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Policy brief NCGM Expert Meeting on International Law and Gender¹

On the 26-27 November 2019, the Nordic Centre for Gender in Military Operations (NCGM)², in its capacity as an expert centre for gender in military operations, organised an Expert Meeting on International Law and Gender with a specific focus on Conflict-Related Sexual and Gender-Based Violence (CR-SGBV). The meeting gathered 20 senior experts from the military, prosecution office of United Nations (UN) International Residual Mechanism for Criminal Tribunals, police, academia, civil society, UN and NATO. During the two-day event, the experts shared experiences and discussed topics related to CR-SGBV. Specifically the topics in the Meeting evolved around issues that NCGM, prior to the Meeting, had identified as in particular relevant for the military to gain more clarity on and increased understanding of, including:

- Which types of acts are considered to be conflict-related gender-based violence?
- What is the military's role and responsibility to prevent and respond to CR-SGBV?
- How can cooperation with other actors be strengthened?

Given that preventing and responding to gender-based violence which is not linked to conflict, generally falls outside of the scope of the military mandate, it is critical to understand what conflict-related gender-based violence means. Increased knowledge and awareness of CR-SGBV will inform the military when to act, how to act and when not to act.

The aim of this policy brief is to capture and elaborate on the key points from the discussions during the Expert Meeting. Specifically, the brief provides guidance and support to better equip the military in its work on prevention and response to CR-SGBV as well as provides recommendations on new and strengthened areas of cooperation between different actors.

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² NCGM is an international military centre established in 2012 under the umbrella of the Nordic Defence Cooperation - NORDEF. NCGM's work and activities are structured around its three core roles: as an Education and Training Facility, as an Expert Centre and as NATO Department Head for the Gender in Military Operations Discipline. The centre is located in Stockholm, with Sweden as its host nation, and with staff from the Nordic nations. In 2014 NCGM opened up to other partner nations, and currently both the Netherlands and Canada have seconded personnel to the centre.



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When does gender-based violence become conflict-related?

Introduction

In order to guide the military on what actions that must be taken to prevent and respond to gender-based violence in conflict, a better understanding of what types of acts are considered conflict-related gender-based violence is required. Not all gender-based violence is manifested as a form of sexual violence and not all acts of sexual and gender-based violence in a conflict area is considered conflict-related. Whilst international instruments, judgement, policies and frameworks provide some guidance on the different forms of conflict-related sexual violence, they contain limited guidance on different forms of conflict-related gender-based violence.

The UN Security Council Resolutions (UNSCRs) on Women, Peace and Security (WPS)³, NATO military guidelines on the prevention of and response to conflict-related sexual and gender-based violence⁴ and several of the UN Security Council Mandates for Peacekeeping missions⁵ refer to gender-based violence in conflict. In addition, the Rome Statute of the International Criminal Court⁶ includes gender-based persecution as an act that can constitute crimes against humanity when committed as part of a widespread and systematic attack directed against any civilian population. Nonetheless, these international instruments and frameworks lack guidance on, and practical examples of, the types of acts and/or situations they are referring to.

Given that preventing and responding to gender-based violence which is not linked to conflict, generally falls outside of the scope of the military mandate, it is critical to understand not only what conflict-related gender-based violence means, but more importantly when gender-based violence become conflict-related.

³ See for example UNSCR 1960, UNSCR 2106 and UNSCR 2467.

⁴ NATO Military Guidelines on the Prevention of and Response to, Conflict-Related Sexual and Gender-Based Violence, 2015.

⁵ See for example UNSCR 2364, UNSCR 2499 and UNSCR 2459.

⁶ Rome Statute of International Criminal Court, A/CONF.183/9.



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What constitutes “a link to conflict”?

Domestic violence in a conflict area that has no connection, link or relation to the conflict itself would generally not be considered conflict-related. This means, that generally, the existence, or even the increase of gender-based violence carried out at the same time as an armed conflict does not in itself make it conflict-related. Hence, one of the critical aspects is how to interpret and understand what is considered a link or relation to conflict.

Both international law and UN documents provide guidance on what can be considered a link to conflict in terms of sexual violence. Below is a non-exhaustive list of factors that have been considered in precedents from the International Criminal Tribunal from the Former Yugoslavia (ICTY)⁷ and/or have been listed in the UN Secretary General’s Annual Reports on conflict-related sexual violence⁸ as factors that can be considered when determining the link to conflict:

- Perpetrator being a combatant or affiliated with a state or non-state armed group.
- Victim being a member of the opposing political, ethnic or religious group.
- The act may be said to serve the ultimate goal of a military campaign.
- The crime is committed as part of or in the context of the perpetrators official duties.
- There is a climate of impunity, generally associated with state collapse, for sexual violence.
- When making the connection between the crime and the armed conflict, particular care is needed when the perpetrator is not a combatant.

Understanding the link to conflict requires a gender perspective

To understand when gender-based violence becomes conflict-related requires not only an understanding of the factors that can constitute a link to conflict. It also requires an application of a gender perspective when analysing the conflict. This can be illustrated by two examples that were raised during the expert meeting.

The genocide in Srebrenica in 1995 had very strong gender elements to it. A large number of the Bosniak men and boys were gathered, imprisoned in terrible conditions, and thousands

⁷ See also Brammertz and Jarvis, *Prosecuting Conflict-Related Sexual Violence at the ICTY*, Oxford University Press, 2016.

⁸ S/2019/280 Conflict-related sexual violence – report of the United Nations Secretary-General



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were executed in just a few days. In addition to that up to 30 000 Bosniak women, children and elderly persons were separated from their male family members and forced onto buses and expelled from their homes. It was the combination of the execution of men and boys and the expulsion of women that proved the intent to destroy the targeted Bosnian Muslim community, which resulted in the determination of it as genocide.⁹

“Given that gender constructions form an inherent part of the fabric of any community group, damaging or destroying that community usually involves specifically targeting the gendered constructions on which the community rests. So, for example, in understanding what it means to destroy the foundations of a targeted community for the purposes of genocide, an understanding of the gender factors will be essential”¹⁰

A more recent example on conflict-related gender-based violence is the detention of women in Syria. Reports from the conflict in Syria on women in detention claim that women risk not only to be raped or subjected to other forms of sexual and gender-based violence in detention, but the mere fact that a woman is detained is perceived as bringing disgrace on her family and community.¹¹ It has become a general assumption in Syria that if a woman is detained, she will unquestionably be raped or subjected to other forms of sexual and gender-based violence. Whether she has in fact been subjected to sexual and gender-based violence is therefore generally not taken into consideration when it comes to how the relatives perceive the dishonour such a potential act bring upon the family. This has led to several cases where detained women upon their release face domestic violence, and in some cases even honour killings, from family members and relatives.

It is clear that the sexual- and gender-based violence committed by police or military against Syrian women in detention should be considered conflict-related. However, it is less clear whether the violence committed by relatives towards the women upon the release from detention is “conflict-related” or not. Domestic violence committed at the same time as an armed conflict is generally not considered conflict-related. In this case, however, it is a clear connection between the domestic violence and the conflict. The link to conflict becomes even stronger if the state or non-state armed groups are using this societal construction of female

⁹ Brammertz and Jarvis, Prosecuting Conflict-Related Sexual Violence at the ICTY, Oxford University Press, 2016.

¹⁰ Brammertz and Jarvis, Prosecuting Conflict-Related Sexual Violence at the ICTY p.12, Oxford University Press, 2016.

¹¹ A/HRC/37/CRP.3 “I lost my dignity”: Sexual and gender-based violence in the Syrian Arab Republic – conference room paper of the Independent International Commission of Inquiry on the Syrian Arab Republic.



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purity and detain women with the purpose of destabilising families and divide societies. By utilising such tactic the state or non-state actors can succeed in terrorising communities and gain further control of power, people or territory.



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The military's role and responsibility to prevent and respond to CR-SGBV

Introduction

The military's role and responsibility to prevent and respond to CR-SGBV depends on several different aspects, in particular the mandate, the operational context and whether it is a UN, NATO, multinational or national operation.

Preventing and responding to CR-SGBV requires collaborative efforts between several different actors. Non-Governmental Organisations (NGOs), International Organisations (IOs), local medical centres and civil society organisations are critical actors in providing medical treatment, psychosocial and legal support, shelter and other forms of support to survivors of CR-SGBV. Other essential actors are the police and prosecutors when it comes to law enforcement, including investigation and prosecution of perpetrators of CR-SGBV.

When, through policy, doctrine, mandates, or tasks it is established that the military has a responsibility to prevent and respond to CR-SGBV, what is then the military's role?

The military's work with CR-SGBV should be complementary to that of other actors in this field. Given the unique responsibility of the military in pre- and post-conflict situations, as well as during conflict, the military may in some conflict areas be one of few actors present, and in those situations the military's role to prevent and respond to CR-SGBV becomes critical.

Broadly speaking the military's role and responsibility can be divided into two overarching areas. Firstly, preventing and responding to own forces' committing of CR-SGBV and secondly, preventing and responding to other actors committing CR-SGBV towards the civilian population. The focus of the expert meeting, as well as this brief is the second category.

The mandate ultimately decides the military's role to prevent and respond to incidents of CR-SGBV committed by other actors than own forces. Many UN peace operations' mandates include a responsibility to prevent and respond to CR-SGBV of which the military can have a specific role when it comes to creating overall stability and security or providing physical security to the civilian population. In addition, a responsibility for international military forces



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to train host nations forces on the topic of CR-SGBV may also be included in Security Force Assistance missions and other international missions that include capacity-building elements. During the Expert Meeting, the following three roles for the military when it comes to CR-SGBV were particularly emphasised:

1. Establish overall stability and security in the area of operation.
2. Provide physical security to the civilian population.
3. Train host nations security forces.

A fourth role for the military; using force to prevent and respond to incidences of CR-SGBV, was only briefly touched upon during the meeting. This topic could be further expanded upon in future meetings or discussions.

The Military's Role to Prevent and Respond to CR-SGBV

1. Establish overall stability and security in area of operation

The military's role to create overall stability and security in the area of operation includes addressing CR-SGBV as it can exacerbate conflict and impede restoration of peace and security. It is imperative that the military has a comprehensive understanding of the conflict and more specifically the operational environment to be able to establish stability and security. To gain a full understanding of the conflict and operational environment, collecting updated and relevant information, reporting on early warning indicators and conducting a gender analysis of the conflict and operational environment, is critical. This should be fed into both the short term and long term military planning to ensure effective military response.

Collect relevant information

Receiving updated, relevant and critical information is paramount to having an accurate understanding of the current situation. Generally, reporting on sexual and gender-based violence is poor in non-conflict affected societies. In societies affected by conflict, the reporting is even more incomplete. Therefore, it is critical to have a well-established relationship with all parts of any local community in the conflict area in order to receive relevant information. In order to be able to create such well-established relationships it is vital to analyse force composition and make use of mixed patrols. Furthermore, it is also important to have an understanding on how the information can be gendered, meaning that women might be more likely to talk about certain aspects with other women and other aspects with



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men and vice versa, or that men or women may be particular unwilling to share information on sexual violence in a particular context.

Conduct gender analysis on the conflict and on the collected information

As illustrated and highlighted in this policy brief, it is critical to conduct a gender analysis on the conflict and the violence carried out in the conflict to have an accurate understanding of the current situation. Analysing relevant and updated information, identifying patterns of violence and early warning indicators are important aspects to include in the gender analysis. The gender analysis will support in better tailoring the immediate military response and feed into the planning of both the short term and long term military response.

Report on CR-SGBV and include early warning indicators in this reporting

Spikes of instances of CR-SGBV rarely occur without warning. Therefore it is critical to ensure that early warning indicators are included in the reporting. Using early warning indicators and letting these feed into the planning and decision-making process may lead to more proactive approaches, rather than reactive responses. The following non-exhaustive list of examples of early warning indicators was raised during the Expert Meeting:

- Large number of fighters in “standby mode” as fighters with no tasks may involve themselves in unacceptable behaviour
- Violent and unstable character of the soldiers in present troops
- Lack of discipline and supervision of the soldiers
- Lack of accountability for and ability to discipline fighters when committing CR-SGBV
- Lack of training of soldiers and their superiors.

2. Provide physical security to the civilian population

To ensure effective prevention and response to CR-SGBV, the military should focus on providing physical security to the civilian population. The typical example of action is to increase security patrols or change the patrol routes to respond to instances of CR-SGBV. Another response can be to move military personnel from one area to another to concentrate its efforts on prevention and response to the increased security threat that spikes of CR-SGBV may result in. Providing security to the civilian population can also mean providing security that enables other actors to reach out to the civilian population.



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Depending on the operational context, providing physical security can include more creative solutions tailored for the specific situation. An illustrative example mentioned by one of the participants at the Expert Meeting was related to the use of military engineers. In an operation, military engineers had been tasked to repair roads of a specific area. This area had been highlighted as an area where women and girls had been attacked and subjected to CR-SGBV. The engineers were subsequently also tasked to clear the vegetation close to the roads. The growth of the vegetation provided armed groups with places to hide when women and girls passed by. Thus, the removal of the vegetation increased the physical security for the civilian population in the area. This example clearly shows that the information with regards to the prevalence of CR-SGBV should be used in a whole of mission approach to preventing and responding to CR-SGBV. The road repairs focusing on the logistical aspects alone would not have addressed the issue of CR-SGBV, but by including vegetation clearance the physical security of the civilian population was increased.

3. Delivery of training to local security forces

Several international military operations' and missions' mandates, including UN and NATO, include elements of capacity-building support to host nation security forces. Increasing the understanding of CR-SGBV within the host nation forces and other armed actors in host nation was raised at the Expert Meeting as an important avenue to prevent and respond to CR-SGBV. Education and training is a critical part of this support. During the Expert Meeting it was emphasised that military-to-military education and training was an important avenue to secure the prevention of and response to CR-SGBV.

In many international operations, deployed forces are tasked to support the host nation forces. A challenge that was raised during the Expert Meeting concerned situations where the host nation forces are also the ones committing CR-SGBV against the civilian population. In such situations, protection of civilians and supporting the host nation's forces can be contradictory. It is however important that the knowledge of CR-SGBV and its implications is increased, and never waived in training or capability building activities.

The benefits with cooperation and collaborative efforts between different actors

Preventing and responding to CR-SGBV require collaborative efforts between several different actors. Cooperation between these different actors will not only avoid duplication but also ensure a comprehensive and effective response.



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During the expert meeting it was emphasised that to improve and strengthen this collaboration it is first and foremost important to understand what is and what is not, the respective actors' roles and mandates. For example, one common misconception regarding the military's role and responsibility is that it should focus on, or include, law enforcement. Generally, the majority of military personnel is not trained or educated in law enforcement, particularly not in areas such as investigation and prosecution of CR-SGBV. Rather it is generally the police components and prosecutors who have this role and responsibility. Oftentimes police and prosecutors do not only have training and education on investigations and prosecutions but also receive specialised training or have specific experience from working with this category of violence, both in conflict settings and in peacetime.

Another important aspect highlighted was that interdisciplinary approaches to prevention and response to CR-SGBV may not only increase our understanding of CR-SGBV, but might also inspire, influence, and lead us to developing new approaches in our work. This in turn may improve our prevention and response activities. The sharing of experiences, expertise and perspectives on CR-SGBV from the experts during the meeting as they represented different actors and therefore provided different angles on the issues highlighted the value of the interdisciplinary approach.

During the two days, new areas of cooperation on how to better make use and benefit from other actors' lessons learned were also raised. The following examples are highlights from these discussions:

- The list of indicators for proving the foreseeability of sexual violence crimes from the prosecution office of the International Criminal Tribunal for former Yugoslavia¹² can also be relevant for the military and other actors when developing or using early warning indicators in general but will specifically highlight increased risk for CR-SGBV.

Recommendation from NCGM: Early warning indicators as well as best practises when it comes to gender analysis and contextualising the sexual and gender-based violence in the conflict could be further explored and developed in an interdisciplinary working group.

- Deployed military in international missions can serve more often as witnesses or experts in prosecutions of cases of war crimes, crimes against humanity and genocide.

¹² Brammertz and Jarvis, Prosecuting Conflict-Related Sexual Violence at the ICTY p.251, Oxford University Press, 2016.



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Recommendation from NCGM: Courts, tribunals and international legal mechanisms could consider analysing which cases would benefit most from such expert witnesses.

- Military reporting can be used more as document evidence in court cases of war crimes, crimes against humanity and genocide.

Recommendation from NCGM: Courts, tribunals and other international legal mechanisms could consider analysing and providing guidance on what elements would be beneficial to the judicial system, if it was included in military reporting.

- Sharing of information between actors is critical in order to increase the understanding of CR-SGBV in a conflict as well as to be able to better tailor prevention and response. However, there are major challenges when it comes to sharing of information, in particular from actors working with survivors, due to securing the protection of victims and confidentiality of the information.

Recommendation from NCGM: Continued efforts in strengthening the cooperation, deepening the understanding of the different roles and mandates and creating interdisciplinary networks is critical to increase our understanding of CR-SGBV.

- Carry out joint training and education (military-police-prosecutors-civilian) to host nation counterparts can be of great value in order to ensure effective and comprehensive response.

Recommendation from NCGM: Joint training and education (military-police-prosecutors-civilian) could be expanded upon both in national and international contexts. In-mission training could serve as a particularly beneficial avenue for such training as it will enhance information sharing and collaboration between the actors in a specific context.



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Concluding remarks

The military's role is not to define when sexual and gender-based violence is conflict-related. However, given that preventing and responding to gender-based violence which is not linked to conflict, generally falls outside of the scope of the military mandate, it is critical to understand what conflict-related gender-based violence means. Increased knowledge and awareness of CR-SGBV will inform the military when to act, how to act and when not to act.

The military's work with CR-SGBV should be complementary to that of other actors in this field. Given the unique responsibility of the military in pre- and post-conflict situations, as well as during conflict, the military may in some conflict areas be one of few actors present, and in those situations the military's role to prevent and respond to CR-SGBV becomes critical.

The mandate ultimately decides the military's role to prevent and respond to incidents of CR-SGBV committed by other actors than own forces. During the Expert Meeting, the following three roles for the military to prevent and respond to CR-SGBV were elaborated on; 1) Establish overall stability and security in the area of operation, 2) Provide physical security to the civilian population and 3) Train host nations security forces. Applying a gender perspective when analysing the conflict is important to get a full picture of the operational environment. This in turn may avoid gaps in operational assessment and lead to a better planned and tailored military response.

Preventing and responding to CR-SGBV require collaborative efforts between several different actors. Cooperation between these different actors will not only avoid duplication but also ensure a comprehensive and effective response. Interdisciplinary approaches to prevention and response to CR-SGBV may not only increase our understanding of CR-SGBV it might also inspire, influence and lead us to develop new approaches in our work.

Lastly, NCGM would like to thank and recognise the experts who joined the inter-disciplinary meeting. Their knowledge and experience has not only laid the basis for this brief but also contributed to moving NCGM's work on this topic forward.