

REFUGEE AND DISPLACED WOMEN: 60 YEARS OF PROGRESS AND SETBACKS

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Introduction

2011 marks the anniversary of two important events in refugee protection. In 1951 the United Nations adopted the UN Convention Relating to the Status of Refugees. Promulgated in the aftermath of World War II and amidst the intensification of the Cold War, the 1951 Convention defined refugees as persons who were deserving of international protection because of their well-founded fear of persecution. Drawing on the experience of the Holocaust, the Convention was particularly focused on protection of those who feared persecution on the basis of race, religion, nationality, membership in a particular social group and political opinion—all bases upon which the Nazis chose their victims. Notably absent in this list are those who faced persecution on the basis of gender or sexual orientation.

Forty years later, in 1991, the Executive Committee of the Office of the UN High Commissioner for Refugees (UNHCR) adopted Guidelines on the Protection of Refugee Women.¹ The guidelines were meant to address gaps in protection that faced millions of refugee women and girls who found themselves at risk. These gaps included problems in gaining recognition as refugees when the applicants claimed to be victims of gender-based persecution unrelated to the other grounds contained in the Convention; physical security risks that went unattended, particularly those related to sexual and gender-based violence; and problems gaining access to needed assistance and means of economic independence, which in turn undermined economic and social rights. In 2001, the UNHCR made five commitments to refugee women that elaborated these points. The commitments relate to:

- Women's and girls' membership and participation in decision-making;
- Registration and documentation;
- Tackling Sexual and Gender-Based Violence (SGBV), including domestic violence;
- Participation in food distribution; and
- Providing sanitary materials to women and girls of concern.

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¹ In the interests of full disclosure, I should note that I drafted the 1991 Guidelines for UNHCR.

The commitments were followed by the promulgation of a new *Handbook for the Protection of Women and Girls* in 2008, to update the 1991 Guidelines and provide further guidance.

Since 1991, there has been progress but also setbacks in providing equal and effective protection to both male and female refugees.² This article begins with a brief discussion of the demographic profile of refugees. It then discusses the three gaps described above: legal protection, physical security, and social and economic rights. It concludes with an analysis of the progress made and recommendations to address some of the setbacks identified.

I. Demographic Profile

Statistics on people who move are notoriously poor. Data on certain categories of migrants, for example those who cross borders without the authorization of host countries, are particularly difficult to collect. Many of these migrants without legal status are fearful of stepping forward for censuses and surveys. A further difficulty is obtaining accurate demographic breakdowns of the migrant populations, in order to assess the situation of migrants by gender and age.

This article focuses on a subset of migrants: refugees—those who cross an international border to obtain protection from harm which would occur in their home country. According to the UN High Commissioner for Refugees, an estimated 43.3 million people were forcibly displaced worldwide at the end of 2009.³ UNHCR reported this as the highest number of people uprooted by conflict and persecution since the mid-1990s. This overall number masks considerable variation in the status and location of those who were displaced. The number of refugees under UNHCR's mandate remained relatively stable throughout this decade, at 10.5 million in 2009. An additional 4.7 million Palestinian refugees were registered with the UN Relief and Works Administration for Palestine Refugees in the Middle East (UNRWA). UNHCR estimated that 27.1 million persons were internally displaced for reasons similar to those that caused people to move across international borders and

² This focus on refugee women is not meant to suggest that male refugees do not face significant protection problems or that the problems facing women can be solved without the active participation of men in the process. In recent years, UNHCR has attempted to mainstream gender into its operations and more recently, as part of its strategy to improve protection for women, to recognize that men must be a part of effective programming. UNHCR uses the following definition of gender: “the social attributes and opportunities associated with being male and female and the relationships between women and men and girls and boys, as well as the relations between women and those between men. These attributes are socially constructed and are learned through socialization processes. They are context/time specific and changeable” (UN High Commissioner for Refugees (UNHCR), *Handbook for the Protection of Women and Girls*, Geneva: UNHCR 2008). For an excellent analysis of the overall change in UNHCR's strategy on gender, see A. Edwards, ‘Transitioning Gender: Feminist Engagement with International Refugee Law and Policy: 1950–2010’, *Refugee Survey Quarterly* 2010-29, 2, pp. 21-45. Also see S. Martin, *Refugee Women: Second Edition*, Lanham, MD: Lexington Books, 2003 for a fuller treatment of the issues covered in this article.

³ UNHCR, *2009 Global Trends*, Geneva: UNHCR, 2010.

become refugees—conflict, persecution and political instability. The remaining numbers include asylum seekers—that is persons who have not yet been granted refugee status—and refugee returnees— those who have returned to their home countries from their countries of asylum. About 80 percent of the total population of refugees and displaced persons were in developing countries; about half were in urban areas.

UNHCR estimates that women and girls represent 49 percent of the refugee and displaced population within its mandate.⁴ Forty-one per cent of refugees and asylum-seekers were children below 18 years of age. Women and girls amount to 47 percent of refugees but only 40 percent of asylum seekers. Half of all internally displaced persons and returnees are women. The highest proportion of women is in Central Africa and the Great Lakes region (53 percent) and the lowest proportion is in Europe (44 percent). These proportions are consistent with the types of refugee populations found in different regions. A higher proportion in Europe is composed of asylum seekers whereas a higher proportion of the African population is internally displaced or refugees in neighbouring developing countries. Camp populations tend to have a higher concentration of women than is true of urban populations.

The different demographic profiles are likely tied to socio-economic factors.⁵ Migration can be an expensive process, requiring both financial and human capital. Travel itself is costly and getting to a distant location often requires the assistance of smugglers or networks of family and friends who can help pave the way. In many traditional societies men are more likely to have such contacts and financial resources and, hence, are able to attempt to move to urban areas or even seek entry into Europe or North America. When families pool scarce resources to get some members as far as possible out of harm's way, they may also prioritize young men who may be at risk of conscription and who have higher earning potential to send remittances back to other members.

The demographic profile of the refugee and displaced population has ramifications for both protection and assistance efforts. Gender often determines where people are displaced, their vulnerability to human rights abuses, and their access to services and economic livelihoods. The adequacy of legal frameworks to address gender in refugee crises is discussed in the next section.

⁴ It should be noted that sex and age data are available for only two-thirds of the refugees under UNHCR's care.

⁵ See N. van Hear, 'Refugee return and reconstruction after war: class, conflict and forced migration in Sri Lanka and Somaliland,' Oxford: Centre for Migration Policy and Society, 2004, available at <http://www.mballi.info/doc4.htm> (14 April 2011) for ways in which class intersects with conflict in producing displacement.

II. Legal Protection

II.1 General Protection Provisions

The basic structures and legal instruments to ensure the legal protection of refugees were established almost sixty years ago. The essential purpose of the U.N. Convention Relating to the Status of Refugees was to provide a general definition of who was to be considered a refugee and to define his or her legal status. The 1951 Convention was produced in the early days of the Cold War, largely to resolve the situation of the millions of refugees who remained displaced by World War II and fascist/Nazi persecution. At its core, this treaty substitutes the protection of the international community (in the form of a host government) for that of an unable or unwilling sovereign. Defining refugees as persons who were unable or unwilling to avail themselves of the protection of their home countries because of a “well-founded fear of persecution based on their race, religion, nationality, political opinion or membership in a particular social group,”⁶ the 1951 Convention included geographic (Europe) and time limitations (persons displaced before 1951) that were lifted in the 1967 Protocol. Since 1967, the Refugee Convention has been a universal instrument, applying to refugees worldwide.

In addition, the Organization of African Unity adopted a refugee convention in 1969 that expands the definition of a refugee. According to the OAU Convention (1974):

The term ‘refugee’ shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his [or her] country of origin or nationality, is compelled to leave his [or her] place of habitual residence in order to seek refuge in another place outside his [or her] country of origin or nationality.⁷

The *Cartagena Declaration on Refugees*, adopted in November 1984 to address the situation of refugees from Central America, includes a similar broader definition that encompassed victims of conflict, not just persecution. Moreover, UNHCR is often asked by the General Assembly or the Secretary General to use its good offices in providing assistance and protection to persons fleeing conflict and instability.

There is no binding international law related to the protection of internally displaced persons although the African Union has promulgated a regional convention, which has not yet entered into force. In 1998 the UN Secretary-General’s Special Representative on Internal Displaced Persons developed the

⁶ UN Convention Relating to the Status of Refugees, Article 1 (1951)

⁷ Organization of African Unity, *Convention Governing the Specific Aspects of Refugee Problems in Africa* (1973)

Guiding Principles on Internal Displacement (Guiding Principles). Although not legally binding, the Guiding Principles provide a critical framework for defining and promoting IDP protection. They do not create rights per se, but restate and compile existing international human rights and humanitarian law relevant to the internally displaced. They also attempt to clarify gray areas and gaps in international instruments with regard to issues of particular relevance to the internally displaced.

Under the Guiding Principles, IDPs are defined as:

persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized state border.⁸

The Guiding Principles identify the rights and guarantees relevant to the protection of IDPs in all phases of displacement. They provide protection against arbitrary displacement, offer a basis for protection and assistance during displacement, and set forth guarantees for safe return, resettlement and reintegration. They also establish the right of IDPs to request and receive protection from national authorities, and the duty of these authorities to provide protection (principle 3). Vulnerable populations, such as expectant mothers, mothers with young children, and female headed households are entitled to protection required by their condition and to treatment that accounts for their needs (principle 4).

II.2 Gendered Persecution

Gender is not included in the international definition of a refugee as a person with a well-founded fear of persecution on the basis of race, religion, nationality, political opinion or membership in a social group. Yet, women may be fleeing gender-based persecution from which their home country governments are unwilling or unable to protect them.

In 2002 UNHCR issued two guidelines to provide guidance for State Parties and national Refugee Status Determination (RSD) authorities on gender-sensitive assessment and processing of asylum claims. The *Guidelines on Gender-Related Persecution* and the *Guidelines on Membership of a Particular Social Group* within the Context of Article 1A(2) of the 1951 Convention and its 1967 *Protocol relating to the Status of Refugees* complement other UNHCR guidance on aspects of gender-related persecution. These guidelines provide legal interpretative guidance on ensuring gender-sensitive interpretation of the

⁸ UN Commission on Human Rights, Report of the Representative of the Secretary General, Mr. Francis M. Deng, submitted pursuant to Commission resolution 1997/39 Addendum Guiding Principles on Internal Displacement, E/CN.4/1998/53/Add.2, 11 February 1998, para. 2.

Convention and that RSD procedures do not marginalize or exclude gender-related experiences of persecution.

In its 2002 Guidelines on Gender-Related Persecution, UNHCR noted: “Though gender is not specifically referenced in the refugee definition, it is widely accepted that it can influence, or dictate, the type of persecution or harm suffered and the reasons for this treatment. The refugee definition, properly interpreted, therefore covers gender-related claims. As such, there is no need to add an additional ground to the 1951 Convention definition.”⁹

Several governments including Australia, Canada, the United States and the United Kingdom, have issued guidelines or regulations to guide asylum determinations in this area. European Union Directive 2004/83/EC on minimum standards for the qualification and status of third country nationals or stateless persons as refugees and persons otherwise in need of international protection also recognizes gender-based persecution as a basis upon which asylum may be granted. Universities and nongovernmental organizations have supplemented these guidelines. In South Africa, for example, The University of Cape Town Legal Aid Clinic, as a member of the National Consortium on Refugee Affairs, developed gender guidelines on asylum proceedings for the South African government.

Some forms of persecution are in themselves gender-specific: “gender-specific harm may include but is not limited to sexual violence and abuse, female genital mutilation, marriage-related harm, violence within the family, forced sterilisation and forced abortion.”¹⁰ The guidelines generally make a distinction as to the perpetrator of the persecution in determining whether the applicant is justified in being unable or unwilling to accept the protection of her home country. In many gender-persecution cases, the harm is carried out by non-State actors—family members, armed elements who are not sanctioned by the government, even community members seeking to hold up social norms. When non-State actors are recognized, as they are in many countries, the asylum applicant must demonstrate a failure of the State to provide protection from the non-State actor.

The most difficult issue to overcome in gender-based cases is the nexus between the harm suffered and one of the grounds for protection. These cases often try to tie the persecution to the applicant’s membership in a particular social group. UNHCR guidelines define social group as: “a group of persons who share a common characteristic other than their risk of being persecuted, or who are perceived as a group by society. The characteristic will often be one

⁹ UNHCR, Guidelines on International Protection: ‘Gender-Based Persecution’ and ‘Membership of a Particular Social Group’ within the Context of Article 1A (2) of the 1951 Convention and/or Its 1967 Protocol Relating to the Status of Refugees, Geneva: UNHCR, 2002.

¹⁰ United Kingdom: Asylum and Immigration Tribunal / Immigration Appellate Authority. 2000. *Immigration Appellate Authority (UK): Asylum Gender Guidelines*, 1 November 2000, available at: <http://www.unhcr.org/refworld/docid/3ae6b3414.html> (28 July 2010)

which is innate, unchangeable, or which is otherwise fundamental to identity, conscience or the exercise of one's human rights."¹¹

The forms of persecution that refugees experience are often gendered. For example, a woman may face serious harm because she is unwilling to practice religion as the authorities of her country require. These cases generally involve a refusal by the woman to follow the behaviours that religious leaders say are required of all adherents—for example, wearing the veil or other garments deemed proper for women. In theocracies, opposition to these behaviours may also be, or be seen as, expressions of political opinion. In addition to opposition to social norms upheld by the State, women may be persecuted for their opposition to laws and practices that discriminate against them or make it difficult for them to support themselves and their children.

Women often face special problems in making their case to the authorities, particularly when they have had experiences that are difficult and painful to describe. The female victim of sexual torture may be reluctant to speak about it, particularly to a male interviewer. Rape, even in the context of torture, is seen in some cultures as a failure on the part of the woman to preserve her virginity or marital dignity. She may be shunned by her family and isolated from other members of the community. Discussing her experience becomes a further source of alienation.

The 2008 Handbook outlines steps that should be taken to overcome some of these barriers to recognition as refugees. The guidance is aimed at national authorities as well as UNHCR staff who do refugee status determinations in countries in which governments have deferred to UNHCR's expertise. The Handbook advises that those making status determinations should ensure that:

- all examiners are familiar with the ways in which gender and age can be relevant to determining whether a particular form of harm or treatment constitutes persecution;
- extensive background information on the situation of women and children in the country of origin is available;
- all adult family members and dependants accompanying a 'principal applicant' have an individual and confidential registration interview to determine if they may have an independent refugee claim;
- women and girls have access to counsellors able to explain how the asylum procedure works, including the possibility that gender-related forms of persecution can constitute grounds for refugee status; and
- specially trained female interviewers and interpreters are available to asylum-seekers, especially where it becomes evident that sexual and gender-based violence may be an issue.

¹¹ UNHCR, Guidelines, 2004, supra note 9.

The guidelines also recognize the need for special procedures for children who are unaccompanied or separated from their parents, particularly in ensuring the child's representation by an adult familiar with the child's background and who can protect her or his best interests.¹²

III. Physical Security

Protection goes well beyond legal recognition. The protection of refugee and displaced women in conflict situations is particularly problematic as civilians are increasingly the targets of attacks in civil conflicts. Articles 7 and 8 of the Rome Statute of the International Criminal Court include rape and sexual violence among the crimes against humanity and war crimes. Rape and sexual assault also occur during flight at the hands of border guards, government and rebel military units, bandits and others. This is why women's safety may be no more ensured once in refugee and displaced persons camps or reception centres. For example, refugee and displaced women have faced serious threat of rape when they pick firewood, often the only source of heating and cooking fuel. Refugee women have been forced to provide sexual favours in exchange for obtaining food rations for themselves and their families. When refugee and displaced women do not have documentation of their status, they are particularly vulnerable to abuse. In some cases, only male heads of households receive documentation of their status, leaving their spouses vulnerable to harassment each time they leave their homes.

III.1 Sexual violence and exploitation

Revelations about sexual exploitation of refugee children in West Africa brought the issue to international attention in 2002. A study carried out by the UNHCR and Save the Children/UK interviewed refugee girls and adolescents in Liberia, Guinea and Sierra Leone. Noting that the study was not intended to be as rigorous as would be required for a criminal investigation, the report cited numerous examples of sexual exploitation by staff working for international humanitarian organizations.¹³

Many factors contribute to the vulnerability of refugee and displaced women and girls to sexual violence and exploitation. Exploitation certainly occurs in the absence of alternatives for refugees and displaced persons. When a group is completely dependent on others for economic survival, members of the group are inherently vulnerable to such exploitation. In many camps, the physical facilities increase the likelihood of protection problems. Camps are often overcrowded. Unrelated families may be required to share a communal living space. A UN team investigating allegations of sexual abuse in West Africa

¹² UNHCR, Handbook, 2008, supra note 2.

¹³ UNHCR and Save the Children UK. 'Note for Implementing and Operational Partners by UNHCR and Save the Children-UK on Sexual Violence & Exploitation,' available at <http://www.unhcr.org/cgi-bin/texis/vtx/news/opendoc.pdf?id=3c7cf89a4&tbl=PARTNERS> (14 April 2011)

found: "Bathing facilities in a number of the camps consist of one building with one side for men and another side for women. The isolation and lack of separate and distinctly placed facilities, which would increase the cost, has caused the facilities to occasionally be the site of sexual violence."¹⁴

The Interagency Standing Committee has issued guidelines to prevent and respond to gender-based violence, developed training programmes for staff, raised awareness, and taken other steps to prevent sexual exploitation and abuse. UNHCR has repeatedly issued guidelines on prevention of sexual and gender-based violence as well as other forms of abuse against women and girls.¹⁵ However, the fundamental problem of dependency on humanitarian aid remains for many refugee and displaced women and children.

III.2 Camp Security

Security is generally inadequate as well. International humanitarian aid staff is often absent from camps, leaving operations to local national and refugee staff. Night patrols to ensure greater protection may be absent or infrequent. The responsibility for security generally rests with governments. Yet government authorities, particularly in poorer countries, usually do not have sufficient resources to fulfil the responsibility. In many cases of internal displacement in particular government authorities are hostile to the forced migrants. The refugees and displaced themselves may take on the responsibility for patrolling the camps, but their capacities are limited as well. In developed countries, the refugee reception facilities are often overcrowded and their staff not sensitized or equipped to combat SGBV. Asylum-seekers and refugees are also known to fall prey to traffickers and smugglers who promise them better protection, living conditions and economic opportunities.

Spouse and child abuse and abandonment are other problems encountered by women and children in refugee and displaced persons situations. Heightened levels of domestic violence are frequent where refugees have lived for extended periods in the artificial environment of a refugee camp or reception facility, or while waiting for the decision on their asylum application. Psychological strains for husbands and adolescent boys unable to assume normal cultural, social and economic roles can result in aggressive behaviour towards wives, children and sisters.¹⁶

¹⁴ United Nations General Assembly, 'Investigation into Sexual Exploitation of Refugees by Aid Workers in West Africa: Report of the Secretary-General on the Activities of the Office of Internal Oversight Services,' A57/465 Fifty-seventh Session, Agenda item 122, October 11, 2002.

¹⁵ Inter-Agency Standing Committee (IASC), *Guidelines for Gender-Based Violence Interventions in Humanitarian Settings: Focusing on Prevention of and Response to Sexual Violence in Emergencies*. New York: United Nations, 2005.

¹⁶ S. Turner, 'Angry Young Men in Camps: International Assistance and Changing Hierarchies Of Authority Amongst Burundian Refugees in Tanzania.' UNHCR Working Paper No. 9. Geneva: UNHCR, 1999.

Refugee and displaced persons camps in a number of locations house the civilian families of members of armed forces. The camps frequently serve as rest and recuperation sites. The men often bring weapons with them into the camps and proliferation of weapons can compound the protection problems facing refugees. The camps in what was then known as Zaire dominated by the Hutu militias that had committed genocide and continued their armed conflict made this problem highly visible in the mid-1990s. There have been, however, some successful efforts to separate combatants from civilians. In Zambia, for example, former combatants reside in a separate camp so they do not mix with the refugee population.

Forced recruitment of women and children into the armed forces of resistance groups is a further problem in some countries. Women and girls are often forced into sexual slavery by armed forces. In some cases, military forces recruit women and girls as soldiers, while in others, women and children are required to carry ammunition and supplies. Women and children are also used to clear mines. Abduction of children remains a major problem with girls often experiencing sexual abuse, as explained in the UN Secretary General's Report on Children in Armed Conflict:

Abducted children are subjected to brutal treatment and other egregious personal violations. In northern Uganda, LRA has abducted thousands of children and forced them to become child soldiers and to commit atrocities. The case of the girls abducted in 1996 from Aboke secondary school has particularly brought the situation of abductions in northern Uganda to the attention of the international community. While many of the children returned home within days, others remain unaccounted for, and some of the girls released have reported sexual abuse.¹⁷

III.3 Political Instability

A final significant impediment to physical security of refugee and displaced women and children is the general insecurity that places humanitarian operations at risk. In modern conflict, civilians have become the targets of armed attack, not just the innocent victims of war. Also targeted are the humanitarian actors that seek to assist and protect civilians. Insecurity is by far one of the biggest impediments to protecting the rights of refugee and displaced women and children, particularly when the displaced are still within their own countries or they remain under the control of military forces in a country of refuge. Insecure conditions impede access to displaced populations for delivery of aid, create protection problems for aid workers as well as their clients, and make it impossible to monitor and evaluate the effectiveness of aid operations.

¹⁷ UN Secretary General, Report on Children and Armed Conflict, A/58/546-S/2003/1053, 1996, p. 6.

Such problems do not necessarily stop when the women return home. The conflict may be ongoing and, even if a peace agreement has been signed, political instability, the continued presence of landmines and the destruction of the economy and infrastructure make conditions dangerous for returning women and their families. The UNHCR emphasizes voluntary return must be in safety and dignity. The UNHCR Handbook on Voluntary Repatriation (1996: section 2.4) notes that

among the elements of 'safety and dignity' to be considered are: the refugees' physical safety at all stages during and after their return including en route, at reception points and at the destination; the need for family unity; attention to the needs of vulnerable groups; the waiver or, if not possible, reduction to a minimum of border crossing formalities; permission for refugees to bring their movable possessions when returning; respect for school and planting seasons in the timing of such movements; and freedom of movement.¹⁸

Recognizing that the protection of refugee women and children may require special arrangements, the Handbook includes a special box reminding repatriation planners: "Make appropriate arrangements for the physical safety of unaccompanied women and women heads of household in departure, transit or reception centres (such as separate areas close to the relevant infrastructure with adequate security arrangements, lighting)."¹⁹

IV. Social and Economic Rights

Many refugee and internally displaced women are dependent on international assistance for all of their material needs including food, shelter, water and health care. For new arrivals this situation is easily understood. Refugees and displaced persons fleeing their homes usually cannot bring material resources with them. The clothing on their backs and perhaps a small bundle of belongings are often all that they have been able to take. They may arrive in poor health, malnourished and/or disabled, having experienced famine in their countries of origin and long treks through hazardous terrain.

That large numbers of refugees and displaced persons continue to be dependent on international assistance long after their original flight is more disturbing and presents protection problems. In many host countries, refugees remain in care-and-maintenance camps for years, unable to return to home communities because of continued conflict and instability but denied opportunities to work or access to training or income-producing activities. UNHCR estimates that some 5.5 million refugees are in protracted situations, displaced for more than five years.²⁰ Often, refugees must rely on food rations,

¹⁸ UNHCR, Handbook on Voluntary Repatriation, Geneva: UNHCR, 1996, sec 2.4.

¹⁹ Ibid.

²⁰ UNHCR, 2009 Global Trends, 2010, supra note 3.

clothing and shelter as provided by international donors throughout their time as refugees. Of a bare subsistence nature even at the best of times, during periods of financial strain, the assistance package is often inadequate to meet even the basic nutritional needs of the population. Further, there is too little coordination among the various sections of assistance—health, education, and skills training—to better facilitate independence.

Access to material assistance, employment and health care services has been restricted in a number of developed countries as a way of discouraging new arrivals of refugees. Economic dependency, isolation and lack of integration support may put displaced populations, especially single women, women with children and unaccompanied minors at a further risk of SGBV, including sexual exploitation and forced prostitution.

Refugee and displaced women are especially affected by the lack of appropriate and adequate international assistance. Unable to obtain employment and often denied participation in training or income generation programmes, they are unable to provide for their families without international assistance. With it they may still be vulnerable to sexual abuse and exploitation. Finally, they are not adequately consulted about the programmes in place nor are they permitted to participate actively in the implementation of projects ostensibly designed to assist them.²¹

IV. 1 Food security

A principal contributor to heightened mortality in humanitarian emergencies is malnutrition. Malnourished people are more susceptible to disease and are more difficult to cure of illnesses. Malnourished women who are pregnant or lactating are unable to provide sufficient nutrients to their children to enable them to survive. In addition to food problems, poor sanitation and contaminated water supplies contribute to high death rates in many refugee situations.

Equal access to food and non-food items is a key issue for refugee and displaced women and children. International organizations and host countries, often in consultation with the refugee leaders of the camps, generally make decisions about food distribution. Refugee leadership structures, particularly at the height of emergencies, often exclude women. Yet, male leaders may have little understanding of the needs and circumstances of those who cook the food or feed their families—the women. As a result, the food distribution procedures and contents may be inappropriate. Aid agencies may provide food that is inconsistent with the dietary traditions of the refugees and displaced persons. Alternatively, the food requires preparation that cannot be readily accomplished in the camp setting. These problems are further compounded by

²¹ Women's Commission for Refugee Women and Children, *UNHCR Policy on Refugee Women and Guidelines on Their Protection: An Assessment of Ten Years of Implementation*, New York: Women's Commission for Refugee Women and Children, 2002, p. 3.

cultural practices within some refugee and displaced populations that require that men be fed first. Where supplies are limited, women and children may not receive adequate food.

During the past decade, there has been increased recognition that women must be involved early in the process in the design of food distribution systems as well as in the actual delivery of the food. As discussed above, one of UNHCR's five major commitments to refugee women includes that "UNHCR will ensure that refugee women participate directly and indirectly in the management and distribution of food and non-food items"²². World Food Programme policies say that women should control the family food aid entitlement in 80 percent of WFP food distributions. The WFP guidelines also state that women should take a lead role in local decision-making committees on food aid management as well as the management of assets created through food-for-work programmes.

Clean water is another essential need. Women in refugee and displaced persons camps, like many other women in developing countries, spend a great deal of time in water collection. Containers that are too heavy or pumps that are inconveniently located can intensify this effort. When clean water is not available, children, in particular, run the risk of life-threatening diarrhoea diseases.

Collection of fuel for cooking and heating is also a task for which women are generally responsible. In a refugee or displaced persons context, however, efforts to find firewood can be not only time-consuming (if located at some distance from the camps) but dangerous (if located in mine-infested areas or the site of conflict). A 2006 report summarized the problem among displaced women in Uganda:

In northern Uganda, trees and grass are more plentiful than in Darfur, especially after the rainy season. Yet the same trees and grass that provide the means to cook also provide cover for the Lord's Resistance Army (LRA) rebels, who abduct women, and especially girls, to serve as sex slaves, cooks, porters and soldiers. The so-called 'protectors' of displaced women and girls in northern Uganda – the Ugandan army – also await women and girls collecting firewood (or water, or vegetables), and sexually exploit them by threatening to falsely expose them as LRA collaborators.²³

The report found similar problems in Darfur and Tanzania. It also assessed the alternatives to firewood collection—including distribution of firewood or other means of cooking (e.g., charcoal or kerosene), fuel-efficient stoves, use of solar energy—as well as mechanisms to protect women while they collect firewood

²² UNHCR, Handbook, 2008, supra note 2, p. 316.

²³ Women's Commission for Refugee Women and Children, *Beyond Firewood: Fuel Alternatives and Protection Strategies for Displaced Women and Girls*, New York: Women's Commission for Refugee Women and Children, 2006, p. 6.

and to provide sources of income so they can purchase fuel. Each of these alternatives has a financial cost that the international community has been unwilling to bear in most locations, leaving women and girls to pay the cost in risk to their own lives and well-being.

IV. 2 Health

A further persistent problem is the distribution of sanitary materials. Since 1996, UNHCR has required all field programmes to include sanitary materials in regular budgets. However, a survey of 52 UNHCR offices found low compliance. The unavailability of these materials is not just an inconvenience to refugee women and adolescents. Rather, it is a major impediment to their full participation in the life of the camp society: "In both Ethiopia and Zambia girls stayed away from school and sometimes remaining in their houses because they had nothing decent to wear during monthly menstruation"²⁴. As a result of persistent complaints, UNHCR established provision of sanitary materials as one of its five principal commitments to refugee and displaced women, vowing to "provide sanitary materials to all women and girls of concern as standard practice in assistance programmes"²⁵ (UNHCR 2006b).

The health problems refugee and displaced women and children face are similar to those of other women and children in developing countries, but many of them are compounded by the refugee experience. Nutritional problems have been discussed. Refugee women can suffer from physical disabilities resulting from their refugee experience. They may be the victims of mine explosions, for example. Loss of limbs is not uncommon both in flight and during stays in camps.

Once the emergency phase is over, a leading cause of death among refugee and displaced women of childbearing age are complications from pregnancies. Lack of training of midwives and traditional birth attendants (TBA), septic abortions, unsanitary conditions during birth, septic instruments, poor lighting during deliveries, and frequency of pregnancies all lead to difficulties. Health complications also arise from female genital cutting, a practice that carries over into refugee and displaced persons camps. Problems include: infections due to instruments that are not sterile, damage to adjacent organs, obstructed menstrual flow, painful intercourse, severe blood loss and obstetric complications.

Prior to recent years, health services for refugees and displaced persons too often overlooked the type of female-specific needs described above. However, an assessment of UNHCR's Guidelines on the Protection of Refugee Women concluded, "that UNHCR and its partners have made important strides in providing reproductive health services. In contrast to a decade ago, when such

²⁴ Women's Commission for Refugee Women and Children, *UNHCR Policy on Refugee Women* 2002 *supra* note 22, p. 28.

²⁵ UNHCR, Handbook 2008 *supra* note 2, p. 30.

services were rare, they are presently an integral part of health care delivery programs in some places.”²⁶

This turnaround occurred largely because representatives of UN agencies, nongovernmental organizations (NGOs) and governments formed the Inter-agency Working Group on Refugee Reproductive Health (IAWG). The IAWG produced a field manual that outlined a Minimum Initial Service Package (MISP) “designed to prevent and manage the consequences of sexual violence, reduce HIV transmission, prevent excess neonatal and maternal morbidity and mortality and plan for the provision of comprehensive reproductive health services.”²⁷ Several NGOs also came together as the Reproductive Health for Refugees Consortium to offer actual services for refugee and displaced women and girls.

Safe motherhood is an essential component of the MISP. In the acute stage of a humanitarian emergency, neonatal and maternal morbidity and mortality can be reduced by providing clean delivery kits to promote clean home deliveries, providing midwife delivery kits to facilitate clean and safe deliveries in health facilities, and initiating the establishment of a referral system to manage obstetric emergencies. Once conditions have become more stable, comprehensive services for antenatal, delivery, and postpartum care should be established. Also needing attention are post-abortion complications for those suffering the complications of spontaneous and unsafe abortion. To the extent possible, the needs of both the refugee and displaced and the local population should be addressed. This is particularly important because most refugees and internally displaced persons are in countries with high maternal and infant mortality rates.

Family planning services are a second priority in reproductive health services. From the beginning of an emergency, relief organizations should be able to respond to the need for contraception, particularly the distribution of condoms. Providing a full range of family planning services may require more stable conditions. A range of contraceptives should be provided, as well as assessment of needs, counselling and information about methods, and follow-up care to ensure continuity of services. Providers must have the technical skills to offer the methods safely, and they must have an adequate logistics system to ensure continuity of supplies.

Programmes to address sexual and gender-based violence (SGBV) have grown along with other reproductive health services during the past decade. SGBV programmes generally advocate a multi-sector approach that takes into account prevention of abuses, the physical and psychological ramifications of violence, the potential need of the victim for a safe haven, the longer-term

²⁶ Women’s Commission for Refugee Women and Children, *UNHCR Policy on Refugee Women*, 2002 supra note 22, p. 30.

²⁷ Inter-Agency Working Group on Reproductive Health in Refugee Situations, *Reproductive Health in Refugee Situations: An Inter-Agency Field Manual*. Geneva: UNHCR, 1999, p. 12.

economic needs of vulnerable populations, the legal rights of victims, training of police and security personnel, and other similar issues.

Other health programmes that developed and grew in the 1990s involve the psychosocial needs of refugees and displaced persons. Women caught in conflict experience particular stresses that can affect their mental health as well as their ability to cope. More serious mental health problems are not uncommon, arising from torture and sexual abuse prior to or after flight. As we have seen in the section on protection issues, rape and abduction are to be found in many refugee situations. Depression and post-traumatic stress disorder often follow such experiences. Programmes for refugee women and girls tend to range from specialized mental health services to play, sports, and other recreational groups for traumatized children, to income generation activities for traumatized women. The aims are to prevent trauma and stressors that negatively affect mental health to the degree possible, and to strengthen the capacity of refugees to cope with the traumas and stressors when prevention fails.

IV.3 Education

The Executive Committee of the UNHCR has reaffirmed the fundamental right of refugee children to education and, in its 38th Session, called upon all States, individually and collectively, to intensify their efforts to ensure that refugee children benefit from primary education. Yet, the right to education continues to be abridged, particularly for girls. A 2002 UNHCR report on education concluded: "One-third of refugee children (excluding infants) and adolescents in populations categorized as 'UNHCR assisted' are in UNHCR-supported schooling, and that perhaps 40 per cent are in school altogether."²⁸ With a majority of refugees now living in urban areas, access to education is often impeded by the lack of host community capacity. Even when host countries permit refugee children to attend local schools, these may be seriously overcrowded and inhospitable to newcomers. UNHCR recognizes that ensuring quality education in a safe environment is a challenge in many of its operating environments.²⁹

Despite attention to education for girls in the Millennium Development Goals and other international initiatives to reduce poverty, a UNHCR evaluation found: "On a global basis, female refugee participation in education remains low, following patterns in countries of origin (ranging from 10 percent to 40 percent of students at the primary level, less in secondary and vocational studies, and only 25 percent of all students at the tertiary level)."³⁰ Poverty, which disproportionately affects women, further impedes enrolment in

²⁸ UN High Commissioner for Refugees, *Learning for a Future: Refugee Education in Developing Countries*. Geneva: UNHCR, 2002, p. 6.

²⁹ UNHCR, Handbook 2008 *supra* note 2, p. 295-306.

³⁰ G. Dunkley, G., Review of UNHCR's Refugee Education Activities, Geneva: UNHCR, 1997, para. 18.

schools. Families may fear that adolescent girls will be subject to greater sexual harassment if they leave compounds to go to school. Lack of appropriate clothing and sanitary materials may also impede educational attainment. Some programmes have tried to address these concerns directly. For example, to address reports of sexual exploitation of girls in schools, “the International Rescue Committee implemented programmes to train women classroom assistants for upper-primary classes. Working alongside male teachers, they serve as role models, monitor risks of exploitation of students by teachers and document cases of abuse.”³¹

Refugee and displaced women face many of the same impediments to education and skills training, as do girls—inadequate resources, teachers and classes. In addition, women face other barriers. Traditional views of the role of women sometimes prevent them from accepting work or undertaking training that takes them out of the household. There may also be restrictions on the type of work that is considered to be appropriate for women. Practical problems also constrain enrolment, including need for day care and lack of time and energy after household work and/or jobs as a wage earner. Also, many skills training programmes assume some level of prior education, most notably in terms of literacy. Refugee and displaced women may not qualify for such programmes, having been discriminated against in their country of origin in obtaining elementary education.

IV. 4 Training and Job Opportunities

Other constraints relate to the design and contents of training programmes. In some cases, they have been too far removed from the everyday life activities of the refugee women and have therefore appeared to be irrelevant to their needs. Some vocational training programmes have focused on skills that are not marketable in the refugee context or follow traditional patterns that are not sustainable for income-production. To respond to these criticisms, UNHCR recommends a thorough assessment be undertaken prior to developing skills training and livelihood programmes, to include assessment of markets. In this way existing skills within the displaced community can be matched to labour needs, including in emerging markets where gender roles are not yet defined; furthermore, the use of participatory assessments can serve to identify the various resources available to women and men of different age groups and backgrounds.

Also, there should be consultation with the community, including women and girls, to ensure the design of livelihood programmes reflects their concerns and to ensure that programmes do not automatically reinforce traditional gender roles and economic mapping exercises to determine what businesses women are engaged in, what skills they have, what obstacles they must overcome and what market opportunities exist for business start-ups and growth.

³¹ UNHCR, Handbook 2008 *supra* note 2, p. 303.

Programmes should be comprehensive, including pre-counselling, apprenticeship, job placement, and technical assistance.³²

Theoretically there are a number of ways that refugees can supplement their household income.³³ They include employment in the local economy or with assistance agencies; agricultural activities; bartering; establishment of trades or small businesses; and participation in skills training programmes and formal income generation projects. Women in developing countries typically find employment in the informal sector of the economy and refugee women in developing countries do the same. In general, refugee women who work in the local economy are within the service sector. For example, it is not uncommon to find a refugee woman supporting her family through her earnings as a domestic. These jobs are often a cornerstone in the household survival strategy for an extended family.

Refugee women are often involved in the tending of the garden plots surrounding the house, where refugees can raise vegetables to either supplement their diet or, if they choose, sell to earn some extra money. Assistance agencies are an important source of employment for refugees in developing countries. Typically these positions go to younger men who have the language skills to communicate with and relate to the expatriate staff in charge. These positions often offer a higher level of financial compensation than is usually available to refugees in the local market, relatively interesting non-manual labour work (though the employees often feel they are overqualified for the position), more security, higher status, and other benefits such as an increased chance for resettlement to a third country.

The primary area of employment with assistance agencies for refugee women is in the health sector. In a number of cultures, it is more appropriate for women to seek medical advice from and be examined by other women. The employed women work in supplementary feeding programmes, as traditional birth attendants, in mother/child health programmes, as home visitors, particularly in public health education and outreach, as translators, etc. Following health programmes, the second largest sector for employment is 'women's projects,' including income generation activities.

Conclusion

In theory, the international community has come down firmly on the side of gender equality in laying out guidelines on the protection of refugee women. As early as 1991, the UN Economic and Social Council, following the guidance of the UNHCR Executive Committee, stressed that all action taken on behalf of refugee and displaced women and children must be guided by the relevant international instruments relating to the status of refugees, as well as other

³² UNHCR, Handbook 2008 *supra* note 2, p. 311.

³³ For a full discussion of refugee livelihoods, see Women's Refugee Commission, *Building Livelihoods: A Field Manual for Practitioners in Humanitarian Settings*, New York: WRC, 2009.

human rights instruments, in particular, the *Convention Relating to the Status of Refugees*, adopted on 28 July 1951, and its 1967 Protocol, the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW), and the *Convention on the Rights of the Child*.³⁴

In referencing CEDAW, the Executive Committee, composed of governments (not all of whom signed CEDAW) recognized that UNHCR would be bound by universal human rights principles in its treatment of refugee women, just as it is bound to universal principles contained in the now 60 year old Refugee Convention. UNHCR's subsequent *Guidelines on the Protection of Refugee Women* and more recent *Handbook for Protection of Women and Girls* reiterated that CEDAW and the other human rights instruments provide a "framework of international human rights standards for carrying out protection and assistance activities related to refugee women."³⁵

In practice, achieving protection of refugee women, particularly where gender inequality is a barrier, has been much more difficult. The gap between rhetoric and reality for women and girls is still very large. They remain the civilian casualties of conflict and, with their dependent children, form a majority of the displaced. They remain the victims of sexual violence and exploitation. They remain without equal access to education and livelihoods. Women and girls remain the principal target of traffickers. And cultural traditions remain a potent barrier to improving their lives.

Advocacy in support of the following interventions would help women who have been forced to flee their homes overcome the formidable barriers that still exist. First, there should be renewed efforts to implement fully the various legal instruments and guidelines that set out norms and standards of protection for refugees generally and women and girls specifically. These include, *inter alia*, the 1951 UN *Convention Relating to the Status of Refugees* and its 1967 Protocol; the UNHCR *Guidelines on the Protection of Refugee Women*; the UNHCR *Sexual and Gender-Based Violence against Refugees, Returnees and Internally Displaced Persons: Guidelines for Prevention and Response*; the *Guiding Principles on Internal Displacement*; the UNHCR *Handbook for Protection of Women and Girls*, and other policies offer guidance on ways to empower refugee and displaced women and protect their rights and physical safety and security.

Yet, further policies and programmes should be adopted to enable refugee and displaced women to participate actively in decisions that affect them and their families. Improvements are also needed in the socio-economic status of refugee and displaced women to enable them to support themselves and their families in dignity and safety. This means improving access to employment,

³⁴ UN Economic and Social Council, Resolution on Refugee and Displaced Women and Children (E/RES/1991/23), New York: United Nations, 1991. Available online at: <http://www.unhcr.org/excom/EXCOM/3ae69eee14.html> (28 July 2010).

³⁵ UNHCR, *Guidelines on the Protection of Refugee Women*, Geneva: UNHCR, 1991, para 6.

credit, education and skills training as well as access to adequate and safe housing. Not only are women refugees entitled to the exercise of these rights, but access to them would have strong, positive protection ramifications. In particular, steps should be taken to help refugee and displaced women protect themselves from sexual exploitation, trafficking, involuntary prostitution and other exploitable situations. This means lessening dependence on international humanitarian assistance while increasing the potential for self-support.

Policies should ensure access for women who have been forced to migrate to primary and reproductive health care services, including programmes to address sexual and gender-based violence, trauma resulting from flight and conflict, and sexually transmitted diseases and HIV/AIDS. Education programmes should be implemented that inform migrant women of their rights and responsibilities under international and national laws. These programmes should use an array of media techniques to reach the women in a culturally and linguistically appropriate manner.

In order to ensure that these reforms are made, improvements are needed in the collection of data on refugees and internally displaced persons, with particular attention to collecting sex and age disaggregated statistics. A specific focus on urban refugees and displaced persons as well as collection of data on those who spontaneously settle, including those with irregular status, would help ensure that all refugee and displaced persons find adequate legal and physical, social and economic protection.