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*Overview of International Standards and Policy on Gender Violence and Refugees: Progress, Gaps
and Continuing Challenges for NGO Advocacy and Campaigning*

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1. INTRODUCTION

In providing a global overview of developments or progress in the area of refugee protection against gender violence I thought I would highlight some of the advances made over the last decade at the advocacy or international level. With many of you coming from the frontline in the protection or monitoring of refugee rights, I thought that I would take this opportunity to encourage you to make the connections between international policy and your realities on the ground in working with and for refugees. Amnesty International (AI) believes it is fundamental to refugee protection to keep the standards and policies being developed at the international level in mind when working at regional, national and local levels, and, equally importantly, for AI and other international non-governmental organisations (NGOs) to keep the realities of the field at the centre of discussions on refugee protection generally and in relation to gender violence in particular. This two-way dialogue – from the field to Geneva and from Geneva to the field – is vital if real change is to be effected.

My presentation has two main aims. The first is to identify from the overview of developments some key observations of progress, including any changes in the way we conceive of the issue of gendered or gender-based violence. The second aim is to take note of continuing gaps in the protection regime and to question what role and responsibility NGOs have in highlighting or even filling those gaps. I hope that this will then lead to a fruitful discussion on what remains to be done and how we may coordinate our advocacy and campaigning actions to achieve further progress together. It should be pointed out that the focus of my presentation is on gendered violence against refugee women¹ and girls only.

As many of you may be aware, AI launched a global campaign to Stop Violence Against Women (SVAW) in March 2004, which aims to tackle the multiple causes of violence against women from armed conflict to family violence and harmful traditional practices that seek to control women's sexuality.² Within this context, AI has researched, written and campaigned on a number of issues that affect violence against women, including within the context of refugee and other displacement situations and trafficking,³ as well as having included the issue of violence against non-national women within submissions to various UN bodies.⁴ The campaign is planned to continue for a further four years and so there will be more opportunities to reflect and act upon the issue of violence against displaced women.

2. WHAT IS GENDER OR GENDER-BASED VIOLENCE?

Many terms are used to describe or label essentially the same thing: gender violence, gendered violence, gender-related persecution, or sexual and gender-based violence. According to UNHCR's guidelines on *Sexual and Gender-Based Violence against Refugees, Returnees and Internally Displaced Persons*, sexual and gender-based violence (or SGBV) refers to 'violations of fundamental human rights that perpetuate sex-stereotyped roles that deny human dignity and the self-determination of the individual and hamper human development.'⁵ The terms 'refer to physical, sexual and psychological harm that reinforces female subordination and perpetuates male power and control.'⁶ According to these guidelines, 'the term "gender-based violence" is used to distinguish common violence from violence

that targets individuals or groups or individuals on the basis of their gender [or sex]'.⁷ Gender violence may affect both men and women, but it disproportionately affects women and girls. The term has thus been predominantly used to apply to women and girls.

I wish to make just two brief observations on how we use terminology. First, there is concern that the primary focus on 'gender violence' as opposed to violence generally narrows what is included within the discourse on gender violence and refugees and, therefore, within our work more generally on refugee protection. To put this another way, generalised violence is not always seen and understood as falling within the scope of the protection needs of refugee women as focus is primarily given to gender-specific or gender-based violence. This can lead to either overlooking or downplaying the impact of non-gender-specific harm on women and girls that is also serious and needs action to prevent and respond to it. Such violence may include attacks on civilians, excessive use of force, genocide, disappearances, physical violence, harassment, arbitrary detention, torture, or forced recruitment into armed groups. It can also lead to artificial classifications of particular types of harm as gendered violence, resulting in programs and resources to combat it, while other harm is left aside.

And, second, I also worry about the stereotypes that can emerge by differentiating between these two so-called types or categories of violence. That is, continual repetition of women as victims of SGBV can lead to a situation where women are only seen or identified as *victims* and if they are victims, then they are victims of particular forms of harm, such as rape and sexual violence. This in turn can distort the image of women to that of 'apolitical victims of "private" male sexual aggression'.⁸ In this way, women's agency can be ignored or neglected. We must remain aware at all times of the impact of international policies as well as our own actions on the potential to ignore or to diminish the ability of women to exert control over their own lives. This requires acknowledging that women are able to make their own decisions about how to respond to and cope in response to gender violence and allowing them the space to do so, as well as ensuring their input and consultation in respect of introducing measures for violence prevention and response.

3. PROGRESS ON GENDER VIOLENCE AGAINST REFUGEES

Much has been done by UNHCR over the past two decades in relation to acknowledging and subsequently addressing the question of gender violence, women's rights and discrimination. UNHCR established its first policy on refugee women in 1990, which sought recognition for the now accepted fact that becoming a refugee affects men and women differently and that protection responses and strategies must recognise and take account of these differences. The policy further stated that to understand fully the protection needs and assistance resources of the refugee population, and to encourage dignity and self-sufficiency, refugee women themselves must participate in planning and implementing projects.⁹ Prior to UNHCR's first official policy, there had been a number of conclusions of the UNHCR Executive Committee (EXCOM) in the mid to late 1980s that focused on giving particular attention to the international protection of refugee women.¹⁰ These came at the end of the UN Decade for Women from 1975 – 1985, which had addressed as a human rights issue the question of women's rights and violence against women, including violence against refugee women.

In the 1980s, EXCOM issued very generic statements about the protection and assistance needs of refugee women, including:

- violence, physical safety, and exposure to sexual abuse or harassment;
- the need for statistical data to tailor programs accordingly;
- encouraging states to give a specific focus to women asylum-seekers and the 'particular social group' category of the refugee definition for those having transgressed social mores (1985).

In 1988, EXCOM urged the UNHCR to explore and build upon the experience of others in this field – with a specific mention given to NGOs. It also called on UNHCR to develop training modules on women. Some were developed in the 1990s and later, in early 2000, with the *gender training kit on refugee protection and resource handbook*. Importantly, the 1988 conclusion emphasised women as agents *and* beneficiaries in the planning of protection and assistance programs. Such an emphasis has not always been maintained in later conclusions or documents however.

In 1990, the focus was on ensuring:

- the recruitment and availability of appropriately trained female staff, and female interviewers;
- the integration of refugee women's needs into planning activities;
- extending protection and culturally appropriate gender-based counselling and other services to women who are victims of abuse;
- identifying and prosecuting persons who have committed crimes, and protecting victims of such crimes from reprisals;
- issuing identification and/or registration documents to all women;
- effective and equitable access to basic services;
- participation and consent of women in durable solutions;
- resettlement programs to make specific provisions for refugee women at risk; and
- the development of guidelines on refugee women.

In July 1991, *Guidelines on the Protection of Refugee Women*¹¹ were issued, and they are currently being reviewed by UNHCR. NGOs have been widely canvassed for their views on these draft guidelines and we await the final draft.

By the mid-1990s the focus of EXCOM was squarely on sexual violence, which is not surprising given the backdrop of the conflicts in Bosnia and Herzegovina and Rwanda that were ongoing at that time; as well as on gender-related persecution and asylum procedures. In 1993 and 1995, EXCOM encouraged States to develop and implement criteria and guidelines on 'persecution' for the purposes of the refugee definition aimed specifically at women and in 1996, it again reiterated the call for states to develop guidelines on gender-related persecution as a ground for asylum. At this time, we can see a shift in focus to some extent away from the hard face of reality of women in camps or reception/detention centres, predominantly located in the developing world, to women seeking asylum and the barriers to their recognition as refugees, an issue primarily affecting industrialised countries. States' responses to these calls have been mixed. Only a handful of states amended asylum legislation to specifically

identify gender or sex as a specific ground to asylum, while a few more issued guidelines or instructions to decision-makers to recognise gender-related persecution.¹²

By 2001, there was the first mention of trafficking in persons, especially women and children, which followed the Global Consultations Conference Room paper on Refugee Women.¹³ The focus was two-fold: it was on trafficking in women as a threat to refugee women because such activities flourish in armed conflict and other situations of insecurity and chaos, and second, recognition that some trafficked women may qualify for refugee status under the UN 1951 Convention relating to the States of Refugees (Refugee Convention). Since then, we can see a heavier focus on the latter, with the production of new guidelines on gender-related persecution,¹⁴ and follow-up guidelines on trafficking specifically, issued in 2006.¹⁵ These later Trafficking Guidelines identified that UNHCR has a mandate in relation to trafficking in two ways:

1. UNHCR has responsibility to ensure that individuals of concern to the Office do not fall victim to trafficking; and
2. That those who have been trafficked and fear being subjected to persecution upon return to their country of origin are recognised as refugees under the Refugee Convention and granted protection accordingly.

States, UNHCR, other international agencies and NGOs have taken on the issue with some fervour, but the preventative side in terms of refugee protection has been largely missing.

The protection of refugee women was a particular topic in the 2001-2002 Global Consultations on International Protection, marking the 50th anniversary of the Refugee Convention, including an Inter-Agency Lessons Learned Conference on Prevention and Response to Sexual and Gender-Based Violence in Refugee Situations, held in Geneva in March 2001.¹⁶ This conference made six recommendations:

1. Strengthen institutional commitment to a multi-sectoral approach to the prevention and response to SGBV in UNHCR, other UN organisations, governments and NGOs;

2. Revise the 1995 UNHCR *Sexual Violence Against Refugees: Guidelines on Prevention and Response* – especially developing a comprehensive inter-agency field guide – including sector-specific tools;
3. Strengthen and develop SGBV sensitization and training programmes for all actors, all sectors and functional areas;
4. Incorporate monitoring and evaluation in all programme design and planning;
5. Strengthen inter-agency coordination and develop stronger links and partnerships with national organizations and groups engaged in SGBV programs and advocacy work;
6. Engage and actively include the refugee community through all stages of program design, implementation, monitoring and evaluation.

Also in 2001, UNHCR issued *A Practical Guide to Empowerment*, as part of its gender mainstreaming efforts.¹⁷

We can see that much progress has been made at the Geneva level to incorporate the experiences of women within the refugee discourse over the past decade and a half. The question remains whether this has been transferred to action at the field level. In addition, there appears to be a dearth of research and information on the extent to which states have implemented similar policies in respect of reception, integration and standards of treatment for asylum-seeking and refugee women on their territory.¹⁸

In May 2002, the Women's Commission on Refugee Women and Children (WCRWC) carried out an independent assessment of UNHCR policy on refugee women and its implementation. The WCRWC assessment concluded that implementation had been uneven and incomplete, occurring on an *ad hoc* basis in certain sites rather than in a globally consistent and systematic way. The report also indicates that the level of expertise and commitment to gender sensitive programming within UNHCR and with its operational partners – including local and international NGOs – varied widely. UNHCR's lack of capacity to monitor implementing partners was also identified as a key issue, as was the general lack of capacity of host governments to engage in this issue.¹⁹

Since the WCRWC assessment, it emerged that UNHCR and NGO staff were involved in the scandalous sexual exploitation of children in West Africa in February 2002,²⁰ and that a Code of Conduct²¹ was elaborated for UNHCR staff in response. The Code of Conduct has faced both criticism and praise – in being a positive step and long overdue, to being a weak response to such a critical and criminal situation. Other NGO evaluations have reviewed, *inter alia*, the Rwandan Women’s Initiative and the Bosnian Women’s Initiative.²² The recent WCRWC firewood report²³ challenges the rationale behind earlier strategies employed by governments and the UNHCR, such as firewood delivery, to protect women and girls from attacks during firewood collection.

The *Agenda for Protection* that arose out of the Global Consultations process, as a platform for prioritising key refugee issues, contains a section dedicated to refugee women. Its focus is on revision of guidelines, dissemination, monitoring and implementation; as well as gender mainstreaming. In the period since the Global Consultations, the needs of refugee women and protection against gender violence has been noted in EXCOM conclusions, including in 2003 on sexual abuse and exploitation during flight and upon arrival; and for UNHCR to ensure full implementation of respective policies, codes of conduct and guidelines, as well as to implement the evaluations of UNHCR’s work. New *Guidelines for Prevention and Response on SGBV against Refugees, Returnees and IDPs* were issued in May 2003.²⁴ These guidelines build upon the 1995 guidelines in containing a special chapter on refugee children, as well as attaching UNHCR’s Code of Conduct and related documents. In 2004, the first mention of property restitution upon return for women was noted by EXCOM, and the EXCOM is currently negotiating language of a 2006 conclusion on Women-at-Risk. This conclusion aims to focus on risk factors to aid in identifying situations of risk as well as personal characteristics that make particular women susceptible to violence, drawing upon the work of the WCRWC²⁵ and the Centre for Refugee Research at University of New South Wales.

4. CONCLUDING OBSERVATIONS: WHAT HAS BEEN ACHIEVED? WHAT STILL REMAINS TO BE DONE?

There are now available a myriad of guidelines, instructions and conclusions, not to mention the development of similar documents at the NGO level and these are being regularly updated and reviewed. However, there is still too little emphasis on implementation. On the part of NGOs, there is a need to build upon and/or develop more effective advocacy and campaigning strategies to bring about real change. A number of very good training programs have been developed by UNHCR, yet they still largely target female protection officers,, while male protection officers, more senior colleagues or programming/logistics personnel have not been adequately encouraged or required to participate, although this is improving. NGOs have also developed guidelines and carried out training on refugee protection, and integrate the issue of gender-related violence,²⁶ while there appears to be limited information about states in this regard in any global or accessible form. The joint UNHCR-NGO field guide on refugee protection also includes a special section on refugee women.²⁷ Individual staff of the UNHCR are now required to sign a code of conduct, but there seems to be limited investigations and still a level or sense of impunity. Noting improved registration systems, it is also unclear to what extent multi-sector systems in camps have been improved to reduce possibilities for such exploitation. In this regard, it is worth asking ourselves whether we, as NGOs, have developed and implemented similar tools. Moreover, have NGOs followed up on the involvement of their staff in the West African scandal? What have been our approaches? Have we scrutinised ourselves to the same degree as UNHCR? States should similarly face scrutiny by NGOs.

What is also noticeable at the level of standards and policies is that focus is primarily still on refugees in camp situations, with limited focus on urban refugees, or security during return and repatriation programs. There has been very limited acknowledgement of the role of NGOs in delivery of assistance and protection in EXCOM conclusions or guidelines, which is especially important in light of increasing outsourcing of protection activities – whether this be in relation to refugee status determination procedures or the delivery of SGBV programs or other programs (e.g. reconstruction). There has also been limited attention given to internally displaced persons (IDPs), although they are slowly becoming integrated as UNHCR takes on a more proactive role in this regard.

Moreover, refugee men and boys have largely been absent from the gender violence discourse. The general trend has been to see men as having an important role to play in empowering women or in power-sharing with women, corresponding to the view that without their involvement, women's rights will remain marginalised and very little will change. However, there has been almost no recognition of men as victims or targets of gender violence, especially boys and young men, who are at risk of forced recruitment, trafficking for forced labour, prostitution or organ sales, or sexual exploitation.

The challenge we have been facing for some time and continue to face is to move beyond the creation of more guidelines and temporary responses to the entrenchment of real changes, including when refugees cease to be refugees, that is, when they return to their homes of origin, or become citizens in a new country. The burning question is how positive measures adopted in refugee camps, urban settings and other displacement situations can translate into long-term social and cultural changes that lead to eradicating violence against women generally, whether they are refugees, IDPs, or women in the host community.

¹ Reference to women in this presentation includes girls.

² AI, *Amnesty International launches global campaign to stop violence against women – A cancer and human rights atrocity*, AI Index: ACT 77/021/2004, 5 Mar. 2004; AI, *It's in our hands – Stop Violence against Women*, AI Index: ACT 77/001/2004.

³ See, e.g., AI, *Uganda: Violence against women in northern Uganda*, AI Index: AFR 59/001/2005, 17 July 2005; AI, *France: Violence against women: A matter for the State*, AI Index: EUR 21/001/2006, 6 Feb. 2006 (with a section on migrant women and domestic violence); AI, *Ending violence against women – the role of the International Criminal Court: Justice now for the girls and women of Darfur*, AI Index: AFR 54/005/2006, 4 Apr. 2006; AI, *Italy: Temporary Stay – Permanent Rights: The treatment of foreign nationals in detained in 'temporary stay and assistance centres'*, AI Index: EUR 30/004/2005, 20 June 2005; AI, *Gulf Cooperation Council (GCC) countries: Women deserve dignity and respect*, AI Index: MDE 04/004/2005, 11 May 2005 (Ch. 5 on Migrant Domestic Workers); AI, *Kosovo (Serbia and Montenegro): 'Does that mean I have rights?': Protecting the human rights of women and girls trafficked for forced prostitution in Kosovo*, AI Index: EUR 70/010/2004, 6 May 2004.

⁴ AI, *Israel: Briefing to the Committee on the Elimination of Discrimination against Women*, AI Index: MDE 15/037/2005, 30 June 2005; AI, *UN Committee on Migrant Workers: Written submission to the CMW day of general discussion on protecting the rights of all migrant workers as a tool to enhance development*, AI Index: IOR 40/028/2005, 31 Oct. 2005.

⁵ UNHCR, *Sexual and Gender-Based Violence against Refugees, Returnees and Internally Displaced Persons: Guidelines for Prevention and Response*, May 2003, p. 9.

⁶ *Ibid.*, p. 9.

⁷ *Ibid.*, p.10.

⁸ If you are interested in more discussion on the issue of 'essentializing' or 'stereotyping' women in relation to human rights laws, please see my article, A. Edwards, 'The "Feminizing" of Torture under International Human Rights Law' (2006) 19(2) *Leiden J. Int'l L.* 349-391.

⁹ UNHCR, *Policy on Refugee Women*, 1990, p. 5.

¹⁰ See, UNHCR, *A Thematic Compilation of Executive Committee Conclusions on International Protection*, 2nd ed. Sept. 2005.

¹¹ UNHCR, *Guidelines on the Protection of Refugee Women*, July 1991.

¹² For an overview of such guidelines, laws and cases, see A. Edwards, 'Age and gender dimensions in international refugee law', in E. Feller, V. Türk & F. Nicholson (eds.), *Refugee Protection in International Law: UNHCR's Global Consultations on International Protection* (Cambridge University Press, 2003), 43-80.

¹³ UN Doc. EC/GC/02/8, 25 April 2002

¹⁴ UNHCR, *Guidelines on International Protection: Gender-related persecution within the context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees*, UN Doc. HCR/GIP/02/01, 7 May 2002.

¹⁵ UNHCR, *Guidelines on International Protection: The application of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees to victims of trafficking and persons at risk of being trafficked*, UN Doc. HCR/GIP/06/07, 7 Apr. 2006.

¹⁶ UNHCR, *Conference on Sexual and Gender-Based Violence*, Geneva, 27-29 Mar. 2001.

¹⁷ UNHCR, *A Practical Guide to Empowerment*, Geneva, 2001.

¹⁸ Some work has been done in relation to reception and integration of resettled refugees, see UNHCR, *Refugee Resettlement: An International Handbook to Guide Reception and Integration*, Oct. 2002.

¹⁹ WCRWC, *UNHCR Policy on Refugee Women and Guidelines on Their Protection: An Assessment of Ten Years of Implementation*, May 2002.

²⁰ UNHCR-Save the Children – UK Assessment Mission on Sexual Exploitation and Violence of Refugee Children in Guinea, Sierra Leone and Liberia in 2002.

²¹ The Code of Conduct is attached as an annex to UNHCR, *Guidelines for Prevention and Response on SGBV against Refugees, Returnees and Internally Displaced Persons*, Geneva, May 2003.

²² See, E.K. Baines, *Vulnerable Bodies: Gender, the UN and the Global Refugee Crisis* (Ashgate, 2004), Chs. 4 & 5.

²³ WCRWC, *Beyond Firewood: Fuel Alternatives and Protection Strategies for Displaced Women and Girls*, March 2006.

²⁴ UNHCR, *Guidelines for Prevention and Response on Sexual and Gender-Based Violence against Refugees, Returnees and Internally Displaced Persons*, Geneva, May 2003.

²⁵ WCRWC, *Displaced Women and Girls At Risk: Risk Factors, Protection Solutions and Resource Tools*, Feb. 2006.

²⁶ See, *Reach Out Refugee Protection Training Kit*, 2001-2005.

²⁷ UNHCR-NGO, *Protecting Refugees: A Field Guide for NGOs*, 1999.