

ACCESS TO JUSTICE

Programme Resource



TRÓCAIRE

Working for a Just World

This programme resource has been produced by Trócaire, the Irish Catholic Agency for World Development.

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Cover Image - Martha Julia Lopez holds a picture of her dead husband, Seriseo Munoz, close to her heart. Seriseo (50), was shot dead last year when gunmen, hired by a rich landowner, opened fire on a group of farmers as they worked. This community is one of thousands throughout Honduras whose legal challenge for land has been met with the murder of innocent farmers.

Photo: David Stephenson for Trócaire.

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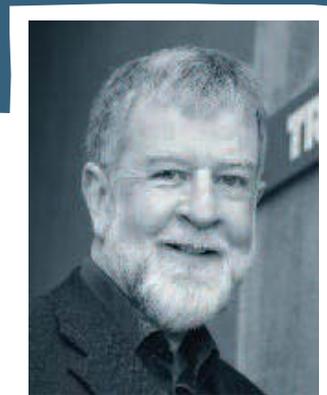
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ACRONYMS

ACHPR	African Commission of Human and Peoples Rights
ASEAN	Association of Southeast Asian Nations
BPFA	The Beijing Platform for Action
CAFCA	The Centre for Forensic Analysis and Applied Sciences
CCJ	Colombian Commission of Jurists
CEDAW	The Convention on the Elimination of all Forms of Discrimination against Women
CERD	United Nations Committee on the Elimination of Racial Discrimination
CSO	Civil Society Organisation
DDR	Demobilisation, Disarmament and Rehabilitation
DFA	The Department of Foreign Affairs
DRC	The Democratic Republic of Congo
EU	European Union
FTA	Free Trade Agreement
GHR	Governance and Human Rights
GHR P&S	Governance and Human Rights Policy & Strategy
HR	Human Rights
HRD	Human Rights Defenders
HIV	Human immunodeficiency virus
IACHR	Inter-American Human Rights Commission
ICC	International Criminal Court
IDP	Internally Displaced Population
IHL	International Humanitarian Law
IHRL	International Human Rights Law
ILO	International Labour Organisation
IPEC	International Programme to Eliminate Child Labour
LRF	Legal Resources Foundation
MEPs	Members of the European Parliament
NGO	Non-Governmental Organisation
OAS	Organisation of American States
OAU	Organisation of African Unity
OHCHR	Office of the High Commissioner for Human Rights
OPT	Occupied Palestinian Territory
PAR	Partners at Risk
PLHIV	People Living with HIV
SP	Special Procedures
TNCs	Transnational Corporations
UN	United Nations
UDHR	Universal Declaration of Human Rights
UNGA	United Nations General Assembly
UN SCR	United Nations Security Council Resolution
UPR	Universal Periodic Review
ZLHR	Zimbabwean Lawyers for Human Rights

Foreword



SINCE ITS INCEPTION, JUSTICE HAS BEEN CENTRAL TO TRÓCAIRE'S WORK. INSPIRED BY OUR MANDATE, FROM THE OUTSET, TRÓCAIRE PLAYED A CRUSADING ROLE IN THE STRUGGLE FOR JUSTICE IN DIVERSE CORNERS OF THE GLOBE; FROM EL SALVADOR AND NICARAGUA; TO ZIMBABWE, SOUTH AFRICA AND RWANDA; TO CAMBODIA AND VIETNAM.

In some cases, we have observed perpetrators being brought to justice and repressive regimes being overthrown, in others we have seen deteriorations in human rights conditions. Many of the programme countries where we work face a multitude of challenges, such as legacies of brutal dictatorships and embedded impunity; growing intolerance of social protest and human rights defence; and outright negation of the fundamental rights of the poorest and most vulnerable in society, such as women, minority groups and indigenous communities. Our Access to Justice work takes place against a backdrop of compromised democracies, protracted armed conflict and conflict over natural resources, livelihoods eroded by climate change, increased food prices and inequitable development and trade policies.

Nonetheless, the international human rights system has become more sophisticated, offering greater opportunities to hold abusive states to account. Trócaire is privileged to work alongside brave and inspirational partners, many of whom are pushing the frontiers of international human rights and justice through their dedicated work and innovation on the ground. Courageous women and men are the catalyst for the struggle for justice all over the world, where they outspokenly denounce violations of fundamental rights and tirelessly condemn abusive and neglectful governments. Trócaire partners and communities we accompany often face the risk of violent repression, attacks or death. Trócaire's work, demanding justice and accountability, is as urgent as ever and while Trócaire remains steadfast to its commitment to empowering those most vulnerable to human rights violations, we can also play a role in narrowing the gap between the international system of human rights promotion and protection and the communities we accompany.

Trócaire's Governance and Human Rights (GHR) policy reiterates our commitment to justice: 'the abuse and oppression of the poor is an intolerable outrage', thus calling on us to not cease in our efforts, in solidarity with our local partners, in demanding just, peaceful and equitable societies.

The Access to Justice manual is a learning resource to complement our GHR Policy and Strategy. It is designed to provide tools to Trócaire Programme Officers and partners with which to navigate the international human rights and justice system, as well as examples of best-practice of integrated programming in our Access to Justice work.

A handwritten signature in black ink that reads "Justin Kilcullen".

Director

1. TRÓCAIRE AND ACCESS TO JUSTICE



Empowering bonded labourers in Pakistan to escape their enslavement: Partners work to help labourers secure ID cards so that they can be recognised as citizens and secure their rights.

Photo: Trócaire



‘The movement towards the identification and proclamation of human rights is one of the most significant attempts to respond effectively to the inescapable demands of human dignity’

Compendium of the Social Doctrine of the Church, no. 152

1.1 Introduction

This manual aims to contribute to Trócaire and partners’ Access to Justice work by providing an overview of contemporary human rights ideas and justice mechanisms and by highlighting best practice in Trócaire’s Governance and Human Rights (GHR) programmes across the globe.

As the international human rights framework continues to expand, states have come under greater scrutiny for their human rights records, thus broadening the space for civil society to engage and to demand compliance with international standards. Trócaire and partners can avail of this opportunity to make our Access to Justice work more robust in our countries of operation.

The objective of the first section of the manual is to situate Trócaire’s work within the international human rights framework, in order to assist Trócaire and partners in reflecting on how international human rights standards and mechanisms can be used to reinforce programmes and partner work.

The second section of the manual details the rich panorama of programme work in diverse contexts, highlighting examples of innovation and best-practice. The purpose of the second section is to outline a framework articulating an integrated approach to our Access to Justice work based on the following core strategies:

1. Empowerment of poor and vulnerable groups to promote and protect their rights
2. Redress through access to formal and informal justice systems
3. National level advocacy to demand accountability and compliance of states with domestic legislation and international law
4. International level advocacy to demand accountability and compliance of states with international law.

Trócaire’s Access to Justice work is underpinned by a gender mainstreaming approach as well as cross-cutting strategies of conflict sensitivity¹ and support to partners at risk.

¹ Conflict sensitivity means understanding the interactions between our work and the conflict context in which we work and then acting upon this understanding in order to minimise negative (conflict) impacts and maximise positive (peace) impacts.

Chapter 9 provides a summary of how a programme approach can be applied to our Access to Justice work with key considerations that need to be kept in mind for good programming.

It is hoped that the manual will serve as a guide to Trócaire staff and partners and that they will consider these strategies of best-practice in the design and implementation of their GHR programmes. It is recognised that, given the diversity of programmes and contexts, not all strategies will be appropriate for all programmes. The manual does, however, emphasise the importance of an integrated approach, which not only addresses prevention of and remedy for human rights violations, but also the development of judicial and legal systems wherein the human rights of the poor and vulnerable are recognised.

1.2 Human rights and Trócaire's mission

“ Trócaire envisages a just and peaceful world where people's dignity is ensured and rights are respected; where basic needs are met and resources are shared equitably and in a sustainable manner; where people have control over their own lives and those in power act for the common good’

Mobilising For Justice - Trócaire's Strategic Framework 2006-2016.

As reflected in Trócaire's mission, Trócaire's work is underpinned by our commitment to social justice. Central to Trócaire's mandate is the understanding of the importance of empowering the poor and vulnerable to claim and defend their rights and to be agents of their own development.²

Catholic Social Teaching is rooted in social justice and the protection of the poor and vulnerable from oppression and abuse. The Catholic Church understands human rights as deriving from human dignity and considers the respect and promotion of the person and their fundamental rights as being essential to achieving the common good. Catholic Social Teaching challenges us to be courageous in our defence of those who are subjected to human rights violations, to act in solidarity with the poorest and most excluded and to be outspoken in our intolerance of oppression and injustices.

² Trócaire's Governance and Human Rights Policy and Strategy (GHR P&S)

1.3 Governance and human rights

Governance is the framework of institutions, mechanisms and processes through which power and authority is exercised, a country's resources and affairs are managed, and citizens, institutions and leaders interact and exercise their rights and obligations.³ Good governance creates an environment conducive to the promotion and protection of human rights. The 'right to participate', as an entry point for realising all other human rights, underpins Trócaire's governance and human rights work.

Trócaire considers the full realisation of human rights as the ultimate goal of development and this is based on the belief that the inherent dignity of human beings entitles them to a core set of inalienable rights. Trócaire reinforces its work through a rights-based approach to development.⁴ In this regard, it understands that development processes are likely to be more sustainable when they are anchored in the framework of international law,⁵ which defines basic rights and legal obligations, and demands accountability.

For Trócaire, a rights-based approach offers the opportunity to become more effective in our work for justice. The GHR Policy and Strategy has underlined the importance of fortifying our GHR work by embedding it in international law and ensuring that international human rights standards are made explicit in our programme and policy work.

³ Summarised from Trócaire's GHR P&S

⁴ Please refer to Annex 2 of the GHR P&S for more information on the Rights-Based Approach

⁵ International Law refers to International Human Rights Law and International Humanitarian Law

2. CONTEMPORARY HUMAN RIGHTS IDEAS AND PRACTICE



The ability to protest so as to protect and promote human rights is central to any human rights strategy: The Israeli Committee Against House Demolitions (ICAHD) sit in the way of an Israeli bulldozer as it attempts to demolish a Palestinian home in East Jerusalem.

Photo: Israeli Committee Against House Demolitions

“ ‘All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms’

Vienna Declaration and Programme of Action, 1993.

2.1 Evolution of international human rights law

In the aftermath of the atrocities witnessed during World War II, the United Nations (UN) drafted the Universal Declaration of Human Rights (UDHR), which was adopted by the United Nations General Assembly (UNGA) in 1948. The UDHR established a ‘common standard of achievement for all peoples and nations’ and outlined the basic civil, political, economic, social and cultural rights that everyone should be able to enjoy. The UDHR together with the International Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights are considered the three core documents that form the International Bill of Human Rights.⁶ Since 1945, international human rights law has evolved through the development of a body of international human rights treaties and instruments, allowing for further definition and codification of specific human rights and the protection of human rights in law. Today there are **nine core international human rights treaties**,⁷ which form the basis of international human rights law.

⁶ Since the adoption of the Universal Declaration in 1948, all UN member States have ratified at least one Treaty and 80% have ratified four or more. See (<http://www.ohchr.org/EN/HRBodies/Pages/HumanRightsBodies.aspx>)

⁷ Please see Resource Sheet 2 for further details on International Treaties and Treaty Bodies.

2.2 Key human rights ideas

Universal: Human Rights are seen as universal due to their inalienable nature, which derives from the inherent dignity and worth of human beings and therefore are applicable to all human beings regardless of culture or identity. Over time, the UN has become more explicit in its recognition of the importance of cultural sensitivity in the practice of human rights, but at the same time, it has remained persistent in its argument that claims of cultural relativism cannot be used to justify human rights violations.

Indivisible: Civil, political, economic, social and cultural rights are held to be indivisible. In the past, economic, social and cultural rights were subordinated to civil and political rights on the international agenda. In more recent years, the harsh reality of enduring poverty and inequality has called into question the historical neglect of economic, social and cultural rights. It is increasingly accepted that a hierarchy of rights should not exist and that, in fact, human rights are mutually reinforcing; each right is a pre-condition for the realisation of another right.

Interdependent and Interrelated: Today it is widely accepted that it is impossible for an individual or group to realise one human right in isolation from another human right. For example, it is difficult for individuals or groups to defend their economic, social and cultural rights if their civil and political rights are circumscribed, e.g. without freedom of association and expression it is difficult for individuals or groups to mobilise to demand their right to dignified housing or food.⁸

Individual and Collective rights: International human rights law is inspired by a Western understanding of human rights as 'individual' rights and this has been a contentious issue that has been hard to reconcile across different cultures. However, despite this inherent ideological bias, international human rights law does not preclude the recognition and realisation of collective rights. Indeed, certain rights are more effectively defended and realised by people acting as a group. The recognition of collective rights continues to gain credence at international level and collective rights (such as for indigenous peoples) are reflected in different international human rights treaties and regional mechanisms.

⁸ 'Frequently Asked Questions on a Human Rights Based Approach to Development' OHCHR. Available at <http://www.ohchr.org/Documents/Publications/FAQen.pdf>

2.3 Who has the obligation to enforce international human rights law?

Upon ratification of an international human rights treaty, a state becomes a 'state party' to the treaty and is obliged to assume responsibility to respect, protect and fulfil the rights contained therein, through the translation of the treaty's content into domestic legislation and policy.

1. **Respect:** To refrain from interfering with the enjoyment of human rights
2. **Protect:** To ensure that third parties do not interfere with the enjoyment of human rights
3. **Fulfil:** To take steps to realise the right in question, through the facilitation of conditions wherein people can meet their needs and the provision of direct services in cases where these rights cannot be otherwise realised ⁹

Under international human rights law¹⁰, the primary responsibility for guaranteeing human rights lies with the state as the chief **duty-bearer**. States are obliged to ensure the realisation of the rights of individuals and groups who are **rights-holders**. Each right confers a mixture of both positive and negative duties on the state.¹¹ Inherent to international human rights law is the idea that rights-bearers also have obligations to respect the rights of others.

With the emergence of transnational corporations (TNCs) as a key global non-state actor, the capacity of the state to protect and ensure the non-interference of third parties has been challenged, particularly in countries where such corporations are more powerful than the state itself. While there are still gaps in international law in this regard, the UN Business and Human Rights framework, 'Protect, Respect and Remedy' and its associated Guiding Principles demonstrate international consensus on the extent of the challenges faced, and provides a platform within which to advance the accountability of TNCs.¹²

2.4 Economic, social and cultural rights – aspirations or obligations?

“ ‘Even where the available resources are demonstrably inadequate, the obligation remains for a State Party to ensure the widest possible enjoyment of the relevant rights under the prevailing circumstances’ .¹³

International human rights law applies both immediate and progressive obligations to the fulfilment of economic, social and cultural rights. As such, it is understood that where states are not in a position to fulfil the relevant rights immediately, they will take deliberate, concrete and

⁹ Ibid

¹⁰ Please see Resource Sheets 2 & 3 for more information on the international human rights system

¹¹ For example the state must take positive action to guarantee the right to vote through legislation, but it has the negative duty of ensuring that its officials refrain from intimidating, torturing or mistreating its citizens.

¹² Please see Trócaire's Business and Human Rights Advocacy Manual for further information and guidance.

¹³ Amnesty International (2005), *Human Rights and Human Dignity - A primer on Economic, Social and Cultural Rights*, page 41, Amnesty International Publications London.

targeted steps towards their realisation in accordance with the principle of progressive realisation. However, international human rights law also states that resource constraints cannot be used as a justification for inaction or the lack of advancement towards achieving these rights. To this end, states are also bound by immediate or core obligations to satisfy the minimum essential level of each right.¹⁴ For example, a state could design a national housing strategy as a 'progressive obligation', but would ensure access to dignified housing as an 'immediate obligation'. In reality, violations of economic, social and cultural rights are often not as a consequence of lack of resources but rather they are due to lack of political will.

The definition of 'immediate or core obligations' is of utmost importance in terms of the 'justiciability' of economic, social and cultural rights. Justiciability refers to the capacity of a court to provide adequate remedy in relation to a specific violation. Previously, it was believed that the fulfilment of economic, social and cultural rights was the sole competence of governments, as part of public policy and resource allocation. However, considering that the state has 'immediate obligations' in relation to economic, social and cultural rights, the same judicial oversight for their realisation should exist as does in regard to the achievement of civil and political rights. Courts and civil society are increasingly using this principle to demand accountability from governments. There are some interesting examples from Latin America, India and South Africa, where accountability has been achieved for violations or omissions in relation to economic, social and cultural rights through these means.¹⁵

2.5 International humanitarian law

International Humanitarian Law (IHL), or 'the Law of War', specifically deals with human rights principles in the context of international and non-international armed conflicts. The core principles of IHL are primarily enshrined in the four Geneva Conventions of 1949 and the two Additional Protocols of 1977. In essence, IHL attempts to protect those parties who are not, or are no longer, involved in armed conflict, e.g. civilians, prisoners of war and ex-combatants. Its fundamental goal is to protect civilians who are caught in the cross-fire and whose territory is under the control of one or more of the parties to the armed conflict. To this end, it demands that armed actors distinguish between civilians and combatants and between military and civilian objects, and that they refrain from using non-conventional weapons.¹⁶

¹⁴ 'Frequently Asked Questions on a Human Rights Based Approach to Development' OHCHR available at <http://www.ohchr.org/Documents/Publications/FAQen.pdf>

¹⁵ For example, the Treatment Action Campaign was successful in the Constitutional Court in South Africa in arguing for the right to Nevirapine medication to prevent mother-to-child transmission of HIV. See http://www3.law.columbia.edu/hrlr/hrlr_journal/38.2/Christiansen.pdf

¹⁶ Smith, R. K. M. & Van den Anker, C. (2005), *The Essentials of Human Rights*, Hodder Arnold

2.6 Human Rights, women and gender equality

“ ‘Recalling that discrimination against women violates the principles of equality of rights and respect for human dignity, is an obstacle to the participation of women, on equal terms with men, in the political, social, economic and cultural life of their countries, hampers the growth of the prosperity of society and the family and makes more difficult the full development of the potentialities of women in the service of their countries and of humanity.’¹⁷

Although the principles of equality and non-discrimination are enshrined in the UN Charter, the UDHR and the core international human rights instruments, rights activists felt that the rights of women needed to be made explicit in a legally binding international instrument. **The Convention on the Elimination of all Forms of Discrimination against women (CEDAW)** was passed by the UNGA in 1979, coming into effect in 1981. CEDAW is founded upon the principles of non-discrimination and equality and is rooted in a gender analysis of the causes of discrimination and obstacles to overcoming it. **The Beijing Platform for Action (BPFA)** expanded upon the provisions set out in CEDAW and enhanced the interpretation of the provisions by unravelling further the obstacles to overcoming gender inequality.

Violence against women is not explicitly elucidated in the CEDAW, although certain provisions can be drawn from the equality approach.¹⁸ **The Declaration on the Elimination of Violence against Women**, in 1993, was a step in the right direction, but as a non-binding instrument it only has the power to advise rather than oblige states to act. Subsequently, the appointment of the **Special Rapporteur on Violence against Women** gave weight to the Declaration in practical terms. The mandate of the Special Rapporteur to operate in any country, regardless of whether the country in question has ratified a specific instrument or not, and to intervene even before all national channels have been exhausted, has increased the pressure on states to take appropriate measures to address domestic and other forms of violence against women.¹⁹

CEDAW, while being criticised for certain analytical weaknesses and gaps, did open the way for a more serious debate around the issue of women’s rights and gender equality. Amongst other issues, this debate challenged traditional thinking around the non-interference of the state in the private-sphere, thus calling on the state to extend its role to the private sphere and to prevent and respond to situations of domestic violence.²⁰

¹⁷ CEDAW - <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>

¹⁸ Painter, G. R., (October 2004), Gender, the Millenium Development Goals, and Human Rights in the Context of the 2005 Review Process. available at http://www.choike.org/documentos/mdg_women2004.pdf

¹⁹ Smith, R. K. M. & Van den Anker, C. (2005), *The Essentials of Human Rights*, Hodder Arnold

²⁰ Ibid.

3. HUMAN RIGHTS AND JUSTICE



Protecting individual human rights defenders supports wider efforts to promote human rights in the wider population: An international campaign secured the release of Jestina Mukoko of Zimbabwe Peace Project, here outside Dail Eireann at peace vigil.

Photo: Trócaire

“We want to be the voice of the voiceless, to cry out against so many violations of human rights.”

Archbishop Oscar Romero

3.1 Formal justice systems at national level

An effective, independent and credible justice system is indispensable for the rule of law and ultimately development and peace. Regardless of the make-up of domestic legal systems,²¹ these systems must be grounded in international law and must recognise the rights of vulnerable groups as stipulated in the international treaties ratified by a particular country. International standards must be enforceable through the domestic legal and judicial system. For justice systems to operate effectively, judicial authorities, officials and law enforcers must be provided with adequate capacity building on international human rights and humanitarian law, as well as with sufficient human, technical and financial resources. Governments are obliged to respect the impartiality of the judicial authorities and in doing so to resist interference in or obstruction of their operations. In addition, those most vulnerable to human rights violations must also be empowered and be provided with legal aid in order to access and use these systems. Nevertheless, access in itself is not enough, but rather access must lead to just and enforceable outcomes. In many countries, however, victims of human rights violations face considerable obstacles in accessing legal representation and the justice system. There can also be significant problems associated with corruption and interference with the proper functioning of the justice system which can hinder the judicial process and the implementation of its decisions.

3.2 Informal justice systems

Informal justice systems refer to non-state systems and can cover a range of alternative justice systems that are rooted in traditional, indigenous, religious or community beliefs and practices. According to the UN, in many developing countries, over 80% of cases are resolved through these informal systems.²² These systems rely on religious or traditional laws and customs to interpret and sanction injustices that may relate to various issues such as property or land, protection of livestock, personal security, petty crime, family and community disputes or access to basic services. Traditional leaders do not necessarily have an understanding of the formal justice system and human rights. These systems have proven successful in resolving community disputes in a peaceful manner and in so doing strengthen community cohesion. Community cohesion is strengthened through the use of restorative approaches to justice which seek to not only provide justice but also restore relationships between victim and perpetrator.

²¹ Domestic legal systems are founded upon different legal traditions including civil law or common law, criminal law, constitutional law and customary law.

²² United Nations Rule of Law (UNROL) – Informal Justice at http://www.unrol.org/article.aspx?article_id=30

However in some contexts they can reinforce hierarchical and discriminatory relationships and gender inequality, as well as perpetuate gross violations of human rights.²³ Nevertheless, informal justice systems can offer legitimate and effective alternatives, and therefore need to be recognised and strengthened as part of any comprehensive efforts to increase access to justice for the poor and vulnerable.

3.3 Transitional justice

Transitional Justice refers to the body of judicial and non-judicial mechanisms, procedures and processes that a society engages in so as to attempt to overcome the devastating legacies of gross human rights violations. It aims to balance the need for justice with the need to promote truth and reconciliation. It seeks to end the climate of impunity that has prevailed, redress underlying grievances and governance gaps and thereby create a climate of justice that will promote a lasting peace. Transitional justice most often has to take place in contexts with poor governance, fragile justice systems and broken societies; substantially increasing the challenges to delivering a durable peace based on justice. Although each process is unique, it ought to comply with international standards. Experience has proven that justice, truth, reparation and institutional reforms must be achieved in tandem, as no one component can be fully realised on its own.²⁴

3.3.1 Economic, Social and Cultural rights as part of Transitional Justice

In the past, truth commissions have tended to focus on violations of civil and political rights, despite the fact that violence and armed conflict is more often than not triggered due to structural violence, in the form of poverty and inequality sustained in exclusionary political and economic models. Trócaire believes that the mandate of truth commissions should be extended so that the analysis of the violence or armed conflict takes into account the root causes and in doing so facilitates the design of more comprehensive responses. Where the underlying causes of the violence are not understood and addressed, the entire transitional justice process is undermined, thus posing a threat to building sustainable peace and stability.

3.3.2 Amnesty versus the Rights of Victims as part of Transitional Justice Processes

According to the UN, victims of gross violations of international human rights law and serious violations of international humanitarian law are defined thus:

‘Victims are persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss, or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of human rights law, or serious violations of international humanitarian law. Where appropriate the term ‘victim’ also includes the immediate family or dependents of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.’²⁵

²³ Ibid.

²⁴ Please see Resource Sheet 5 for more information on Best Practice in Transitional Justice

Consistent with Trócaire’s values and its rights-based approach to GHR work, victims ought to play a central role in any transitional justice process, during which their participation and protection must be secured. Victims who participate in such processes can often be re-victimised due to discrimination, abusive authorities and the risk of threats, attacks and assassination. Their participation should lead to their empowerment, so that they can transition from the condition of victim, to active citizens who are agents of their own development.

Up until recently, it was widely argued that in countries with legacies of armed conflict, efforts to achieve justice and accountability undermined the process of peace building. As a result, amnesties were often awarded under the pretext of achieving the greater common good of peace, allowing corrupt and brutal members of the parties to a conflict, including the military or government to eschew responsibility for atrocities committed and avoid sanction. Over time, transitional justice experiences have proven that the subordination of justice to the objective of peace, in the form of impunity, has not led to more peaceful and stable societies. Today international law and UN policy²⁶ fully rejects the notion of amnesties for perpetrators of gross violations, war crimes, crimes against humanity and serious violations of IHL.

3.4 Access to justice through regional courts

Regional human rights systems contribute to human rights promotion and protection through the translation of international human rights law into regionally enforceable standards and through the creation of monitoring mechanisms and courts with which to hold states to account. Human rights bodies have been created in Europe, Latin America and Africa. There are recent developments within the ASEAN region to create a mechanism there but these remain at the very early stages of conceptualisation. The most active of these bodies are those of Europe and Latin America. The **Inter-American Court of Human Rights (Inter-American Court)**²⁷ and the **African Court on Human and People’s Rights (the African Court)**²⁸, provide channels through which civil society organisations can seek justice when efforts at domestic level have failed.²⁹

The legal frameworks of regional human rights mechanisms derive from international standards. Both the Inter-American Court and the African Court have the mandate to accept cases that represent systematic and widespread abuses, but only after all domestic channels have been exhausted. Their rulings are legally binding on states parties; nevertheless, they face considerable challenges to enforce their recommendations. The African Court was merged with the African Court of Justice in 2008 and emitted its first sentence in 2009. Not all African states have ratified its jurisdiction, thus seriously undermining its effectiveness.

²⁶ Resolution Adopted by the General Assembly 60/147, *Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of Human Rights and Serious Violations of International Humanitarian Law*, Pg. 5 - article 8, available at <http://www.un.org/Depts/dhl/resguide/r60.htm>

²⁷ A/HRC/12/18 - Annual Report of the UNHCHR and Reports of the Office of the High Commissioner for Human Rights and the Secretary-General, Analytical Study on Human Rights and Transitional Justice Paragraph 52, page 17, available at <http://www.unrol.org/doc.aspx?d=2855>

²⁸ http://www.corteidh.or.cr/denuncias_consultas.cfm

²⁹ <http://www.african-court.org/en/court/mandate/general-information/>

3.5 Universal jurisdiction

According to IHL, states parties to the Geneva Conventions are required to find and prosecute violators of international criminal law found within their territory and as such their courts should be enabled to exercise universal jurisdiction.³⁰ Essentially, universal jurisdiction is based upon the universal acceptance that there are crimes so horrific, such as genocide and ethnic cleansing amongst others, that they constitute a crime to all of mankind and therefore states have a moral obligation to prosecute criminals, regardless of their nationality and despite the fact that the crime was committed outside their borders. Despite the creation of the International Criminal Court (ICC) in 2002, universal jurisdiction is still very relevant given that the ICC can only investigate crimes committed after 2002.

3.6 The international criminal court

With the ratification of the Rome Statute by 60 states in 2002, the International Criminal Court came into being. The ICC became the first permanent international criminal court with jurisdiction to investigate and prosecute crimes committed after July 2002 and in relation to states³¹ that have accepted its jurisdiction. It was established to deal with the 'intellectual authors', i.e. highly-ranked individuals, such as heads of state and government or military officials, alleged to have ordered, planned and/or committed the most heinous forms of human rights violations. The Prosecutors Office of the ICC usually commences investigations following a complaint by a state party or by the UN Security Council, however, the Chief Prosecutor can also pursue investigations of his/her own accord. Civil society organisations, therefore, can bring a case to the attention of the ICC by presenting evidence before the Prosecutors Office, and request an investigation. The ICC's jurisdiction is based upon the principle of 'complementarity', which stipulates that the ICC can only exercise jurisdiction in cases where a national court is unable or unwilling to do so.³² Although the ICC continues to be hampered by lack of collaboration of state parties in handing over those responsible for human rights atrocities, its creation has increased the onus on governments to deliver justice.

²⁹ Please see Resource Sheet 4 for more information on the African and Inter-American regional systems and developments underway towards such systems in ASEAN

³⁰ ACCORD Issue 22, Ramsbotham A, & Zartman, W, 2011, Building Peace Across Borders, Conciliation Resources

³¹ As at the 22 June 2011, 116 countries had become State Parties to the Rome Statute. Resource Sheet 7 provides information on the categories of crimes which fall under the jurisdiction of the ICC. For more information on the ICC please see <http://www.icc-cpi.int/Menu/ASP/states+parties/>

³² Smith, R. K. M. & Van den Anker, C.

3.7 Access to justice from a gender perspective

A gender-responsive justice and legal system is necessary in order to challenge the arbitrary exercise of power and discrimination against women and to reinforce the idea that crimes against women, even in the private sphere, will not be tolerated. Unfortunately, there is a long way to go before international standards that recognise the rights of women are enforced in formal and informal justice processes. For justice to become more accessible to women, domestic legal frameworks need to be reformed to ensure that existing laws do not reinforce discrimination and gender inequality and new legislation needs to be developed to overcome the ongoing deficit in the promotion and protection of women's rights. Furthermore, the multiple obstacles which continue to impede women's access must be understood and addressed.³³

3.7.1 Women, Conflict and Justice

Armed conflict and violence exacerbates underlying gender inequalities and as conflict escalates, discrimination, embedded in unequal power structures, intensifies. In the arena of war, women are subjected to gross acts of sexual violence such as rape, torture and mutilation, sexual slavery, forced prostitution and forced pregnancy. Sexual violence is often used as a weapon of war in order to secure military, economic and political objectives and under UN Security Council Resolution 1820 it is recognised that sexual violence can constitute a war crime, a crime against humanity and an act of genocide.³⁴

Women's contribution to peace, during and after armed conflict, is rarely recognised and they are rarely well represented in formal peace negotiations. According to UNWOMEN, where information is available, women have represented less than 8 percent of participants in recent peace negotiations, thereby reducing the likelihood that the rights of women will be adequately reflected in the outcomes.³⁵ Transitional justice processes have been very weak in addressing the specific violations that women have suffered during armed conflict, as well as the corresponding high levels of impunity³⁶. In post-conflict contexts, where gender-blind peace and demobilisation processes have occurred, gender based violence tends to continue or even increase.

The international human rights system has been slow to deal with the issue of women and conflict, and it was not until 2000 that this situation began to be explicitly and more comprehensively reflected in international standards. Today, states are bound by the UN Security Council Resolution 1325 and its supporting resolutions 1820, 1888, 1889 and 1960, which deal specifically with women, conflict, peace and security.³⁷

³³ UNIFEM, Progress of the World's Women 2008 – 2009, Chapter 5 Justice, available at <http://www.unifem.org/progress/2008/>

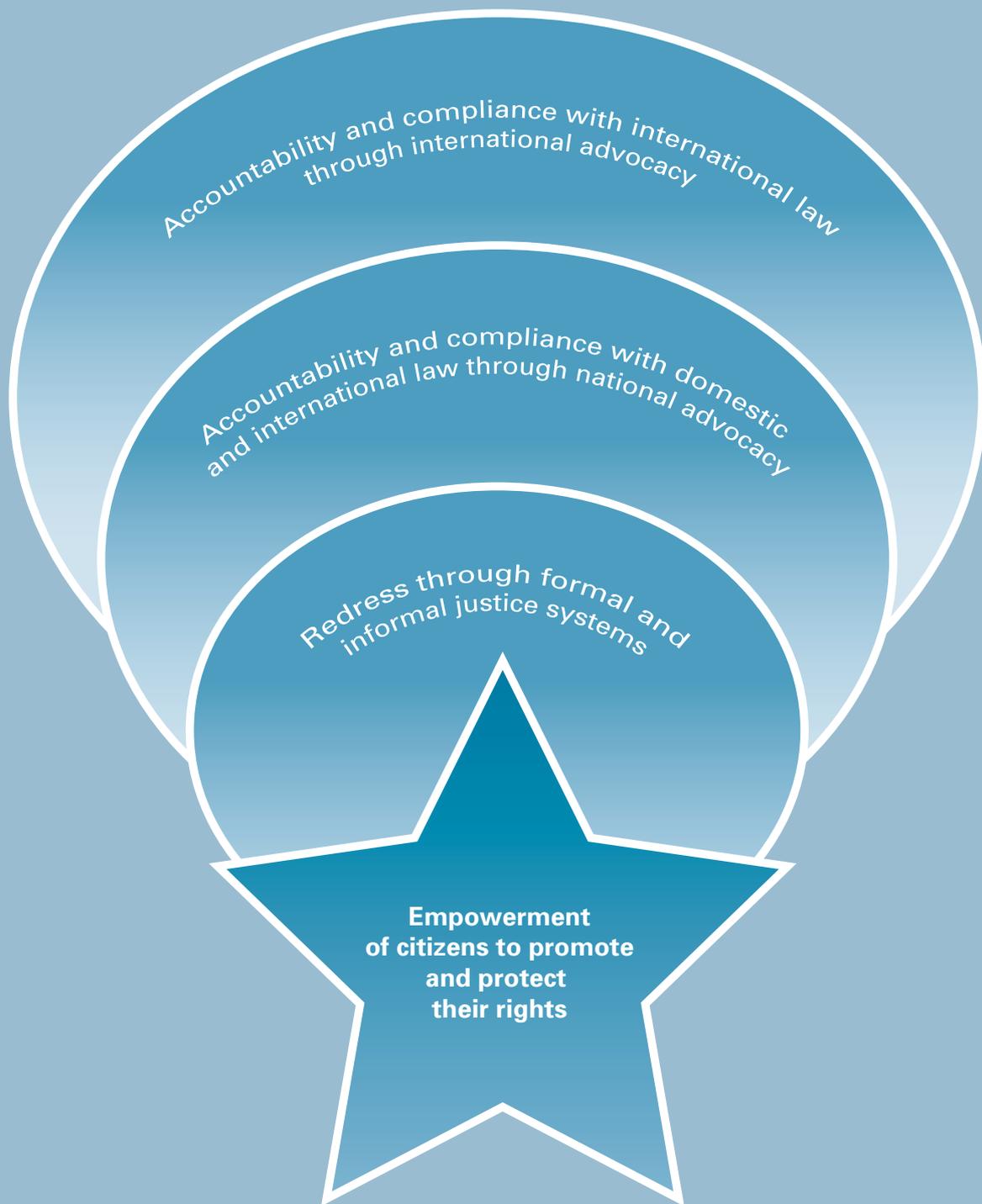
³⁴ See Trócaire's Gender Policy for more analysis on GBV and conflict.

³⁵ UNWOMEN Peace Building at http://www.unifem.org/gender_issues/women_war_peace/peace_negotiations.php

³⁶ Despite the limitations of transitional justice processes in relation to women's rights and gender, the International Criminal Tribunal for Rwanda and International Criminal Tribunal for Yugoslavia did prosecute leaders for mass rape and both tribunals developed case law on sexual violence in conflict, contributing the recognition of sexual violence as a crime by the Rome Statute. (Ibid).

³⁷ Please see Resource Sheet 6 for more information on these UN Security Council Resolutions (UN SCR)

4. TRÓCAIRE'S ACCESS TO JUSTICE WORK





‘These duties are no longer a matter of Charity but of Simple Justice.’

Bishop’s Pastoral on the establishment of Trócaire, 1973.

4.1 Outcome 2: access to justice – a framework

This section of the manual outlines the core strategies used in Trócaire’s Access to Justice work, under Outcome 2 of the Governance and Human Rights Policy & Strategy (GHR P&S). For the purpose of this manual, four core strategies have been identified across Trócaire programmes. The following core strategies are complementary to and combine those outlined in the GHR P&S:

- 1) Empowerment of poor and vulnerable groups to promote and protect their rights
- 2) Redress through access to formal and informal justice systems
- 3) National level³⁸ advocacy to demand accountability and compliance of states with domestic legislation and international law³⁹
- 4) International level advocacy to demand accountability and compliance of states with international law

These four core components correspond to the priorities identified in the GHR P&S ‘*of preventing gross human rights abuses, securing justice for those whose rights have been violated and achieving long-term change through reform of laws and state institutions*’. The framework corresponds to Trócaire’s prioritisation of working on both aspects of prevention of and justice for violations of human rights, while simultaneously demanding accountability of states through compliance with international standards. Programme work that falls under Outcome 2 is underpinned by Trócaire’s rights-based approach, with the empowerment of poor and vulnerable groups being central to the achievement of each of the four strategies within the Access to Justice framework.

In line with Trócaire’s commitment to gender equality, protection of partners at risk and conflict sensitivity, these issues are integrated, according to the logic of each programme, across Trócaire’s Access to Justice work.⁴⁰

Although in some contexts it may not be possible or appropriate to work on each of the four strategies, the framework underlines the importance of complementing local level access to justice work, as outlined in strategies 1 and 2, with parallel strategies to challenge the structural issues of weak rule of law and lack of accountability, as outlined in strategies 3 and 4.

³⁸ National level advocacy includes local, regional and national advocacy in-country.

³⁹ International Law is used to denote International Human Rights and Humanitarian Law

⁴⁰ Please consult Trócaire’s policies and guidelines on: ‘Gender’, ‘Partners’ At Risk’ and ‘Conflict Sensitivity’.

5. STRATEGY 1: Empowerment of poor and vulnerable groups to promote and protect human rights



Empowering youth and challenging human rights violations: B'Tselem use new and innovative technologies to monitor and document abuses in Occupied Palestinian Territory.

Photo: B'Tselem

“ Human rights are to be defended not only individually but also as a whole; protecting them only partially would imply a kind of failure to recognize them. These rights apply to every stage of life and to every political, social, economic and cultural situation. Together they form a single whole, directed unambiguously towards the promotion of every aspect of the good of both the human person and society.’

Compendium of the Social Doctrine of the Church, no. 154

A core strategy in Trócaire’s Access to Justice work, which is informed by Trócaire’s mission and rights-based approach to development, is that poor and vulnerable people are empowered to become protagonists in claiming and defending their human rights.

As part of this strategy, Trócaire supports partners who work with communities and groups that are vulnerable to human rights violations, through implementing capacity building strategies⁴¹ that provide the target population with the **knowledge, skills and support networks** necessary to promote and protect their human rights.

5.1 Knowledge

Human rights education must be informed by international law, as well as by the domestic legal framework in a country. Partners design appropriate curriculums and educational materials according to the local context and to the specific human rights issues that need to be addressed. A capacity building process must take into account local cultural beliefs and practices in order for it to be responsible, effective and sustainable. Therefore, partners employ culturally sensitive strategies, which are respectful to the local culture, while at the same time are able challenge discriminatory and oppressive cultural practices. Many partners develop material and methodologies that are suitable for different groups, for example, materials and methodologies that can be used with children, with groups with low literacy levels, or groups who do not speak the official language. Educational processes should be part of broader efforts of promoting a culture of human rights wherein people understand their duty to respect the rights of others.

⁴¹ Education and capacity building is not seen as an end in itself but rather as a means to promote active citizenship and capacity to claim and defend human rights.

Community ownership is also crucial in order to guarantee an effective process and successful outcomes. Ownership can be built through participatory approaches that guarantee the inclusion of all stakeholders, but in particular the participation of traditionally excluded groups; be they women, elderly, children, people with disabilities, indigenous, ethnic minorities, people living with HIV (PLHIV), or any other group.

In order to guarantee that educational processes are sustainable in the long-term and reach as many people as possible, partners disseminate information through the use of diverse strategies. Partners train key individuals as human rights promoters so that they have the capacity to replicate human rights training in their community or organisation, as well as to advise on human rights issues, thus guaranteeing broader diffusion of knowledge. Similarly, partners use broad-based awareness-raising strategies and incorporate media, art, theatre, music and large-scale public events into their work, in order to target the broader community or population and in particular excluded groups.

Many partners use access to information and communication strategies as part of their access to justice work. Access to reliable and correct information is essential in any empowerment strategy. In countries where the means of communication are monopolised by elite interests and provide partial information, it is important that communities have access to alternative sources of information. Furthermore, partners build the capacity of vulnerable groups to become sources of alternative information and to influence public opinion, through the use of popular communication strategies and access to information technology.

Where possible, capacity building on human rights should not only target rights-holders but also duty-bearers who have the obligation to uphold human rights; for example, partners often provide capacity building on human rights to the police force, local authorities or justice officials. Providing training to both rights-holders and duty-bearers is vital so that when an individual attempts to claim a right or seek redress, the corresponding local authority has at least the basic knowledge on human rights to enable him/her to respond.

Case-Study 1: Occupied Palestinian Territory (OPT) - use of media as a human rights monitoring and access to justice tool

In the OPT, partners have used media in diverse ways to empower citizens to take action and to influence public opinion around the human rights situation. In 2007, B'Tselem launched its camera project, in which the organization distributes video cameras to ordinary Palestinians living in areas in the West Bank, East Jerusalem, and the Gaza Strip where attacks on the Palestinian civilian population are commonplace. The hundreds of volunteers involved film a reality that the Israeli public is usually unaware of. The cameras enable Palestinians to present the reality of their lives to the Israeli and international public. The project is unique in that it enables Palestinians themselves to document the infringement of their rights and to present their daily lives, their anger, pain, joy, and hope to Israelis who live so close by and yet so far away from them. Footage taken by the volunteers is frequently broadcast by Israeli and international media, exposing, to a large audience, incidents that previously remained concealed.

B'Tselem uses the footage as a basis for its complaints to the army and the police following suspected breaches of the law by security forces. In some cases, the footage provides vital evidence in legal proceedings. In a few cases, broadcast of the footage has contributed to prosecutions of military officers and settlers for violations of rights against Palestinians. In this regard, the initiative is ground-breaking. With Trócaire's support, B'Tselem is sharing this methodology with selected partners in Zimbabwe, who hope to be able to replicate this citizen engagement in human rights monitoring and access to justice.

5.2 Skills

Human rights capacity building should also include training on skills with and mechanisms through which a person can exercise their rights. Many countries have complicated, bureaucratic and inefficient procedures and mechanisms, which people need to understand if they are to be able to claim a right or denounce a violation. This involves training around the relevant judicial framework; how policies and laws are enforced; entitlements under specific laws; and entities before which human rights claims can be made and violations lodged. In contexts of widespread and systematic violations of human rights, civil society organisations, both local and national, must have the capacity to research, monitor and document human rights violations. Local organisations can use research, monitoring and documenting skills to feed into their capacity building processes; to contribute to evidenced based-advocacy at local level; to inform communication and awareness-raising work; and to feed into regional and national civil society human rights monitoring initiatives.

In some situations, depending on the nature and extent of human rights violations, partners will include confidence-building strategies and counselling support as an integral component of their capacity building process, to better enable people to promote and protect their rights. Psycho-social support is an essential component in empowerment work with victims of serious human rights violations. Counselling and trauma-healing enables people to deal with their trauma and

to have the confidence to participate and exercise their rights and it is an integral part of many partners' work.

Case-Study 2: Timor Leste – trauma healing

In Timor Leste, Trócaire's partner PRADET provides services for people who have experienced trauma arising from decades of conflict. Trócaire supported the integration of Capacitar⁴² approaches into the work of PRADET, which continues to use these techniques with those who have experienced trauma, thus helping them to re-integrate themselves into their communities and to have the courage to provide testimony regarding abuses and crimes committed.

'Capacitar' (Spanish for 'empower') is an international network assisting victims of trauma caused by violent conflict / post-conflict or natural disasters. Capacitar uses a variety of alternative methods to address the symptoms of post-traumatic stress disorder (PTSD). These methods include gentle body movement, tapping techniques, deep breathing, visualisation and relaxation, Tai Chi, acupuncture, massage, dance and music. These methods have proven to be effective in dealing with individual symptoms but also in helping to rebuild the social fabric of a community using a grassroots approach, with culturally grounded and affordable practices which are complementary or alternative to psychological approaches. Capacitar practices are inspired by Freirean methodologies, making them easily transferable and accessible to people.

5.3 Support networks

The transfer of knowledge about human rights promotion and protection must be part of a broader capacity building process orientated towards active citizenship. As part of this process, individuals and groups learn about structures and mechanisms of governance, through which human rights can be promoted and protected. Partners build active citizen groups by using strategies of organisational strengthening based on democratic values and leadership, alliance-building, and participation. This component is indispensable to a human rights empowerment process, as it consolidates community networks and social cohesion, thus creating a solid platform from which groups can engage more broadly and effectively with the state. In many Trócaire programme countries, partners use Training for Transformation⁴³ that focuses on education and leadership training, rooted in critical analysis and reflection, in order to bring about social transformation.

Conflict resolution can be an integral component of building social cohesion and organisational capacity. The application of conflict resolution skills within or between organisations and communities (and / or authorities) empowers members to deal peacefully with internal and external conflicts, therefore strengthening their internal cohesion and capacity to promote and protect their human rights. Conflict resolution skills can also enhance negotiation and advocacy skills.

⁴³ <http://www.grailprogrammes.org.za/>

Case-Study 3: Conflict resolution in Trócaire's access to justice work

In Myanmar, partners' work on building the capacity of a nascent civil society has included the creation of safe spaces for inter-ethnic dialogue and mediation training, which has brought leaders together from ceasefire and non-ceasefire groups.

In Zimbabwe, partners have created and are providing on-going support to Peace Committees in each District of the country. These are inclusive spaces that include local level political leadership from the main political parties. These structures support dialogue and actions for peace.

In Kenya, the mobilising of 50,000 women by the Women for Peace movement on International Women's Day, which was supported by two Catholic Bishops, sent out a strong message on issues of domestic violence.

In Sudan, the relatively peaceful referendum was supported by the actions of partners in educating people on the workings of the referendum and in promoting messages of peace.

In Rwanda, over a 3 year period, 13,508 cases of community conflict were resolved through partners' community level outreach facilitation.

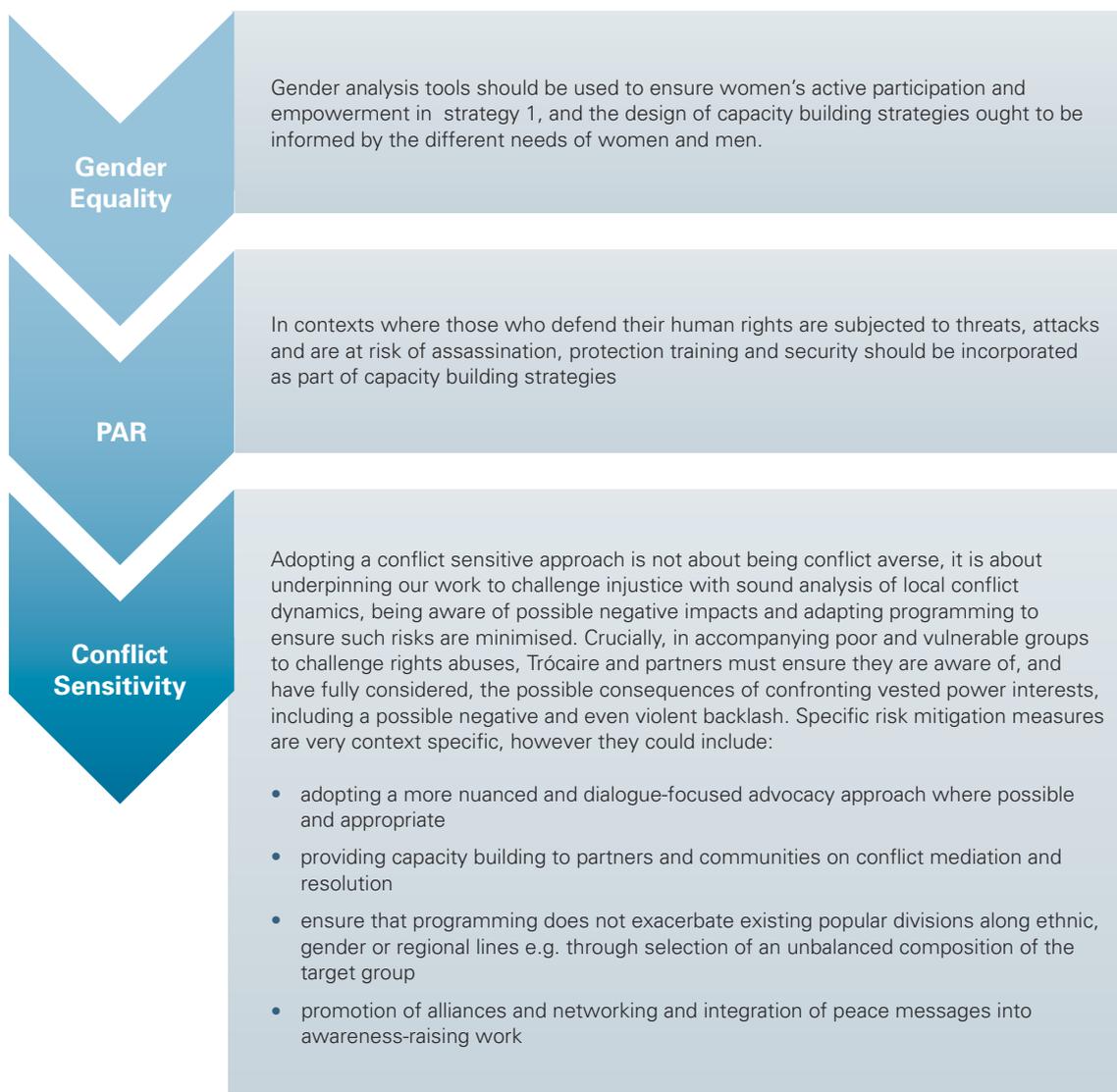
Collective advocacy and lobbying capacity is an important skill for communities and organisations that are vulnerable to human rights violations. Representative and participatory networks increase legitimacy and effectiveness of those seeking to defend their rights, thereby strengthening their recognition, voice and leverage. In contexts of insecurity, repression and or armed conflict, strong and democratic organisations and civil society cohesion are vital in order to protect and sustain civil society processes.

Case-Study 4: Pakistan - empowering bonded labourers to exercise their rights

Bonded labourers represent one of the most marginalised and discriminated groups in any society. In Pakistan, partners have carried out education and capacity building processes with these groups, focusing on their rights and mechanisms to exercise these. Given that this population has high levels of illiteracy, partners have made education and literacy training central to their empowerment work. Furthermore, they have used theatre and radio to access the broader population and they have taken specific measures to ensure the participation of women. As a result of these efforts, 10,000 people, including 3,000 women, now have national identity cards (as opposed to zero in 2007), with which they are recognised as citizens and can demand dignified working conditions.

The programme has also contributed to the organisation of bonded labourers and this has led to establishment of 15 unions, some of which still have to be recognised, and 100 workers groups. Approximately 9,000 Hari workers (landless agricultural workers) have also been organised. Although some of these unions and groups are still weak, partners will continue to build their organisational capacity so that in the future they will have a stronger platform from which to defend their rights.

5.4 Entry points for gender mainstreaming, support to partners at risk and conflict sensitivity⁴⁴



⁴⁴ Please consult Trócaire’s policies and guidelines on: ‘Gender’, ‘Partners’ At Risk’ and ‘Conflict Sensitivity’.

6. STRATEGY 2: Redress for human rights violations through access to informal and formal justice



Q+A session with prisoners - Legal Resources Foundation trains inmates as bare foot paralegals who educate prisoners on their rights and helps in the processing of the huge backlog of remand cases in the prison population.

Photo: Trócaire

“ ‘Four billion people are excluded from the rule of law...(and therefore) unable to count on the law’s protection’.

UNDP, 2008, Report of the Commission of Legal Empowerment of the Poor - *Making the Law Work for Everyone*.

The majority of Trócaire’s GHR programmes have a component on access to legal aid and other forms of remedy. In strategy 2, partners use a diversity of strategies and justice mechanisms, such as empowerment of vulnerable groups to seek legal aid, provision of legal aid and services, support to traditional justice systems, use of regional human rights courts and litigation as part of transitional justice.

6.1 Empowerment to access legal aid

The first step in legal empowerment of poor and vulnerable populations is awareness-raising around legal issues and legal advice, so that individuals understand the legal options available to them and the channels through which they must process their complaints and denounce violations. Educational training, more often than not, takes place as part of a broader human rights capacity building process, as outlined in strategy 1. This is an essential first step, in order to provide people with the knowledge, tools and confidence that they need to seek legal redress.

6.2 Traditional and alternative justice mechanisms

In some countries, particularly where the formal justice system lacks capacity to deal with cases of human rights violations, partners support traditional or alternative justice systems. The role of traditional justice systems is usually limited to minor crimes and they can be very effective in administering justice at community level. Nevertheless, in some contexts they can perpetuate discriminatory and abusive practices. Partners can build the capacity of these traditional or alternative justice enforcers so that they have a stronger understanding of human rights issues and formal law, thus increasing their effectiveness and reducing the risk of discriminatory practices. Traditional and alternative mechanisms also tend to contribute to dialogue at community level through the use of mediation and conciliation skills: these skills can be enhanced by partner support.

Case-Study 5: Kenya – small claims courts

Traditional practices hold sway amongst the Turkana nomads in the northern deserts of Kenya. Access to justice is near impossible with only one formal court and 4 mobile courts in an area the size of Ireland. Incidents of assault, theft, domestic violence often go unaddressed with women and children suffering greatly as a result. Within this context the Justice and Peace Commission has created a small claims court system that blends traditional Turkana law and the laws of the land. No fee is charged to attend the court which is presided over by a local government official in collaboration with traditional elders, both men and women. The impacts from the pilot phases have shown strong community buy-in to the utilisation of these courts and particular success in vindicating the rights of women.⁴⁵

6.3 Access to legal aid

Across the globe, Trócaire supports partners to provide legal aid and represent victims of human rights violations. Partners offer their services free of charge, or at a minimum symbolic cost, to those who are most vulnerable to human rights violations, but who have least access to legal remedy. Forms of legal aid may differ across countries according to the local context and legal framework. In some countries, partners seek to broaden access through the establishment of permanent legal clinics or mobile legal teams. Central to partners' work is understanding the obstacles that poor and vulnerable people face in accessing justice and seeking ways to overcome them.

Partners employ different legal actions depending on the nature of the case, some of the most common strategies being: strategic litigation or public interest litigation, legal petitions, grievance complaints, collective or class actions and alternative dispute resolution.

Paralegals provide additional support in many countries where access to legal advice and support is limited. They play an important role at community and local level, ensuring that information on human rights and legal issues, as well as mechanisms for redress are transferred to the community. Paralegal work can also be very effective in settings where there are widespread human right violations, such as in the prison systems. In some countries, paralegals maintain a presence in various prisons or detention centres where they can impart advice to inmates on their rights, on the progress of their cases before the legal system and, at the same time, they can play a watchdog role, monitoring and documenting the conditions and treatment of the inmates inside the prison facilities.

⁴⁵ See 'Accelerating the wheels of justice - narratives of change from the Kenya Governance and Human Rights Programme'. (in booklet and DVD from the GHR Unit).

Case-Study 6: Democratic Republic of Congo (DRC) - empowerment, legal aid and advocacy to secure justice for sexual violence

In the DRC, five partners implemented a capacity building and empowerment process around human rights and the Sexual Violence Law with over 51,546 people, of whom 26,017 were women. As a result of this process, communities set up advocacy committees in two areas - Ituri and Djugu. Due to the lobbying work of the advocacy committees, the most senior official in the region visited the local law enforcers – the police, traditional leaders and military units and informed them about the law and the importance of applying it. In the aftermath of the capacity building process, partners have noticed changes in attitudes and behaviour of some of the participants: women have become more outspoken in denouncing impunity in cases of sexual violence; and traditional leaders, in three partner areas, are taking a tougher stance against sexual violence and demanding legal processes for the accused, whereas in the past they would have encouraged an amicable settlement between both parties. In parallel to this, partners have established legal clinics and have trained paralegals to provide legal and counselling support to victims of sexual violence. Simultaneously, partners have trained local police and judicial officials on the Sexual Violence Law so that they understand their duties and have greater capacity to deal with the cases. More women are denouncing cases of sexual violence and this has led to 324 cases being denounced to partners. Of these complaints, 207 are being processed, which has led to 58 convictions securing sentences of between 5 and 20 years.

6.4 Strategic litigation or public interest litigation

Given the magnitude of violations in many countries, partners cannot respond to all the requests for legal aid and must be strategic in their selection of cases that they will represent. Partners may select cases due to their emblematic nature, i.e. cases that represent a pattern of widespread and systematic violations, affecting a broad sector of the population, and whereby a ruling in favour of the victims will benefit society at large. By selecting such a case, they seek to challenge the status quo within the legal system and amend laws or policies that are facilitating violations of international law. Partners not only use strategic interest cases to establish precedents for jurisprudence, but also to generate debate in public opinion on this issue, to educate the court, to empower those most affected and to advocate for strengthening of the rule of law. Although a strategic litigation case may achieve a favourable result in court, partners often face difficulties in demanding that the government implement the court's decision. Therefore, partners need to consider having in place a parallel advocacy and awareness-raising strategy to reinforce their strategic litigation work.

Case-Study 7: Strategic litigation / public interest cases undertaken by Trócaire partners

Kenya: In 2010, twenty-one survivors of torture under President Moi's regime in the 1980s were awarded US\$500,000 in compensation in relation to a landmark decision by the courts - this was the result of many years work by Trócaire's partner, the Kenya Human Rights Commission. The ruling has proved a milestone in marking out greater independence of the judiciary and a willingness to tackle the culture of impunity that has prevailed for many years.

Zimbabwe: Women activists who were arrested and ordered to take off their footwear and wade through their urine barefoot have issued a notice of intention to sue the State. This case is being turned into a constitutional application by Trócaire's partner, Zimbabwean Lawyers for Human Rights (ZLHR), challenging the condition of police cells across the countries which are inhuman and degrading.

6.5 Use of regional human rights courts and the international criminal justice system

In many countries and regions, states are simply unwilling or unable to bring certain cases to justice. Often the state itself is the principal perpetrator of human rights violations. In such a scenario, access to justice can be next to impossible. In regions where functioning regional human rights systems exist, partners, having exhausted all possibilities at national level, can bring a strategic interest case before a regional human rights body. The use of regional human rights bodies can assist partners in advancing cases and securing a certain degree of truth, justice and reparation in their countries. In cases where the regional court rules against the relevant government, this puts pressure on the government to accelerate the investigation at domestic level and can ultimately lead to a reduction in impunity and access to truth, justice and integral reparations for the victims. Partners also use these mechanisms to raise awareness at regional level on the human rights situation in their country.

Case-Study 8: Access to justice through regional human rights systems in Latin America and Africa

Colombia: In 1987, 19 traders were disappeared by the Colombian military and right-wing paramilitaries and the location of their remains was never disclosed. The military officers involved were tried in the Military Justice System where they were absolved. A Trócaire partner, the Colombian Commission of Jurists (CCJ), brought the case before the Inter-American Human Rights System,⁴⁶ where it was accepted by the Court. Finally, in 2004, the Court ruled against the Colombian state on multiple violations of human rights and made the following recommendations: transfer the case from the military to the ordinary justice system; investigate and sanction those responsible; and provide forms of symbolic and monetary reparation to the victims. The ruling led to the strengthening of Colombian jurisprudence and policy in the following ways: 1) increased pressure on the state to comply with international standards around enforced disappearances; 2) the implementation of a National Search Plan for Disappeared Persons; 3) establishment of 'specialised psychological support' appropriate for victims of gross violations of human rights. Although justice and truth have yet to be achieved, the Court's ruling has strengthened national policy around enforced disappearance and increased the possibilities of holding the perpetrators to account and of reducing impunity in Colombia.

Zimbabwe: Zimbabwe Lawyers for Human Rights (ZLHR) along with the Associated Newspapers of Zimbabwe submitted a case before the African Commission in 2003 in relation to an unconstitutional media law which led to the closure of one of the largest-selling independent newspapers, the Daily News. In 2009, the African Commission ruled against Zimbabwe for violating several provisions of the African Charter of Human Rights and recommended that it provide compensation to the complainants. The Zimbabwean government has not complied with any of the recommendations to date.

In a few cases, such as Guatemala, Colombia, and the OPT, partners have explored and / or are actively using the mechanism of universal jurisdiction. Partners need considerable capacity, expertise, and international support and contacts to be in a position to pursue justice using this mechanism.

⁴⁶ See Resource Sheet 4 for more information on the Inter-American Human Rights System

Case-Study 9: Occupied Palestinian Territory (OPT) - universal jurisdiction

The Palestinian National Authority does not have jurisdiction over Israeli citizens and therefore the OPT is unable to bring violators of IHL and IHRL to justice. On the other hand, the Israeli judicial system does not function in an impartial and independent manner in relation to cases where the victims are Palestinians. Therefore, given the impossibilities of judicial remedies in either the OPT or Israel, Trócaire's partner PCHR use universal jurisdiction as a last resort for several cases that they represent. In September 2005, an arrest warrant was issued in the UK against General Doron Almog for suspicion of committing 'grave breaches' of the Fourth Geneva Convention whilst he was in charge of the Rafah refugee camp between 2000 and 2003. Despite the warrant he managed to evade arrest when his plane landed in the UK and he returned to Israel. Unfortunately, to date, none of PCHR's cases abroad have led to a prosecution and this is often due to diplomatic interference in international courts. Nevertheless, these cases have received significant media attention and have limited the freedom of movement of some of the defendants.

6.6 Transitional justice

In Colombia, Guatemala, Timor Leste and Rwanda, partners have developed expertise in representing cases as part of transitional justice processes. Partners support victims to ensure that they are guaranteed all of their rights: truth, justice and integral reparation. As part of this work, partners work with victims to increase their knowledge and understanding of the transitional justice process, to document and prepare the cases to reduce obstacles to their participation and to empower them to be central actors in the process.

Transitional justice processes are confronted with many challenges around administering justice in accordance with international standards. Therefore, partners and victims play an important watchdog role, monitoring the adherence of the process to international standards, demanding respect for the rights of the victims and sharing information with the international community around levels of compliance. The documentation of truth is not only for the benefit of victims; it is important that society at large knows and acknowledges the truth about what happened. This contributes to dignifying the memory of those who died and goes some way towards guaranteeing that such atrocities will not be repeated. Partners work to ensure that their work contributes to strengthening the victims' movement and that victims are the principal protagonists during all stages of the process. Partners are also playing a leading role in contributing to the technical expertise of the authorities involved in the transitional justice process.

Case-Study 10: Guatemala - the role of civil society in transitional justice processes

CAFCA has carried out an extensive process of exhumations, identifying the locations of mass graves, disinterring the remains, identifying the causes of death, and registering evidence with the Guatemalan Attorney General's Office. They have also monitored the forensic services of the Guatemalan police and judiciary, ensuring that when these services carry out similar work of exhumation, it is to the requisite standard for formal scrutiny in court. In doing this work, they restore the identities of those exhumed, allowing their families to complete the grieving process through the dignified reburial of the dead. Vitally, they also enable forensic documentation of events, supplying critical evidence for court cases. As part of the exhumation processes, CAFCA have collected individual and community witness statements. This documentation has facilitated the preparation of legal files, which are now being used to seek compensation for victims from the Guatemalan state. CAFCA have trained judges on issues such as the exhumation process and its effect on survivors. They have also taken part in the Commission to Strengthen the Judiciary, which is working on a series of reforms that seek to make the system fairer, more effective, and accessible to all sectors of the population.

6.7 Entry points for gender mainstreaming, support to partners at risk and conflict sensitivity⁴⁷



⁴⁷ Please consult Trócaire's policies and guidelines on; 'Gender', 'Partners' At Risk' and 'Conflict Sensitivity'.

7. STRATEGY 3:

National advocacy to demand accountability and compliance with domestic and international law



Collecting evidence to ensure justice is done: CALDH in Guatemala carry out exhumations of mass graves to provide evidence for use in prosecution of military officials.

Photo: CALDH

“ ‘It is clearly laid down that the paramount task assigned to government officials is that of recognizing, respecting, reconciling, protecting and promoting the rights and duties of citizens.’

Pacem in Terris, no. 77

Human rights promotion and protection is extremely difficult at local level if adequate legal frameworks and independent justice systems do not exist. Under strategy 3, partners' advocacy work around the respect, protection and fulfilment of human rights focuses primarily on strengthening justice systems and their administration, as well as demanding judicial, legislative and constitutional reform that complies with international standards.

7.1 Advocacy for improved justice systems

A strong and independent judiciary is a prerequisite for justice and accountability. Partners may seek to engage with the courts and judicial authorities around issues such as accelerating the processing of cases and reducing case backlog; the role of the courts as watchdogs; ensuring that legislation is formulated and enforced according to constitutional and international standards; and above all on the issue of impunity and the urgency to hold perpetrators to account for violations of human rights.

Where the channel of communication between civil society and the courts is not completely restricted by the government, partners can engage with judicial authorities on these issues. In some countries partners collaborate with the courts as part of consultation processes and or through the provision of technical support and expertise.

Case-Study 11: Kenya - advocacy and technical support to strengthen the administration of justice

In Kenya, a Trócaire partner, Legal Resources Foundation (LRF), successfully lobbied the High-Court, which contributed to the passing of legislation requiring the establishment of a National Council on the Administration of Justice (NCAJ) and at county level, Court User Committees (CUCs). The objective of the CUCs is to improve the administration of justice, clear the backlog of cases and ensure that the rights of prison inmates are respected. This process has led to the creation of at least one CUC in every court in 46 districts of Kenya. Both the national body and the CUCs include participation of civil society and judicial authorities. The CUCs face many challenges, including lack of resources, resistance on the part of judicial officials and lack of proper training of judges and officers. However, active CUCs have increased the capacity, efficiency, responsiveness and transparency of the judicial authorities and, ultimately, the protection of the human rights of poor and vulnerable groups. Guidelines for the functioning of CUCs have been drawn up and training has been provided to their members. The LRF's work has led to increased openness and commitment to addressing difficulties in administering justice on the part of the authorities, has improved practices around treatment of children in police units and detention centres; and has improved access to treatment for PLHIV in certain prisons.

This integrated approach to training, provision of technical expertise and collaboration with judicial authorities, at local level, has been complemented by advocacy work to influence reforms of the justice system at national level. In March 2010, the LRF presented recommendations to the national Task Force on Judicial Reforms, 46% of which were subsequently adopted.

An overriding priority for partners' advocacy work is challenging impunity. Many of Trócaire's programme countries have appalling levels of impunity and the ability or willingness of the state to uphold the rights of its citizens and implement the rule of law is very weak. To counteract the resistance that they often face, partners support their advocacy demands with high-quality and verifiable data and define them according to international standards. Partners can use their participation in justice processes to monitor and document patterns of impunity, in order to further strengthen their advocacy work that targets the government and the justice system.

7.2 Advocacy for recognition of the human rights of poor and vulnerable groups in legal and policy frameworks

At national level, partners tend to carry out advocacy work as part of a network, thereby strengthening their voice, legitimacy and protection, towards the ultimate goal of increasing their effectiveness. Partners' advocacy goal is that international standards are translated into domestic legislation and that they are enforceable, accessible and measurable at country level.

In some contexts, partners may first be forced to advocate that a state signs and or ratifies a relevant international treaty.

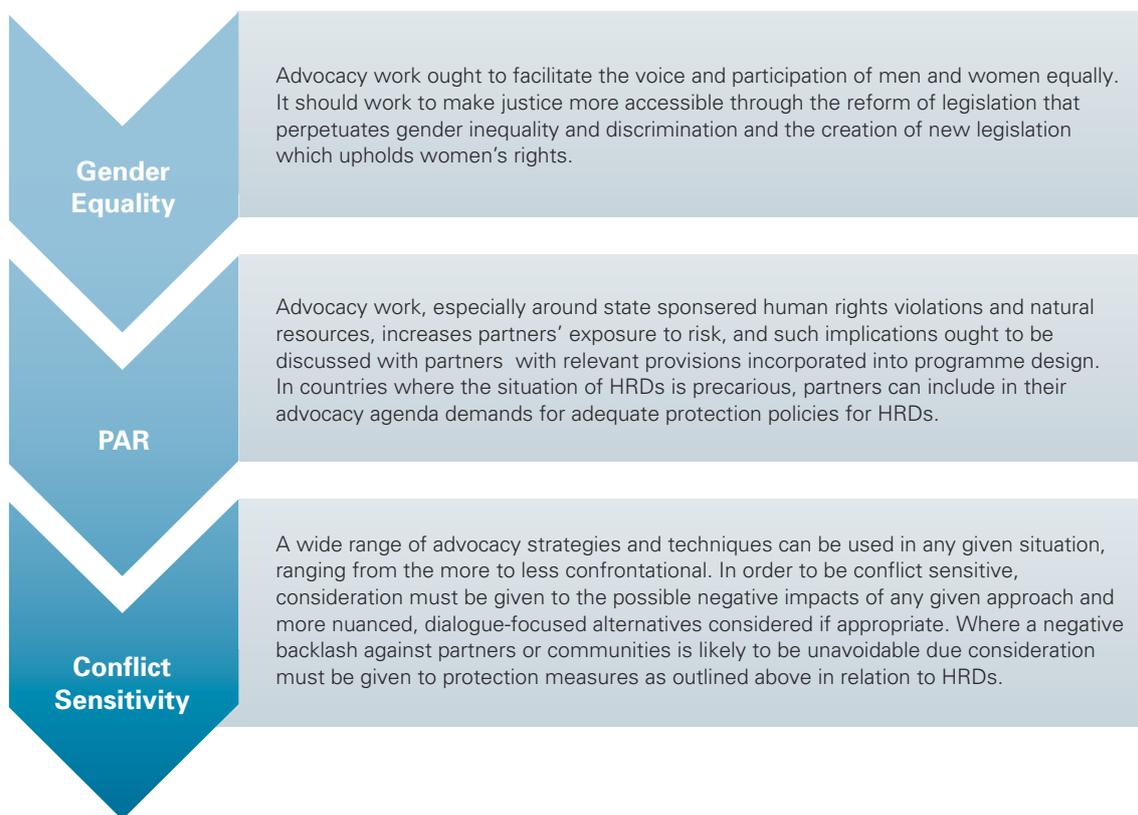
Legislation and policy formulation is often a slow and arduous process, which requires a lot of expertise, resources and time from civil society actors. In many cases, participation may not be welcome and civil society has to fight for the right to participate. According to each context, partners work at different stages of the legislative and policy agenda; from formulation, reformulation and monitoring. Effective national advocacy strategies usually complement and facilitate local level advocacy initiatives. It is of vital importance that partners guarantee that those most affected by the law or policy in question, have an informed voice and meaningful participation.

Although it may be a challenge to get a law or policy approved in the first place, it is often even more complicated to ensure the law is enforced or implemented. Partners, therefore, need to have the capacity to follow-up and to carry out advocacy strategies around the implementation of laws and policies. In addition, it is beneficial for partners' access to justice work to be accompanied by initiatives aimed at strengthening accountable, responsive and transparent governance, thereby creating an enabling environment for the delivery of human rights.

Case-Study 12: Colombia - capacity building and advocacy to implement the law on forced displacement from a gender perspective

In 2008, after receiving petitions from displaced women, the Constitutional Court in Colombia issued Ruling 092. This Ruling ordered the government to incorporate a gender approach into its response to the displaced population, by creating 13 programmes to increase protection and reduce the impacts of forced displacement on women. In 2009 and 2010, a Trócaire partner, SISMA MUJER, carried out a capacity building process with networks of displaced women in 6 regions. Women learnt about their rights as IDPs, in accordance with national legislation on displacement, as well as about monitoring and advocacy strategies. 600 displaced women, at local level, monitored the design and implementation of the 13 programmes that had been ordered by the Court and carried out advocacy and awareness-raising activities with local authorities. Based on the monitoring work done at local level, the network of displaced women and SISMA MUJER prepared a shadow report for the Court, which was submitted alongside the official government report, documenting progress, or lack of, towards the implementation of the 13 programmes. Although the government has been slow to respond in terms of implementing these specific programmes to protect the rights of displaced women, the capacity building and advocacy process has empowered women and their organisations to take an active role in the promotion and protection of their rights. For the first time, women have assumed leadership roles in mixed organisations of the displaced population; they have engaged with municipal authorities around their obligation under law to implement these programmes, and they have represented themselves in hearings with the Court. Furthermore, the issues of GBV and the impact of the armed conflict on women have become more visible on the political and public agenda.

7.3 Entry points for gender mainstreaming, support to partners at risk and conflict sensitivity⁴⁸



⁴⁸ Please consult Trócaire's policies and guidelines on; 'Gender', 'Partners' At Risk' and 'Conflict Sensitivity'.

8. STRATEGY 4: International advocacy to demand accountability and compliance with domestic and international law



Use of international mechanisms helps to advance a country's human rights record: The Sierra Leone delegation at the UN in New York where they engaged on the country's record on eliminating discrimination against women.

Photo: Aongus O'Keeffe/Trocaire

“The prophet’s mission is terrible: the prophet must speak even knowing that people are not going to listen.”

Archbishop Oscar Romero

International advocacy work is often indispensable to Trócaire’s partners and programme work. This will arise in contexts where national legal mechanisms are for whatever reasons (either related to poor policy or politicised or ineffective judiciaries) incapable of addressing human rights concerns. It also includes contexts where gross violations of human rights are occurring where the state is the principal human rights violator, and where legal mechanisms have proved incapable of providing justice and where national level advocacy alone is not sufficient to hold the state to account. In such contexts, as part of strategy 4, partners and Trócaire carry out advocacy work with the objective of demanding increased compliance of states with international standards, and that Irish and European Union (EU) policy does not bolster states with poor human rights records.

8.1 Collaborative international advocacy

Speaking out on gross human rights abuses is central to Trócaire’s mandate. Trócaire can play an important role in facilitating and supporting partner advocacy. Trócaire’s international advocacy on specific issues should be directly informed by partners’ analysis. Similarly, Trócaire’s advocacy work must be coherent with Trócaire’s mission and policies.

International advocacy, to have maximum impact, ought to be carried out in a collaborative manner by both partners and Trócaire. Partners and Trócaire have to be strategic in selecting the human rights issues to address and the actors to target at international level. As with national level advocacy, partners and Trócaire must ensure that their advocacy work is rooted in high-quality, credible and verifiable data.

Trócaire can and does carry out direct advocacy with the Irish government; however, Trócaire ought to also facilitate, where possible, opportunities for partners to access advocacy opportunities in Ireland and Europe. Trócaire and partners tend to target the Department of Foreign Affairs (DFA) and the Minister of Foreign Affairs, the Joint Committee on Foreign Affairs and the Sub-Committee on Human Rights, as well as Members of the European Parliament (MEPs), with the objective of directly influencing Irish policy towards the relevant country and / or requesting that Ireland uses its position in the UN and the EU to raise concern about specific human rights issues and to influence policy formulation.

Trócaire and partners also carry out advocacy within the UN. Partners submit shadow or parallel reports to, for example: Treaty Bodies; Special Procedures; as part of the Universal Periodic Review (UPR); to the International Labour Organisation (ILO); and to national branches of the Office of the High Commissioner for Human Rights (OHCHR). As part of its work on UPR, Trócaire has made submissions to the DFA thus supporting partners’ submissions and advocacy as part of the UPR process.⁴⁹

⁴⁹ Please see Trócaire’s learning resource on the UPR Mechanism for more information.

In some regions, partners and Trócaire use the negotiation of Free Trade Agreements (FTA) and / or other economic agreements as an entry point for advocacy aimed at improving the human rights situation in programme countries. Trade agreements such as Economic Partnership Agreements generally include some human rights conditions, which can be used as a lever for advocacy work. In the cases of OPT-Israel and Latin America, the FTA negotiations have offered a valuable platform for combined advocacy efforts on human rights issues. Some partners also have strong advocacy agendas targeting regional human rights systems. In Latin America, partners submit monitoring reports on human rights issues and on the situation of human rights defenders to the Inter-American Human Rights System. In Colombia, two partners have directly lobbied the Prosecutor's Office of the International Criminal Court (ICC) around levels of impunity linked to gross violations by Colombian state forces. International advocacy work must be coherent with national level advocacy objectives in order for it to reinforce partners' work and have impact. At the same time, partners need to have capacities and strategies in place to follow-up international level advocacy at national level.

Although it is often hard to see immediate impacts of international advocacy, ensuring international engagement with a country with a poor human rights record can lead to undeniable dividends; strengthening of formulation and implementation of legislation, strengthening measures to address impunity, increasing protection for human rights defenders, changes in international policy towards a country and a reduction in certain types of violations.

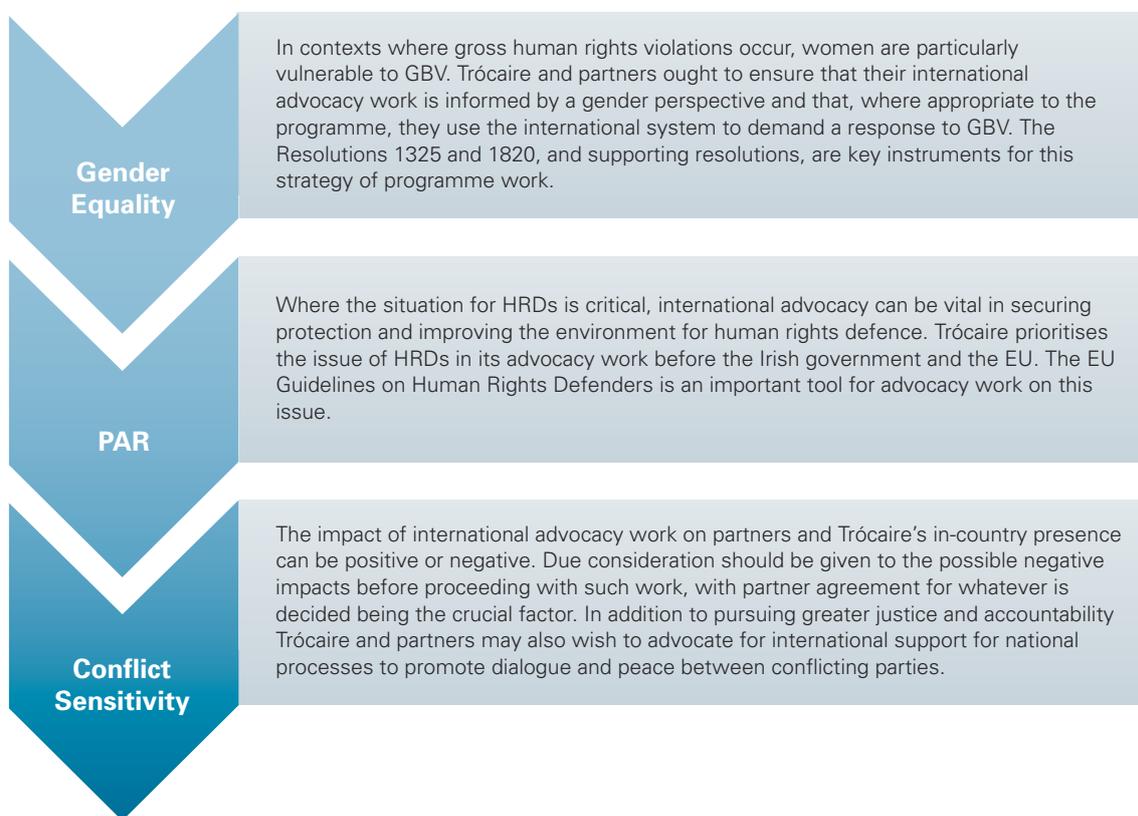
Case-Study 13: Cambodia - international and national advocacy around land and indigenous rights

In 2010, five Trócaire partners carried out lobbying actions before the **UN Permanent Forum on Indigenous Peoples** and submitted a Shadow Report to the **United Nations Committee on the Elimination of Racial Discrimination (CERD)**. As a result of efforts at international level, the international community increased pressure on the Cambodian government, contributing to the passing of the Indigenous Peoples Development Policy. Partners' international advocacy work reinforced their advocacy and empowerment work being carried out in Cambodia.

Partners in Cambodia used the formulation of the National Development Policy to lobby the government on indigenous rights within the context of land management, natural resources and the environment. In collaboration with other civil society actors, they influenced the design of the National Development Policy through participation in working groups, policy submissions and targeting parliamentarians. They also used the media to raise broader awareness on indigenous rights and land and forestry issues. One of the results of this advocacy work, reinforced by their international advocacy strategy, has been greater recognition of indigenous rights in Cambodia and the passing of the National Indigenous Peoples Development Policy.

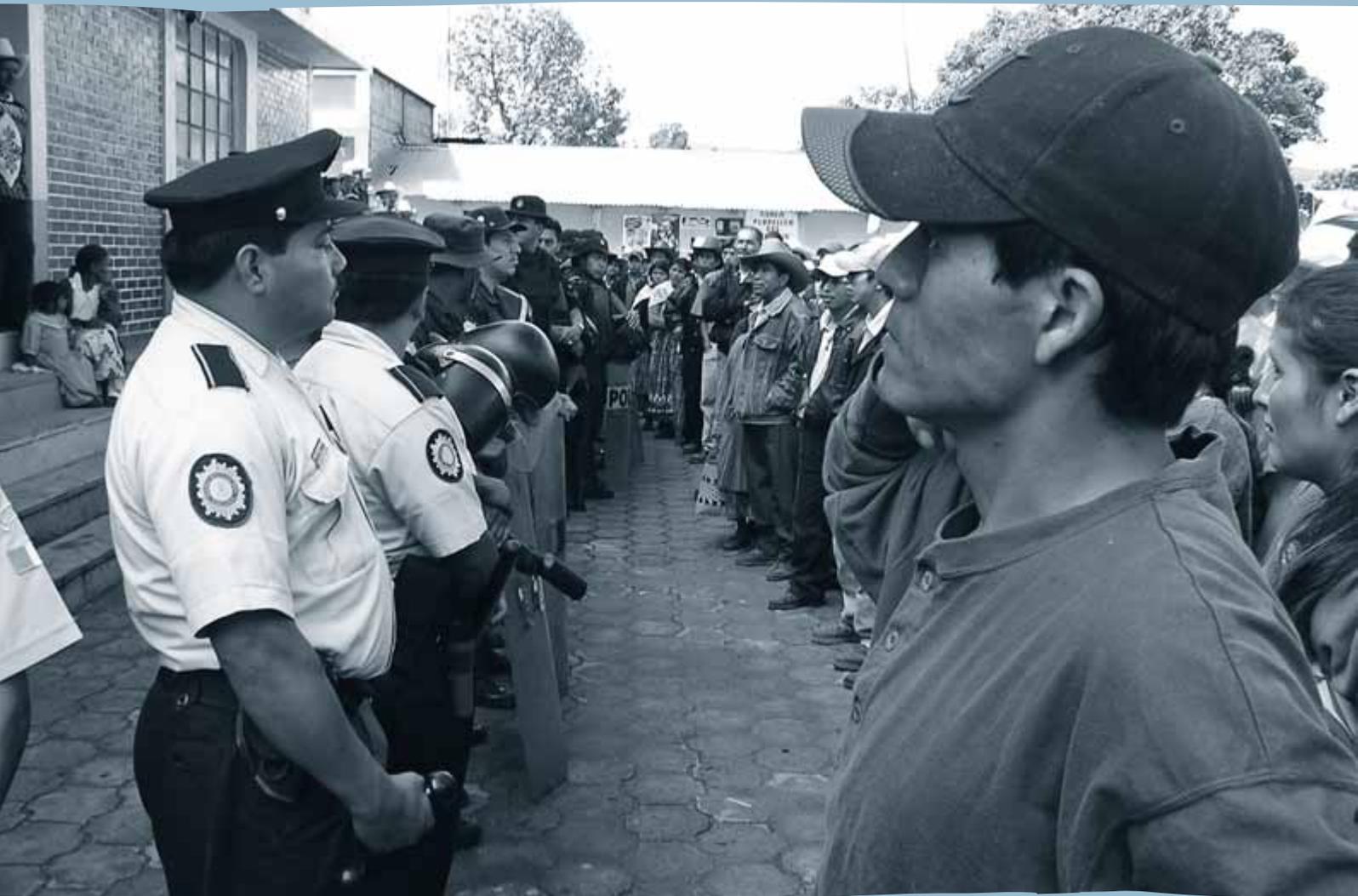
This complementary advocacy work at national and international level has strengthened efforts at local level around capacity building and empowerment of communities on their rights and the legal and judicial framework, all of which has led to increased community mobilisation and negotiation with local governors and private business. The combination of the above strategies has led to the increase of access to and use of land by indigenous communities in several project areas.

8.2 Entry points for gender mainstreaming, support to partners at risk and conflict sensitivity⁵⁰



⁵⁰ Please consult Trócaire's policies and guidelines on: 'Gender', 'Partners' At Risk' and 'Conflict Sensitivity'.

9. A PROGRAMME APPROACH TO ACCESS TO JUSTICE



People impacted by rights abuses need to play a central role in organising and mobilising to defend their rights. Guatemalan indigenous monitor the counting of votes at a public plebiscite on mining in the region.

Photo: Pastoral Comission: Peace and Ecology, Diocese of San Marcos, Guatemala

Key considerations to take into account when designing and / or developing an Access to Justice programme.

Programmes should at least incorporate strategies 1 to 3

- ✓ In order to build on work conducted under strategies one and two, and with a view to maximising the possibility of positive and lasting change, programmes ought to incorporate a national level advocacy component, which targets the state, in particular the judicial and legal systems that are responsible for perpetuating human rights abuses.

In countries where gross violations are ongoing, programmes should include strategies 1 to 4

- ✓ Where serious violations of human rights and international humanitarian law exist, it is important that, where feasible, programmes are complemented by work at international level demanding state compliance with international standards and accountability. International advocacy increases visibility of the human rights crisis, maintains pressure on repressive governments, endorses partners work, and can lead to a reduction in certain human rights violations.

Participation and Voice

- ✓ Programmes ought to guarantee the voice and participation of those most affected by human rights violations, particularly women and other excluded groups not only at community level, but also at national and international level.

Use of international human rights standards

- ✓ The design and implementation of Access to Justice programmes should explicitly be informed by international standards, as this will provide the programme with a robust framework within which to demand accountability from duty-bearers for the respect, protection and fulfilment of human rights.

Interdependence and Interrelation of rights

- ✓ Programmes ought to recognise the interrelations between civil, political, social, economic and cultural rights so as to inform integrated, appropriate and effective responses.

Accountability

- ✓ Given the nature of human rights work which requires documentation of often sensitive information, accountability and sensitivity of Trócaire to its partners and communities that we support, must be central to programme work.

Conflict Sensitivity

- ✓ Trócaire must ensure that all of its actions in country and at international level are underpinned by Conflict Sensitive approaches, guaranteeing the protection and integrity of partners at all times.

Trócaire's role

- ✓ Trócaire can make the international human rights system more accessible to partners through: building partner expertise and capacity to navigate the international human rights system; enhancing their advocacy capacity; and facilitating their access to international advocacy spaces and human rights mechanisms.
- ✓ Trócaire can play a role in advocacy/lobbying so as to raise the profile of particular country issues on the Irish political agenda and through this on the EU and UN agendas.

Resource Sheet 1: The International Human Rights System

The UN human rights system, including the Treaty System, the Human Rights Council and the UN OHCHR, is the main arena for the development and monitoring of international human rights and humanitarian law. Regional and national human rights systems and courts further contribute to interpretation, definition and application of human rights.

THE UNITED NATIONS HUMAN RIGHTS COUNCIL⁵¹

The UN Human Rights Council is made up of 47 member states and its main function is to address situations of human rights violations and make recommendations on them. The main organs and procedures that assist the Human Rights Council in this role are: the Advisory Committee which gives thematic advice to the Council, the UPR, Special Procedures and the Complaint Mechanism.

THE OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS⁵²

The OHCHR drives the human rights agenda within the UN system. Its mandate is to ensure universal enjoyment of human rights and to remove obstacles to their fulfilment. Furthermore, the OHCHR has the responsibility to guarantee coordination around human rights within the UN system, to provide support to the Human Rights Council and to the treaty bodies, and to build capacity on human rights at country level. The OHCHR has 11 country offices⁵³ and 7 regional ones, through which it provides technical support to governments and their institutions, monitors the human rights situation and produces annual reports. Civil society can avail of direct opportunities to furnish these offices with information on the human rights situation. Civil society also needs to lobby to ensure that the country mandates in each country are sufficiently robust so that these offices can play an effective role.

THE INTERNATIONAL LABOUR ORGANISATION

The ILO is a specialised agency of the UN and functions through a tripartite mechanism that involves the participation of government representatives, employers and workers. It has developed a series of 'core labour standards', in the form of conventions, which derive from the **Declaration on Fundamental Principles and Rights at Work**. States parties to the ILO standards have to submit regular reports which are examined first by a committee of experts and then by the tripartite conference. In addition to its core standards, the ILO has developed a series of treaties dealing with other labour related issues. Of particular interest to Trócaire's work are the **ILO Convention 169 on Tribal and Indigenous Peoples** and the **ILO Convention 29 on Forced Labour**. As part of its Lenten Campaign on Child Labour in 2006, Trócaire successfully lobbied the Irish government to fund the ILO International Programme to Eliminate Child Labour (IPEC)⁵⁴.

⁵¹ <http://www2.ohchr.org/english/bodies/hrcouncil/>

⁵² <http://www.ohchr.org/EN/AboutUs/Pages/WhoWeAre.aspx>

⁵³ These include Bolivia, Colombia, Guatemala, OPT, Uganda and Cambodia where there are Trócaire programmes.

⁵⁴ Trócaire Business and Human Rights Advocacy Manual, 2010

Resource Sheet 2: Core international Human Rights treaties & treaty bodies

International Human Rights Law is codified in international treaties,⁵⁵ whose respective committees, - called 'Treaty Bodies' monitor compliance, accept individual complaints and provide additional interpretation of the treaties.

	Core International Human Rights Treaties⁵⁶	Treaty Signatories⁵⁷	Treaty Parties	Treaty Bodies	Can receive Individual Complaints
1	International Convention on the Elimination of All Forms of Racial Discrimination - 1965	85	174	Committee on the Elimination of Racial Discrimination (CERD)	Yes
2	International Covenant on Economic, Social and Cultural Rights - 1966; Optional Protocol (OP) 2008	69	160	Committee on economic, social and cultural rights (CESCR)	No
3	International Covenant on Civil and Political Rights - 1966; 1 st OP; 2 nd OP on the Death Penalty	72	167	Human Rights Committee (CCPR)	Yes
4	Convention on the Elimination of All Forms of Discrimination against Women - 1979; OP 1999	98	186	Committee on the Elimination of Discrimination Against Women (CEDAW)	Yes
5	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment - 1984; OP 2002	77	147	Committee Against Torture (CAT)	Yes
6	Convention on the Rights of the Child - 1989; 1 st OP 2000 on Armed Conflict; 2 nd OP 2000 on child exploitation	140	193	Committee on the Rights of the Child (CRC)	No
7	International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families - 1990	31	44	Committee on Migrant Workers (CMW)	No
8	Convention on the Rights of Persons with Disabilities - 2006; OP 2006	147	99	Committee on Rights of Persons with Disabilities (CRPD)	Yes
9	International Convention for the Protection of All Persons from Enforced Disappearance - 2006	88	23	Committee on Enforced Disappearance (CED)	No

⁵⁵ International human rights treaties are supported by a series of other legally binding and non-binding instruments, known as **universal human rights instruments**.

⁵⁶ United Nations Treaty Collection, <http://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en>

⁵⁷ '**Signatories**' refer to states that agree to be bound by a treaty soon after it has been adopted, i.e. in the limited period open for signatures in the aftermath of its adoption. At this stage the treaty has not yet come into force and signatures are not binding on states. '**Parties**' refer to states that have agreed to be bound by a treaty that has come into force. **States parties** applies to states that both signed and ratified the treaty but also to states who, having missed the timeframe open for signatures, become party to the treaty through a single act called accession.

Reporting to treaty bodies ⁵⁸

States parties to a treaty are obliged to submit initial and periodic compliance reports to the treaty body. In their initial report, states parties are required to show measures taken to make the treaty provisions effective at domestic level and in subsequent reports progress towards achieving treaty provisions and obstacles encountered in fulfilling the provisions. The treaty body then reviews the report and may request a written response from the state party. A formal examination of the report submitted takes place during a committee session, at which representatives of the government in question must be present. A final report is issued by the committee, containing its conclusions and recommendations, and further follow-up and monitoring is based on this report. Although the recommendations in the committee's report are not legally binding, they are recognised as authoritative. Civil society actors can participate at stage 1 with a submission of a shadow report to the committee before the formal review session, at stage 4 in the form of participation during the session and at stage 6 using the concluding report for follow-up and advocacy work.



⁵⁸ For further information on reporting to Treaty Bodies please see - see the OHCHR FactSheet No. 30 at OHCHR at <http://www2.ohchr.org/english/bodies/docs/OHCHR-FactSheet30.pdf>

Resource Sheet 3: the UN Human Rights council special procedures & universal periodic review

Mechanism	Special Procedures ⁵⁹
Mechanism	<p>SPs mechanisms were created to respond to countries with critical human rights situations and human rights issues that are global concerns. Currently there are 7 country mandates⁶⁰ and 33 thematic mandates.⁶¹ SPs are made up of Independent Experts, Special Representatives of the Secretary General, Special Rapporteurs and Working Groups.</p>
Functions	<p>SPs 'examine, monitor, advise and publicly report' on human rights in particular countries and on global human rights priorities in line with their country and thematic mandates</p> <hr/> <p>SPs receive information on allegations of human rights violations and send urgent appeals or letters outlining the allegations to governments, soliciting clarification on the allegations.</p> <hr/> <p>To visit a country and monitor the human rights situation, SPs send a letter of request to the specific country, which can choose to accept or not. If a government accepts the visit, it issues an invitation to the SPs body. On completion of the investigation, the relevant SPs mechanism issues a mission report containing their findings.</p> <hr/> <p>The SPs mechanism contributes to the work of the Human Rights Council around information gathering, monitoring human rights records and contributing to jurisprudence. It also contributes to the UPR process, by highlighting specific country issues.</p>
Participation of civil society	<ul style="list-style-type: none"> • SPs mechanisms also have procedures for receiving 'individual complaints on violations'. These complaints must contain a minimum standard of information and must conform to their formats and guidelines, which differ according to the different special procedures. This is a channel which civil society can use if they wish to raise awareness on a certain country's human rights record or a specific type of violation. • During their country visits, SPs have a mandate to consult with the broadest possibility of stakeholders, including civil society. This is an opportunity for CSOs to meet with the SPs body or individual and submit information which they will consider in their final mission report. • Civil society can use the SPs mechanism's final report and recommendations as an important advocacy tool before their government. • Civicus has produced a very useful <i>Guide to reporting abuses to UN Special Procedures</i>. This is a great reference if you're thinking of communicating with Special Rapporteurs, Independent Experts or Working Groups in the UN System. Download it (in English only) here: http://tinyurl.com/85sy5x5

⁵⁹ Special Procedures of the Human Rights Council at <http://www2.ohchr.org/english/bodies/chr/special/index.htm>

⁶⁰ Cambodia, Democratic People's Republic of Korea, Haiti, Burma, OPT, Somalia, Sudan

⁶¹ Please see Resource on 'Special Procedures Thematic Mandates' on page 55 for more information.

⁶² See Trócaire's learning resource on experiences of using the UPR mechanism

Mechanism	Universal Periodic Review⁶²
Mechanism	The Universal Periodic Review (UPR) was created by the General Assembly (GA) in 2006. The UPR is the first universal mechanism created in the UN system, with the capacity to review all 192 member states.
Functions	<p>The UPR reviews human rights records of each member state every 4 years and makes recommendations. It is a state driven process, founded upon principles of cooperation, dialogue and support between member states.</p> <hr/> <p>The UPR Working Group (47 members) is responsible for the review process, but any member state can engage with dialogue during the review. The UPR Working Group appoints a 3 member state body called the 'troika' to assist states being reviewed in each session and to act as rapporteurs.</p> <hr/> <p>A member state under review submits a country report to the UPR Working Group outlining actions it has taken to improve the human rights situation in accordance with international human rights treaties it has ratified. The UPR can use additional information provided by Special Rapporteurs, Treaty Bodies, other stakeholders and other UN entities. During the session any member state can pose questions, make recommendations and comments.</p> <hr/> <p>The troika prepares an Outcome Report containing the recommendations, questions and comments and the response, including recommendations accepted and rejected, by the state under review. The final report is then adopted at a plenary session of the UN Human Rights Council where further dialogue may take place. The member state then has the responsibility to implement the recommendations that it has accepted and must report upon efforts made at its following review before the UPR.</p>
Participation of civil society	<ul style="list-style-type: none"> • CSOs can submit shadow reports to the OHCHR at the time of the submission of their governments' national report. This information should be submitted by a national network or platform to give it credibility. Civil society input may be referred to by other member states during the session. Civil society can attend the Working Group session as observers and can make statements during the plenary session of the UN HRC. • CSOs can carry out advocacy work in the run-up to the session, lobbying other member states and requesting them to bring up specific human rights issues, questions and recommendations. Trócaire and partners can target the Irish government with such submissions. • The UPR provides civil society with an important advocacy tool and NGOs can play an important role in monitoring the application of the recommendations in the interim period.

The UN Human Rights Council also contains a Complaints Procedures mechanism,⁶³ which is victim orientated. Complaints are vetted by a working group, but the final decision around actions to be taken lies with the HR Council. Only cases of gross and systematic human rights violations will be accepted by the Complaints Procedures mechanism. Victims and CSOs can submit direct complaints, but they must prove that they have exhausted all domestic options.

⁶³ Human Rights Council Complaints Procedure at <http://www2.ohchr.org/english/bodies/chr/complaints.htm>

Special Procedures - thematic mandates⁶⁴

Title / Mandate	Name & country of origin of the Mandate-holder(s)	Contacts
Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context	Ms. Raquel ROLNIK <i>(Brazil)</i>	srhousing@ohchr.org
Working Group on people of African descent	<ul style="list-style-type: none"> • Ms. Monorama BISWAS <i>(Bangladesh)</i> • Ms. Mireille FANON-MENDES- FRANCE <i>(France)</i> • Ms. Maya SAHLI <i>(Algeria)</i> • Ms. Verene SHEPHERD <i>(Jamaica)</i> • Ms. Mirjana NAJCEVSKA Chairperson-Rapporteur <i>(The Former Yugoslav Republic of Macedonia)</i> 	africandescent@ohchr.org
Working Group on Arbitrary Detention	<ul style="list-style-type: none"> • Mr. El Hadji Malick SOW <i>(Senegal)</i> Chairperson-Rapporteur • Ms. Shaheen Sardar ALI <i>(Pakistan)</i> Vice-Chairperson • Mr. Roberto GARRETON <i>(Chile)</i> • Mr. Vladimir TOCHILOVSKY <i>(Ukraine)</i> • Mr. Mads ANDENAS <i>(Norway)</i> 	wgad@ohchr.org
Special Rapporteur on the sale of children, child prostitution and child pornography	Ms. Najat M'jid MAALLA <i>(Morocco)</i>	srsaleofchildren@ohchr.org
Independent Expert in the field of cultural rights	Ms. Farida SHAHEED <i>(Pakistan)</i>	ieulturalrights@ohchr.org
Special Rapporteur on the right to education	Mr. Kishore SINGH <i>(India)</i>	sreducation@ohchr.org
Working Group on Enforced or Involuntary Disappearances	<ul style="list-style-type: none"> • Mr. Jeremy SARKIN <i>(South Africa)</i> Chairperson-Rapporteur • Mr. Ariel DULITZKY <i>(Argentina/United States of America)</i> • Ms. Jazminka DZUMHUR <i>(Bosnia and Herzegovina)</i> • Mr. Olivier de FROUVILLE <i>(France)</i> • Mr. Osman EL-HAJJE <i>(Lebanon)</i> 	wgeid@ohchr.org
Special Rapporteur on extrajudicial, summary or arbitrary executions	Mr. Christof HEYNS <i>(South Africa)</i>	eje@ohchr.org
Special Rapporteur on extreme poverty and human rights	Ms. Maria Magdalena SEPÚLVEDA CARMONA <i>(Chile)</i>	srextremepoverty@ohchr.org
Special Rapporteur on the right to food	Mr. Olivier de SCHUTTER <i>(Belgium)</i>	srfood@ohchr.org

⁶⁴ <http://www2.ohchr.org/english/bodies/chr/special/themes.htm>

Title / Mandate	Name & country of origin of the Mandate-holder(s)	Contacts
Independent expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of human rights, particularly economic, social and cultural rights	Mr. Cephas LUMINA <i>(Zambia)</i>	ieforeigndebt@ohchr.org
Special Rapporteur on the rights of peaceful assembly and of association	Mr. Maina Kiai <i>(Kenya)</i>	freeassembly@ohchr.org
Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression	Mr. Frank La Rue <i>(Guatemala)</i>	freedex@ohchr.org
Special Rapporteur on freedom of religion or belief	Mr. Heiner BIELEFELDT <i>(Germany)</i>	freedomofreligion@ohchr.org
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health	Mr. Anand GROVER <i>(India)</i>	srhealth@ohchr.org
Special Rapporteur on the situation of human rights defenders	Ms. Margaret SEKAGGYA <i>(Uganda)</i>	defenders@ohchr.org urgent-action@ohchr.org
Special Rapporteur on the independence of judges and lawyers	Ms. Gabriela KNAUL <i>(Brazil)</i>	srindependencejl@ohchr.org
Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people	Mr. James ANAYA <i>(United States of America)</i>	indigenous@ohchr.org
Special Rapporteur on the human rights of internally displaced persons	Mr. Chaloka Beyani <i>(Zambia)</i>	idp@ohchr.org
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Resource Sheet 4: Regional Human Rights systems

ORGANISATION OF AMERICAN STATES (OAS)
<p style="text-align: center;">The Inter- American Commission of Human Rights (IACHR) ⁶⁵ The Inter-American Court on Human Rights (Inter-American Court) ⁶⁶ <i>(Independent human rights mechanisms of the OAS)</i></p>
<p>The American Declaration on the Rights of Duties of Man & American Convention on Human Rights</p>
<p>The mandate of the IACHR is to promote the observance and defence of human rights. Its main responsibilities are:</p> <ul style="list-style-type: none">• To receive and investigate human rights complaints in the form of general or collective petitions from individuals or NGOs• To observe human rights situations in member states and publish reports on their records• To carry out country visits to member states to ascertain human rights conditions• To refer cases to the Inter-American Court of Human Rights• To demand that states adopt 'precautionary measures' in urgent situations to protect persons at risk of harm regardless of whether a case is before the Court or not• The IACHR also oversees the work of Special Rapporteurs on issues such as women, migrant workers' rights, children, human rights defenders and freedom of expression. <p>For more information on the mandate of the IACHR and its procedures and criteria for hearing cases consult http://www.cidh.oas.org/what.htm https://www.cidh.oas.org/cidh_apps/instructions.asp?gc_language=E</p> <p>For more information on Latin American human rights instruments consult http://www.corteidh.or.cr/sistemas.cfm?id=2</p>
<p>The Inter-American Court on HR has the following functions:</p> <ul style="list-style-type: none">• The Court has the power to decide whether a state has violated any of the rights enshrined in the American Convention of Human Rights. It can only receive cases from state parties or the Commission.• Court judgements are final and cannot be appealed. The Court has the mandate to monitor compliance with its judgements and does so through the monitoring of compliance reports submitted by states, holding hearings with states and based on input from the Commission and victims.• The Court can advise OAS member states and its bodies around the interpretation of the American Convention on Human Rights.• The Court also has the power to order the adoption of <i>Provisional Measures</i> in situations of extreme gravity and urgency in relation to cases that it has before it and responding to requests from the Commission. <p>For further information on the role of the Court please consult http://www.corteidh.or.cr/denuncias_consultas.cfm</p>

⁶⁵ <http://www.cidh.oas.org/what.htm>, /

⁶⁶ <http://www.corteidh.or.cr/sistemas.cfm?id=2>

ORGANISATION OF AFRICAN UNITY (OAU)

African Commission on Human and People's Rights (ACHPR)⁶⁷ **African Court on Human and People's Rights (African Court)⁶⁸**

The African Charter on Human and People's Rights

The **ACHPR** has the mandate to promote and protect human and people's rights and to interpret the African Charter and its main functions are:

- Research and dissemination of information on Human Rights
- Legal interpretation and recommendations to African governments in relation to the formulation of legislation and the African Charter
- Review periodic reports of state parties
- Submit cases to the African Court
- Manage Special Mechanisms and Rapporteurs on prisons, women, freedom of expression, HRD, IDPs, extra-judicial executions, torture and the death penalty

For more information please see http://www.achpr.org/english/_info/mandate_en.html

The African Court has the competence to make final and binding decisions on cases submitted to it, based on its interpretation of the African Charter, the Court's Protocol and any other African or international human rights instruments ratified by the state in question – its main responsibilities are:

- Protection and promotion of Human and People's rights
- Interpretation of the African Charter and International Law
- Advise member states and OAU organs on interpretation of the African Charter
- Adjudicate cases concerning violations of the African Charter and other international instruments
- Can promote amicable settlements where appropriate
- Receive cases submitted by the Commission, member states, individuals and CSOs and the African Intergovernmental Organisation

Please see <http://www.african-court.org/en/court/mandate/general-information/> for more information.

⁶⁷ http://www.achpr.org/english/_info/news_en.html

⁶⁸ <http://www.african-court.org/en/home/>

ASSOCIATION OF SOUTHEAST ASIAN NATIONS

ASEAN Intergovernmental Commission on Human Rights (AICHR)⁶⁹

The 2005 ASEAN Charter outlined the need for a regional human rights mechanism. Terms of reference were adopted in 2009 for this mechanism. Arising from this the ASEAN Intergovernmental Commission on Human Rights (AICHR) has been created. Each country has a representative, who represents both government and civil society. Some countries have an open selection process for this representative, others do not – it's a Government appointment. Currently the AICHR is drafting terms of reference for an ASEAN Human Rights Declaration.

Separate to this is the Working Group for an ASEAN Human Rights Mechanism. Its primary goal is to establish an intergovernmental human rights commission for ASEAN. It is a coalition of national working groups from ASEAN states which are composed of representatives of government institutions, parliamentary human rights committees, academia and NGOs. The Working Group is engaging governments and other key players in the region. For now, the main focus is standard setting, promotion and protection of human rights and the development of human rights at a national level (including the setting up of national human rights institutes). There is an opportunity for civil society engagement and advocacy on its work. The Working Group has made a number of resolutions and statements.⁷⁰ They are currently drafting a Declaration on Human Rights in ASEAN; it is hoped that this will influence the work of the AICHR and lead to a legally binding mechanism.

⁶⁹ <http://www.asean.org/26208.htm>

⁷⁰ <http://www.aseanhrmech.org/resolutions/index.html>

Resource Sheet 5: best practice in transitional justice ⁷¹

<p>Truth</p>	<p>Truth commissions are commonly used to determine and disseminate the truth about human rights violations and their causes and impacts that have occurred in a society. They are non-judicial in nature but their mandates and scope must be consulted and agreed upon with the victims and society.</p>
<p>Justice</p>	<p>States have the primary responsibility to try and punish those responsible for organising and committing violations of human rights and international humanitarian law. In situations where states are unable or unwilling to carry out investigations and prosecute those responsible, regional and international criminal courts can exercise concurrent jurisdiction. As part of this process states must undertake to effectively combat impunity, to guarantee the rights of the victims and to ensure compliance with international standards.</p>
<p>Reparation</p>	<p>States are obliged to provide redress to victims of violations through symbolic and material forms of reparation. Reparation should cover compensation, restitution, rehabilitation, satisfaction and guarantees of no-repetition (see resource sheet 6 for more information).</p>
<p>Institutional Reform</p>	<p>Public Institutions that were complicit with human rights violations must be reformed. This is essential in order to re-establish rule of law, to guarantee credible and democratic institutions and to protect a country from a return to violence.</p>
<p>Victims</p>	<p>States must undertake the necessary provisions to ensure that victims can have meaningful participation in transitional justice processes; in particular it is crucial that they guarantee the dignity and protection of victims and witnesses.</p>
<p>Demobilisation, Disarmament and Reintegration (DDR)</p>	<p>In situations where DDR occurs in parallel to a transitional justice process, both components should be mutually reinforcing.</p>
<p>Traditional Justice Systems</p>	<p>Traditional justice systems can play a very important role in rebuilding social relationships, taking a restorative justice approach and can exist alongside formal transitional justice mechanisms; for example, the Gacaca⁷² courts in Rwanda and local mediation processes used in Timor Leste</p>

⁷¹ Adapted from the 'Annual Report of the United Nations High Commissioner for Human Rights and Reports of the Office of High Commissioner and the Secretary General, Analytical Study on human rights and Transitional Justice' A/HRC/12/18 August 2009

⁷² Gacaca drew from traditional dispute resolution mechanisms that were combined with elements of formal law to serve as an alternative to the formal justice system. Gacaca judges were elected from within the community. The Gacaca courts had a dual mandate, they were to help establish truth and reconciliation while also punishing crimes committed during the genocide.

Resource Sheet 6: UN basic principles and guidelines on the right to a remedy and reparation⁷³

Reparation

- Reparation should be proportional to the gravity of the violations and the harm suffered. In accordance with its domestic laws and international obligations a State shall provide reparation to victims for acts or omissions which can be attributed to the State and constitute gross violations of international human rights law or serious violations of international humanitarian law. In cases where a person, or legal person, or other entity, is found liable for reparation to a victim, such a party should provide reparation to the victim or compensate the State if the State has already provided reparation to the victim.
- States should endeavour to establish national reparation programmes for reparation and other assistance to victims in the event that the parties liable for the harm suffered are unable or unwilling to meet their obligations.
- Victims are entitled to full and effective reparation, which includes **restitution, compensation, rehabilitation satisfaction, and guarantees of non-repetition.**

Components of Reparation

Restitution	Restitution should where possible restore the victim to the original situation before the gross violations of international human rights or humanitarian law. Restitution includes: restoration of liberty, enjoyment of human rights, identity, family life and citizenship, return to ones' place of residence, restoration of employment and return of property.
Compensation	Compensation should be appropriate and proportional to the gravity of the violation and the circumstances of each case, resulting from gross violations of international human rights and humanitarian law such as a) physical or mental harm; b) Lost opportunities, including employment, education and social benefits; c) material damages and loss of earnings, including loss of earning potential; d) moral damage; e) costs required for legal or expert assistance, medicine and medical services, and psychological and social services.
Rehabilitation	Rehabilitation includes medical and psychological care as well as legal and social services

⁷³ General Assembly 60/147, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and serious violations of International Humanitarian Law, 21 March 2006

<p>Satisfaction</p>	<p>Satisfaction should include, where applicable, any or all of the following</p> <ul style="list-style-type: none"> a) Effective measures aimed at the cessation of continuing violations b) Verification of the facts and full and public disclosure of the truth c) The research for the whereabouts of the disappeared, for the identities of the people abducted, identification and reburial of bodies in accordance with the expressed or presumed wish of the victims, or the cultural practices of the families and communities d) An official declaration or a judicial decision restoring the dignity, the reputation and the rights of the victim and of persons closely connected with the victim e) Public apology including acknowledgment of the facts and acceptance of responsibility f) Judicial and administrative sanctions against persons liable for violations g) Commemorations and tributes to the victims h) Inclusion of an accurate account of the violations that occurred in international human rights and humanitarian law in training and educational materials at all levels;
<p>Guarantees of Non-repetition</p>	<p>Guarantees of non-repetition should include, where applicable, any or all of the following</p> <ul style="list-style-type: none"> a) Ensuring effective civilian control of military and security forces; b) Ensuring that all civilian and military procedures abide by international standards of due process, fairness and impartiality; c) Strengthening the independence of the judiciary; d) Protecting persons in legal and medical and health-care professions, the media and other related professions, and human rights defenders; e) Providing on a priority and continued basis, human rights and international humanitarian law education to all sectors of society and training for law enforcement officials as well as military and security forces; f) Promoting the observance of codes of conduct and ethical norms, in particular international standards, by public servants, including law enforcement, correctional, media, medical, psychological, social service and military personnel, as well as economic enterprises; g) Promoting mechanisms for preventing and monitoring social conflicts and their resolution; h) Reviewing and reforming laws contributing to or allowing gross violations of international human rights and humanitarian law

Resource Sheet 7: UN security council resolutions on women, conflict, peace and security^{74 75}

- **Resolution 1325** (2000) was the first UN Security Council resolution (SCR) to link women to the peace and security agenda. It recognises that women are disproportionately affected by conflict and calls for their active participation at all levels of decision-making in conflict prevention, conflict resolution, peace processes, post-conflict peacebuilding and governance. SCR 1325 further calls for the effective protection of women from sexual and gender-based violence in conflict settings, for the mainstreaming of gender perspectives in all aspects of peace operations, and for the promotion of women's rights and gender equality.
- **Resolution 1820** (2008) was the first SCR to recognize conflict-related sexual violence as a matter of international peace and security. It calls for armed actors to end the practice of using sexual violence against civilians to achieve political or military ends, and for all parties to conflict to counter impunity for sexual violence and provide effective protection for civilians. It also calls on the United Nations and peace operations to develop mechanisms to prevent and respond to sexual violence, including through the training of personnel, the deployment of more women to peace operations, the enforcement of zero-tolerance policies and strengthening the capacities of national institutions.
- **Resolution 1888** (2009) strengthens the implementation of SCR 1820 through assigning leadership and establishing effective support mechanisms. It calls for the appointment of a Special Representative of the Secretary-General to coordinate UN efforts to address conflict-related sexual violence, as well as for the rapid deployment of teams of experts and advisors to situations of concern. SCR 1888 also calls for the inclusion of the issue of sexual violence in peace negotiations, the development of approaches to address the effects of sexual violence, and improved monitoring and reporting on conflict trends and perpetrators.
- **Resolution 1889** (2009) addresses obstacles to women's participation in peace processes and peace building, as prescribed in SCR 1325. It calls for the UN Secretary-General to submit to the Security Council a set of indicators for use at the global level to track implementation of SCR 1325. It also calls for the strengthening of national and international responses to the needs of women and girls in conflict and post-conflict settings.
- **Resolution 1960** (2010) provides an accountability system for implementation of SCRs 1820 and 1888. It mandates the Secretary-General to list in the annexes to annual reports those parties credibly suspected of committing or being responsible for patterns of sexual violence in situations on the Council's agenda. Relevant sanctions committees will be briefed by the Special Representative of the Secretary-General on Sexual Violence in Conflict, and may take action against listed parties. SCR 1960 also calls for the establishment of monitoring, analysis, and reporting arrangements specific to conflict-related sexual violence.

⁷⁴ UNWOMEN gender issues at http://www.unifem.org/gender_issues/women_war_peace/resolutions_instruments.php.

⁷⁵ Other instruments partially deal with some of the issues of around women and conflict: Protection of civilians in armed conflict (resolutions 1674, 1894, 1889), CEDAW and resolution 1612 dealing with children and armed conflict. See UNWOMEN for more information at http://www.unifem.org/gender_issues/women_war_peace/other_resolutions_instruments.php

Resource Sheet 8: categories of crimes⁷⁶ which fall under the international criminal court's jurisdiction⁷⁷

'Genocide: 'the crime of crimes'.

Genocide is defined as a list of prohibited acts committed by an individual with the **intent** of destroying, in whole or in part, a national, ethnic, racial or religious group. Such acts are the killing or causing serious bodily or mental harm to members of the group (torture, rape, sexual violence or inhuman and degrading treatment), imposing conditions on the group calculated to destroy it (forced marches), preventing births within the group and forcibly transferring children from one group to another. The principle of 'intent' means that the ICC will only prosecute the high-ranking individuals for genocide in order to focus efforts on those responsible for designing and instigating such atrocities. However, if intent cannot be proved, the perpetrators can be tried under the category of war crime or crimes against humanity.

Crimes Against Humanity:

Crimes against humanity include the extermination of civilians, enslavement, torture, rape, forced pregnancy, persecution on political, racial, national, ethnic, cultural, religious or gender grounds and enforced disappearances, but only when they are part of a 'widespread or systematic attack' against the civilian population. The stipulation that they be widespread or systematic crimes sets a threshold for prosecution by emphasising the magnitude of the crime and therefore differentiating crimes against humanity from individual and random acts of violence.

War Crimes:

War Crimes include direct breaches of the Geneva Conventions and other serious violations of laws applicable in international and non-international armed conflicts. The ICC, however, only has jurisdiction over war crimes if they are committed as a plan or policy or large-scale commission of violations.

⁷⁶ The crime of Aggression was also defined in the Rome Statute as falling under the jurisdiction of the ICC, however, state parties still have to agree on its definition and under what circumstances the ICC jurisdiction would apply. For this reason, to date, the ICC has no jurisdiction over the crime of aggression.

⁷⁷ Rhona K.M. & Van den Anker C. (2005) *The Essentials of Human Rights*. Hodder Arnold.

Notes

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