.

⁹⁰ UN Commission on Human Rights, *Report of the Representative of the Secretary-General, Mr. Francis M. Deng, submitted pursuant to Commission resolution 1997/39. Addendum: Guiding Principles on Internal Displacement* (11 February 1998) E/CN.4/1998/53/Add.2, available at <http://www.unhcr.org/43ce1cf2.html> (accessed 30 June 2014).

⁹¹ However, many EU Member States have formulated reservations or declarations to this definition, creating a different framework of obligations. See FRAME, *Fostering Human Rights Among European Policies, Report mapping legal and policy instruments of the EU for human rights and democracy support*, cit., pp. 158-159.

⁹² United Nations Treaty Collection UN Database International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families at https://treaties.un.org/Pages/ViewDetails.aspx?mtdsg_no=IV-13&chapter=4&lang=en (accessed 13 July 2014).

⁹³ Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons.

offered is two years, a period of time that is not always sufficient taking into consideration the circumstances that can cause a mass influx of displaced persons.⁹⁴

3.4.2. *Human rights committed against refugees and IDPs. Trends and patterns*

The UN Human Rights Council has expressed its concern on [...] the alarmingly high number of internally displaced persons throughout the world, for reasons including armed conflict, generalised violence, violations of international law, in particular human rights law, and natural or human-made disasters, who receive inadequate protection and assistance, and conscious of the serious challenges that this is creating for the international community.⁹⁵

There has been a steady increase, since 1997, in the number of IDPs from around 17 million recorded then, while the number of refugees has remained between 13 million and 16 million during the same period. Although the present day displacement crisis is global in nature, some regions of the world are more affected than others. The worst affected continent is Africa, which has nearly half of the world's IDPs (approximately 12.5 million). In relation to specific countries currently most affected by displacement due to conflict, worldwide Syria, Colombia, Nigeria, DRC, Sudan, Iraq and Somalia are top of the list⁹⁶ (See Figure 3). Figures relating to new refugees during the first half of 2013 saw the Syrian Arab Republic providing the biggest flow of refugees during that time period, at 1.3 million people, fleeing to countries Lebanon, Jordan and Turkey, as well as Iraq and Egypt. The figures at July 2013 indicated Afghanistan, Syria, Somalia, Sudan and the Democratic Republic of Congo as the top five countries of source of refugees.⁹⁷

There are three perspectives broadly taken when considering human rights and displacement. They are (1) the circumstances that lead to displacement can be human rights violations, (2) human rights violations can occur during or after displacement and (3) arbitrary displacement can be considered a human rights violation in and of itself. It is the second aspect which is presented in this paper, the perspective on the human rights violations which occur during or after displacement, with particular focus on the vulnerable status of the refugees and IDPs in conflict-affected and high-risk areas.

On the basis of reports of the UNHCR, grave violations of human rights against refugees and IDPs have been identified:

1. - Killings and other attacks on the rights to life, physical integrity and security. Evidence from analysis carried is indicative of the heightened risk of violations on

⁹⁴ See FRAME, *Fostering Human Rights Among European Policies*, Report mapping legal and policy instruments of the EU for human rights and democracy support, cit., pp. 158-159.

⁹⁵ UNHRC, Resolution 23/8 Mandate of the Special Rapporteur on the Human Rights of Internally Displaced Persons, (20 June 2013) A/HRC/RES/23/8, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G13/154/00/PDF/G1315400.pdf?OpenElement> (accessed 30 June 2014), par. 5.

⁹⁶ IDMC, Norwegian Refugee Council, *Global overview 2014: People internally displaced by conflict and violence*, (Norwegian Refugee Council 2014), available at <http://www.internal-displacement.org/assets/publications/2014/201405-global-overview-2014-en.pdf> (accessed 30 June 2014), p. 9-10.

⁹⁷ UNHCR, *UNHCR Mid-Year Trends 2013*, 2014, available at www.unhcr.org/52af08d26.html (accessed 24 July 2014), p. 7. See also IDMC, Norwegian Refugee Council, *Global overview 2014: People internally displaced by conflict and violence*, cit. p.10.

arrival at a refugee or IDP camp.⁹⁸ These abuses suppose an attack to the *right to life and physical integrity* as recognised in Article 3 UDHR and Articles 6 and 7 of the ICCPR and other international and regional human rights instruments.

2. - *Sexual violence.*

Sexual and gender-based violence is committed in conflict and post-conflict settings, with refugee and IDP women and girls particularly vulnerable. It has been reported that «sexual violence against refugees is a global problem. It constitutes a violation of basic human rights, instilling fear in the lives of victims already profoundly affected by their displacement».⁹⁹

3. - *Attacks on the rights to water, food, health and education.* Civilian populations are at risk as a direct result of conflict in terms of death or injury and also face ongoing risks as result of military or rebel operations, as reported by the World Health Organization (WHO)¹⁰⁰. These circumstances lead to the violation of the right to food, water and health for those citizens in most need due to their displacement in times of conflict. These rights are protected both by IHL and IHRL. In particular, it is a principle of customary international law that parties to conflict must allow and facilitate aid to any civilian population in need, subject to their control.

Data collected in 28 countries with new internal displacement in 2007 showed that in 21 countries governments were found to be responsible, directly or indirectly, for forcibly uprooting their people. At the same time, some of the worst atrocities against displaced persons have been perpetrated by armed non-state actors through the so-called concept of «one-sided violence».¹⁰¹ Major cases of forced displacement committed by armed groups are the cases of DRC and Colombia.¹⁰²

3.5. *Indigenous peoples*

3.5.1. *International legal and policy framework: a special focus on EU instruments*

Two international treaties are of particular relevance for the protection of indigenous peoples: the International Convention on the Elimination of All Forms of Racial Discrimination and the International Labour Organization (ILO) Convention 169 concerning the rights of indigenous and tribal peoples. The ILO Convention 169 establishes the right of Indigenous Peoples to participate in decision-making processes that concern them by obliging States to guarantee prior consultation of communities involved

⁹⁸ J. C. HATHAWAY, *The rights of refugees under International Law*, Cambridge, 2005, p. 441.

⁹⁹ UNHCR, *Sexual Violence against Refugees: Guidelines on Prevention and Response* (1995), available at <http://www.unhcr.org/3b9cc26c4.html> (accessed 14 July 2014), p. 1.

¹⁰⁰ World Health Organisation (WHO), *World Report on Violence and Health* (WHO Geneva 2002), available at http://whqlibdoc.who.int/publications/2002/9241545615_eng.pdf?ua=1 (accessed 30 June 2014), p. 225.

¹⁰¹ R. COHEN, F. DENG, *Mass displacement caused by conflicts and one-sided violence: national and international responses*, in *SIPRI YB*. 2009.

¹⁰² See Amnesty International, *Annual Report 2013 – Democratic Republic of Congo (2013)* at <http://www.amnesty.org/en/region/democratic-republic-congo/report-2013> (accessed 30 June 2014); UNHCR, *Global Appeal 2014-2015 – Colombia* (UNHCR 2014), available at <http://www.unhcr.org/528a0a367.html> (accessed 24 June 2014).

before conducting any activities affecting their land, lives or culture.¹⁰³ It also establishes the right of ownership and possession and prohibits the removal from the lands they occupy.¹⁰⁴ Moreover, we have to highlight the UN Declaration on the Rights of Indigenous Peoples which is founded on the concepts of equality, respect for diversity and non-discrimination and establishes the rights of indigenous peoples, including the right to culture; identity; free, prior and informed consent; and traditional lands.¹⁰⁵

Regarding indigenous peoples, the action of the EU is quite limited. If the Commission ensures the respect of article 21 (Article 21 of the Charter of Fundamental Rights of the EU explicitly prohibits discrimination on the basis of membership of a national minority), it has nevertheless «no general power as regards minorities».¹⁰⁶ It has also no power concerning issues regarding the recognition of the status of minorities; their self-determination and autonomy; or the regime governing the use of regional or minority languages.¹⁰⁷ However, the EU declares integrating «indigenous issues into all aspects of its external policies» (political dialogues, multilateral fora, financial support).¹⁰⁸

In practice, the rights of indigenous peoples are addressed mainly through the European Instrument for Democracy and Human Rights, supporting indigenous representatives to participate in international fora or supporting them in promoting the International Labour Organisation's Convention 169.¹⁰⁹ Concerning development cooperation activities, the European Consensus on Development commits to integrate indigenous concerns at all levels of cooperation, ensuring their full participation and free, prior and informed consent.¹¹⁰ The Council Resolution on Indigenous Peoples within the Framework of the Development Cooperation of the Community and Member States (1998) provides the main EU guidelines for the protection and support of Indigenous Peoples.¹¹¹

3.5.2. *Human rights violations committed against indigenous peoples. Trends and patterns*

The former Special Rapporteur on indigenous peoples has stated that «indigenous peoples are among the most vulnerable victims of conflicts and violence in Africa, Asia and Latin America».¹¹² It therefore requires a special attention as the phenomenon threatens not

¹⁰³ ABColombia, *Caught in the Conflict – Colombia's indigenous peoples*, 2010, available at http://www.abcolombia.org.uk/downloads/Caught_in_the_Crossfire.pdf (accessed 2 July 2014), p. 9.

¹⁰⁴ Amnesty International, *The struggle for survival and dignity: human rights abuses against indigenous peoples in Colombia*, 2010, available at http://www.kolko.net/downloads/indigenous_people_Col_report.pdf (accessed 15 July 2014), p. 11.

¹⁰⁵ *Ibidem*.

¹⁰⁶ European Commission, *Minorities*, 2013, available at http://ec.europa.eu/justice/fundamental-rights/minorities/index_en.htm (accessed 22 July 2014).

¹⁰⁷ European Commission, *Minorities*, cit.

¹⁰⁸ European External Action Service, *EU policy on indigenous peoples*, available at http://eeas.europa.eu/human_rights/ip/index_en.htm (accessed 19 July 2014).

¹⁰⁹ *Ibidem*.

¹¹⁰ *Ibidem*.

¹¹¹ Council Resolution 13461/98 of 30 November 1998 on Indigenous peoples within the framework of the development cooperation of the Community and the Member States [1998] 13461/98.

¹¹² UN Secretary General, *Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people*, 2005, UN Doc A/60/358, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/>

only individuals but entire communities, as well as the ethnic and cultural diversity of the countries concerned.¹¹³

Indigenous peoples are exposed to the consequences of armed conflict and crisis as any other groups. However, the particularity of the challenges they are confronted are linked with their opposition to resource extraction or development projects that take place or impact indigenous territories and lands.¹¹⁴ Areas that indigenous peoples occupy are unfortunately often considered as «strategic» by parties to the conflict.¹¹⁵ When members of the indigenous groups try to defend them, they are often victims of forced disappearances, assassination of their leaders, torture and massacres.¹¹⁶

On the basis of reports of the UN Special Rapporteur on indigenous peoples, three grave violations of human rights against indigenous peoples have been identified: forced displacement, sexual violence against indigenous women and girls and attacks against the life and physical integrity of indigenous leaders.

1. - *Forced displacement.* Indigenous peoples are one of the groups most vulnerable to forced eviction in situations of conflict, being generally displaced from their ancestral territories on the basis of disputes over land rights. Displacement affects the social structures of any population, but impacts more heavily on indigenous people.¹¹⁷ Their relationship with their lands forms a part of their identity.¹¹⁸

2. - *Sexual violence.* As recognized by the United Nations Secretary-General at the World Conference against Racism, Xenophobia and Intolerance, indigenous women face multiple forms of discrimination because of the «nexus between gender, race, colour or ethnicity and other axes of subordination».¹¹⁹ They are the most vulnerable among indigenous people, because they face double discrimination.¹²⁰

3. - *Attacks against the life and physical integrity of indigenous leaders.* Indigenous leaders are often directly targeted due to their involvement in the defense and protection of territories and natural resources, as well as due to their fight for the right to

N05/513/14/PDF/N0551314.pdf?OpenElement (accessed 11 June 2014), p. 15.

¹¹³ UN Secretary General, *Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people* (2010), UN Doc A/HRC/15/37, available at <http://daccess-ddsny.un.org/doc/UNDOC/GEN/G10/150/75/PDF/G1015075.pdf?OpenElement> (accessed 11 June 2014), p. 12.

¹¹⁴ E. L. LUTZ, *Indigenous Peoples and Violent Conflict: Preconceptions, Appearances, and Realities*, 2005, 29.1, available at <https://www.culturalsurvival.org/publications/cultural-survival-quarterly/none/indigenous-peoples-and-violent-conflict-preconceptions> (accessed 9 July 2014).

¹¹⁵ UN Secretary General, *Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people*, cit.

¹¹⁶ UNGA, *Note by the Secretary General on the situation of human rights and fundamental freedoms of indigenous people*, 2005, UN Doc A/60/358, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N05/513/14/PDF/N0551314.pdf?OpenElement> (accessed 10 July 2014), p. 15.

¹¹⁷ R. K. AKEE, A. K. BASU, N. H. CHAU & M. KHAMIS, *Ethnic fragmentation, conflict, displaced persons and human trafficking: an empirical analysis*, in H. BELADI & E. K. CHOI (eds.), *Frontiers of Economics and Globalization*, 2010.

¹¹⁸ United Nations Secretariat of the Permanent Forum on Indigenous Issues (UNPFII), *Indigenous Peoples - Lands, Territories and Natural Resources*, 2007, available at http://www.un.org/esa/socdev/unpfii/documents/6_session_factsheet1.pdf (accessed on 11 July 2014), p. 2.

¹¹⁹ UNGA, *Note by the Secretary-General: Review of Reports, Studies and Other Documentation for the Preparatory Committee and the World Conference* (2001) UN Doc A/CONF.189/PC.3/5, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G01/147/44/PDF/G0114744.pdf?OpenElement> (accessed 20 July 2014), p. 4.

¹²⁰ C. K. ROY, *Indigenous Women: A Gender Perspective*, 2004, p. 6.

autonomy and cultural identity. This issue has been raised in 2011 by the Inter-American Commission in the evaluation of their 2006 report on the situation of human rights defenders.¹²¹ The Inter-American Commission observed an increase of the vulnerability presented indigenous leaders due to attacks against their life and personal integrity,¹²² pointing out the frequency of murders and threats to indigenous leaders and the consequent impunity, in the majority of cases, of those responsible for these grave violations.¹²³

States are at the forefront of repression of indigenous peoples, by omissions but also by the commission of human rights violations against them.¹²⁴ Numerous cases of serious violations suffered by indigenous peoples by military and paramilitary forces in the name of public security, anti-insurgency, and counter-terrorism are reported, although there is no systematic gathering of data on alleged perpetrators. The precarious human rights situation of indigenous peoples in conflict settings demonstrates the gap between the international framework, national legislation, and the ineffectiveness of the institutions responsible for protecting them.

4. Conclusions

Being a part of a research study dealing with «Human Rights Violations in Conflicts», this article has attempted to present the complex interaction between human rights violations and conflict and has surveyed patterns, perpetrators and trends of serious human rights violations committed against selected vulnerable groups on the basis of existing databases and human rights reports.

Human rights are violated most often and in extreme fashion in all stages of the armed conflicts cycle (pre-conflict; during conflict, and the aftermath of conflict). The main result is a complex and multi-dynamical relationship between conflict and human rights violations: human rights violations can be causes of conflict, can emerge from conflict and can transform already on-going conflict, and human rights accountability may be critical for peace-negotiation and peace-implementation.

The understanding of the complex relationship between human rights and conflict helps us to approach the concept of «vulnerable groups» in conflict settings. As a general trend, we can notice that the vulnerable groups selected share a common structural discrimination, which is reinforced by the situation of conflict. The consequences of conflicts are deeply gendered but also intrinsically linked with situations of prior

¹²¹ OAS Office of the Rapporteur on Freedom of Expression, *2012 Annual Report on Freedom of Expression in the Hemisphere*, 2012, available at <http://www.oas.org/es/cidh/expresion/docs/informes/anauales/monitoreo/Monitero%20Informe%20Anual%202012.pdf> (accessed 15 July 2014), p. 147.

¹²² OAS Office of the Rapporteur on Freedom of Expression, *2012 Annual Report on Freedom of Expression in the Hemisphere*, cit.

¹²³ Inter-American Commission for Human Rights, *First Report on the Situation of Human Rights Defenders in the Americas*, 2006, available at <http://www.cidh.oas.org/countryrep/Defensores/defensorescap6-8.htm#campesinos> (accessed 12 July 2014), section 220.

¹²⁴ UNHRC, *Consultation on the situation of indigenous peoples in Asia*, 2013, available at http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session24/Documents/A-HRC-24-41-Add3_en.pdf (accessed 17 July 2014), p. 8-9.

discrimination. Addressing the structural discrimination of vulnerable groups is not only an essential part of conflict prevention but also an important element of conflict resolution.

However, if categorisation of «vulnerable groups» is necessary in order to tackle specific needs, other denominations could be used in order to avoid stigma and to reflect the changing nature of vulnerabilities. Therefore, the denomination of «groups in need», for instance, might reflect better the actual situation of those groups without putting a perspective of inherent condition of vulnerability.

As the EU has the mandate to «consolidate and support democracy, the rule of law, human rights and the principles of international law»,¹²⁵ on the one hand, and to «preserve peace, prevent conflicts and strengthen international security»,¹²⁶ on the other hand, further research is needed in order to assess how the European Union is integrating the concerns identified in this paper in its conflict/crisis management policies.¹²⁷

¹²⁵ Art. 21 (2) (b) TEU.

¹²⁶ Art. 21 (2) (c) TEU.

¹²⁷ This research will be undertaken as part of the FRAME Project.