

## ISSUES RELATED TO WOMEN AT RISK:

### DISCUSSION PAPER ON A POSSIBLE EXECUTIVE COMMITTEE CONCLUSION ON DISPLACED WOMEN AND GIRLS AT RISK

#### I. INTRODUCTION

1. This paper sets out some of the issues an Executive Committee Conclusion on displaced women and girls at risk could address, for consideration by the Standing Committee in order to determine the possible scope of such a Conclusion. The paper outlines briefly the guidance already contained in previous Conclusions on the protection of refugee women and children. It also examines some of the challenges and barriers that prevent displaced women and girls, whether they are refugees or internally displaced, from enjoying their human rights fully and suggests, as a result, some ways to elaborate upon existing guidance.

#### II. DEFINITION OF DISPLACED WOMEN AND GIRLS AT RISK

2. There is no definition of a "woman at risk" in any Executive Committee Conclusion.<sup>1</sup> The term has traditionally been applied in the resettlement context, thus carrying with it the idea that the concept of "women at risk" is relevant only for the purpose of resettlement. This tends to put too narrow a focus on the application of the term, ignoring that refugee women and girls may be vulnerable to serious protection problems regardless of whether resettlement is the appropriate durable solution.

3. Moreover, it is not only in refugee situations that displaced women and girls encounter particular protection problems. As with refugees, internally displaced women and girls also face protection problems specific to their gender and age, not least if they are caught in the middle of armed conflict where they are at particularly severe risk of sexual and gender-based violence. The cultural and socio-economic position and gender roles of all displaced women and girls tend to exacerbate the risks to which they are exposed, as well as make them less able to protect themselves. They may face gender-related forms of violence and other protection problems at any stage of the displacement cycle. There are in particular risks for girls, as a result of their age, especially if they are unaccompanied, separated or heads of household. All such problems require particularized responses.

4. A Conclusion on displaced women and girls at risk could usefully set out criteria for defining women and girls at risk which would be applicable in the refugee, asylum and internal displacement contexts more generally, not simply in the context of resettlement. This could promote a clearer common understanding of the concept, which is needed to enhance the identification of displaced women and girls at risk for whom a protection and/or a durable solution response needs to be found.

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<sup>1</sup> For the purposes of resettlement, UNHCR considers as "Women-at-Risk" those refugee women or girls who have protection problems particular to their gender, whether they are single heads of families, unaccompanied girls, or are accompanied by a male (or female) partner or other adult male (or female) family member. See UNHCR, *Handbook on Resettlement*, November 2004, chapter 4.5.

### III. GENDER AND THE RECOGNITION OF REFUGEE STATUS

5. Numerous Executive Committee Conclusions have encouraged or urged States to recognize sexual violence or other forms of gender-related persecution as persecution within the meaning of the refugee definition contained in the 1951 Convention relating to the Status of Refugees.<sup>2</sup> In one Conclusion, the Executive Committee specifically recognizes that States are free to adopt the interpretation that “women asylum-seekers who face harsh or inhuman treatment due to their having transgressed the social mores of the society in which they live may be considered as a ‘particular social group’” for refugee status determination purposes.<sup>3</sup>

6. Recognition of refugee status for women and girls subject to sexual or gender-based violence or persecution represents an important protection mechanism for States, as well as for UNHCR under the latter’s mandate.<sup>4</sup> In this respect, for instance, an increasing number of States have in recent years recognized the claims of (generally female) asylum-seekers who have been trafficked and who fear being subjected to serious harm or an intolerable predicament if returned to their country of origin, or who fear being trafficked, and whose claim falls within the 1951 Convention refugee definition. More generally, the particular problems faced by women and girls seeking asylum require awareness, sensitivity and expertise to ensure that the manner and length of time taken to determine their status does not exacerbate prior trauma.

7. Taking into consideration the evolution in State practice of the notion of gender-based violence and the use of the “membership of a particular social group” ground in the refugee definition, a Conclusion could confirm the contemporary understanding of these notions. It could also affirm that victims of trafficking may, under certain circumstances, have valid claims to refugee status.

### IV. RISK FACTORS AND RESULTING PROTECTION PROBLEMS DISPLACED WOMEN AND GIRLS FACE BECAUSE OF THEIR GENDER

8. Executive Committee Conclusions have, over the years, examined certain of the protection needs of refugee women. A number make reference to the “vulnerable situation” of women and children or to “vulnerable refugees, including women and children” or to “the special needs of women and children and those who are otherwise vulnerable”.<sup>5</sup> A slight change in wording was introduced in 2003 when women and children were no longer equated automatically with vulnerability, as the Conclusion refers to “women, children and vulnerable persons”.<sup>6</sup> A few Conclusions indicate the types of harm to which women and children can be particularly vulnerable. These include “recruitment by government armed forces or organized armed groups”, “particular hazards”, “physical violence, sexual abuse, and discrimination”, sexual violence, “exploitation, forced military service and various forms of violence”.<sup>7</sup>

9. These references to women and children fall short of identifying clearly the specific factors which can place displaced women and girls at heightened risk. Yet a thorough understanding of these risk factors and consequent protection problems must form part of any prevention and response strategy and

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<sup>2</sup> See for example Executive Committee Conclusions Nos. 73 (XLIV), paras. (a) and (d); 77 (XLVI), para. (g); 79 (XLVII), para. (o); 81 (XLVIII), para. (t); 87 (L), para. (n).

<sup>3</sup> Executive Committee Conclusion No. 39 (XXXVI), para. (k).

<sup>4</sup> See, in this context, UNHCR’s Guidelines on International Protection on gender-related persecution, HCR/GIP/02/01, 7 May 2002, and on “membership of a particular social group”, HCR/GIP/02/02, 7 May 2002.

<sup>5</sup> See, respectively, Executive Committee Conclusions Nos. 39 (XXXVI), para. (d); 71 (XLIV), para. (w); 90 (LII), para. (i); 97 (LIV), paras. (a)(v).

<sup>6</sup> Executive Committee Conclusion No. 98 (LIV), para. (a)(iii).

<sup>7</sup> See, respectively, Executive Committee Conclusions Nos. 94(LIII), preambular para. 9; 54(XXXIX), preambular para. 2; 39 (XXXVI), para. (d); 73(XLIV); 87 (L), para. (o).

action plan. An Executive Committee Conclusion on this issue could provide guidance by setting out the particular protection risks to which displaced women and girls may be exposed and the causes of these risks. The latter include risks arising where:

- a) there are birth registration or documentation problems, resulting in a lack of legal identity which can mean women and girls in particular are vulnerable, for instance, to exclusion from access to resources, to trafficking, to statelessness and/or are unable to pass on nationality to their children;
- b) there is a lack of age and sex disaggregated data, which prevents adequate identification of groups with specific protection needs;
- c) camp management, community and leadership structures are insufficiently inclusive of women and gender power relations are unequal;
- d) there are food and other shortages, resulting in women's and girls' exposure to prostitution, sexual harassment and trafficking, malnutrition, increased drop out from schools for girls, and child labour;
- e) health services, including female-to-female services, are not sufficiently accessible, especially bearing in mind that women's sexual and reproductive roles place them at particular risk during pregnancy and giving birth, and that they are disproportionately vulnerable to HIV/AIDS;
- f) functioning justice systems are not in place or, where they are, traditional harmful practices, domestic violence and other crimes are not adequately addressed; and
- g) return and reintegration are hampered, for instance, by discriminatory property and inheritance laws.

10. A Conclusion could help move away from a perception of displaced women and girls as vulnerable per se towards one viewing them as vulnerable to particular types of harm and recognizing the causes of such harm.

## V. IDENTIFICATION, ASSESSMENT AND MONITORING

11. Existing Executive Committee Conclusions refer to the importance of a more detailed knowledge and understanding of the specific needs and problems of refugee women in the international protection field and of gathering statistical, sociological and other data, including in particular, data on gender roles and responsibilities.<sup>8</sup> Thus far, however, no Conclusion sets out the need for proper identification and assessment of the risk factors and the particular protection challenges faced by displaced women and girls and for their continuous monitoring and evaluation.

12. This process of identification of women and girls at risk could be enhanced by developing specific tools and mechanisms to identify general and situation-specific risk factors, as well as individual displaced women and girls at risk. Registration data have an important role to play in this respect.

13. A Conclusion on displaced women and girls at risk could set out criteria and approaches on the basis of which displaced women and girls at risk could be identified and their needs could be assessed, as part of the process of working towards appropriate responses and solutions which are effectively monitored. This could enhance understanding of the particular protection problems faced by displaced women and girls, the identification and prioritization of responses, and the monitoring of action to address them.

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<sup>8</sup> See, respectively, Executive Committee Conclusions Nos. 39 (XXXVI), para. (i); 60 (XL), para. (h).

## VI. FUNDAMENTALS OF PREVENTION AND RESPONSE

14. A number of fundamental principles need to underpin any action to prevent and respond to violations of the rights of displaced women and girls. Previous Executive Committee Conclusions recognize that all actions on behalf of persons of concern must be guided by relevant international instruments and thus be rights-based.<sup>9</sup> They highlight the importance of the full, active and equal participation of women and girls in designing and implementing protection and assistance programmes, which make appropriate use of their resources.<sup>10</sup> At the same time, the Executive Committee has acknowledged the importance of working with men to promote women's rights and of a community-based approach to solutions.<sup>11</sup> It has urged UNHCR to work on these issues in partnership with others and to explore and build upon the experience of other United Nations organizations, the donor community and non-governmental organizations (NGOs).<sup>12</sup> Conclusions have recognized that ensuring equal treatment of refugee women and men may require specific action in favour of the former and have reiterated the importance of working towards women's empowerment.<sup>13</sup> The Executive Committee has further recognized the importance for UNHCR of ensuring consideration of age and gender in its policy making and operations through further mainstreaming.<sup>14</sup>

15. In essence, these references represent affirmations of the two-pronged approach to operations promoted in recent years by UNHCR. This involves age, gender and diversity<sup>15</sup> mainstreaming on the one hand and the empowerment of discriminated groups through targeted action on the other. Age, gender and diversity mainstreaming aims to ensure the full and systematic integration of the rights and needs of all persons of UNHCR's concern, including women and children, throughout operational activities. Integral to this are participatory approaches, among the different sectors of the displaced population – women, girls, boys and men – to identify protection risks, raise awareness and facilitate analysis of their respective situations, their roles and the contributions they can make towards resolving their problems. Targeted action to achieve empowerment involves supporting women's and girls' effective participation in decision making, supporting their access to, and control over, resources and their mobilization. It involves promoting a balance of power between women and men in the community, so that neither is dominant and they can work side by side to influence the future of their families and communities.

16. A Conclusion on displaced women and girls at risk could confirm that the fundamental principles outlined earlier in this section must underpin the design and implementation of any measure aimed at preventing and responding to violations of displaced women's and girls' human rights. Such a Conclusion could recognize the important role that women and girls play in protecting themselves and their families. It could also affirm the importance of other fundamental principles, among which are

<sup>9</sup> Executive Committee Conclusions Nos. 64 (XLI), preambular para. 4, and 73 (XLIV), preambular para. 5.

<sup>10</sup> See variously, Executive Committee Conclusions Nos. 39 (XXXVI), para. (h); 54 (XXXIX), preambular para. 5; 64 (XL), preambular para. 2 and para. (a)(i); 98 (LIV), para. (a)(iii); 99 (LV), paras. (h) and (p); 100 (LV), para. (d).

<sup>11</sup> Executive Committee Conclusion No. 99 (LV), paras. (p) and (t). See also, "Refugee Women and Mainstreaming a Gender Equality Perspective", EC/51/SC/CRP.17, 30 May 2001, para. 28.

<sup>12</sup> Executive Committee Conclusion No. 54 (XXXIX), preambular para. 8.

<sup>13</sup> Executive Committee Conclusions Nos. 64 (XLI), preambular para. 5; 99 (LV), para. (p).

<sup>14</sup> Executive Committee Conclusion No. 95 (LIII), para. (f).

<sup>15</sup> Age refers to the different stages in each individual's life cycle, as needs change over time. Gender is the term used to denote the social characteristics assigned to men and women. They differ both within and between cultures and define identities, status, roles, responsibilities and power relations amongst women and men in any society or culture. Diversity means that in each group of people there are differences of age, gender, culture, mental and physical ability/ disability, class, sexual orientation, ethnicity and other backgrounds.

gender equality, as set out in Millennium Development Goal No. 3, which includes displaced women's and girls' equal access to protection, together with the need to ensure a best interest determination for girls at risk.

## VII. MORE EFFECTIVE USE OF RESETTLEMENT AND THE "WOMEN-AT-RISK" CRITERION

17. The resettlement of refugee women and girls who have been determined to be at risk in their country of refuge based on the criteria provided in the UNHCR *Handbook on Resettlement* is an important protection tool. These criteria include refugees with legal and physical protection needs, women at risk, survivors of violence and torture, and, for girls, the criterion for children and adolescents.<sup>16</sup>

18. The use of resettlement, including that of expedited (emergency or urgent) priority resettlement, whether through the "Women-at-Risk" criterion or other criteria, needs to be maximized. Only a relatively small number of refugee women and girls at risk are able to benefit from resettlement. In 2004, 2,119 women and girls were resettled under UNHCR's "Women-at-Risk" criterion out of a total of 42,008 resettled through UNHCR. In 2003, 1,973 were resettled under this criterion out of a total of 27,338. Final figures for 2005 are not yet available.

19. Problems accessing "women-at-risk" resettlement programmes can result from varying interpretations of the concept of "women-at-risk" by different resettlement countries and difficulties identifying women and girls who are at particular risk when all may potentially be at risk. Those who are most vulnerable can also face difficulties accessing "women-at-risk" resettlement programmes, as they may be living in hiding in insecure locations in urban settings and/or may be too afraid to approach individuals in positions of authority, or be under pressure not to do so. Indeed, UNHCR sometimes has difficulty identifying women and girls in need of resettlement, so that quotas under States' "women-at-risk" programmes cannot always be filled. In some situations, resettlement processing time is not sufficiently speedy to address protection needs on an urgent basis. Furthermore, internally displaced women and girls are not able to benefit from resettlement. Too often, they do not have access to adequate and timely protection, much less to durable solution responses.

20. In addition, in some locations, there is a belief that refugee women will exaggerate claims of sexual and gender-based violence in order to gain resettlement, which can also colour responses to cases of sexual and gender-based violence. This is, in turn, compounded by the negative impact of the attitude of some decision makers who do not necessarily regard rape and sexual abuse as sufficient grounds for special protection measures. Conversely, in other situations, problems of fraud have sometimes arisen where refugee women and their families may, for instance, provide inaccurate information in order to qualify for resettlement as single heads of household. Such practices need to be combatted through proper counselling and information on the criteria for resettlement and on refugees' rights and obligations.

21. Systems to extricate women and girls from situations where they are in danger and provide safe houses for them pending resettlement need to be enhanced. Too often, they remain trapped with no solution. Accelerated exit procedures could also be established, in particular to enable the departure of minor children where custody may be an issue. Resettlement procedures could themselves be rationalized to reduce the continued vulnerability to which women and girls can be exposed during processing and thereby ensure speedier resettlement.

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<sup>16</sup> See, UNHCR, *Handbook on Resettlement*, chapter 4.

22. A Conclusion on displaced women and girls at risk could provide concrete recommendations on how resettlement and in particular “the Women-at-Risk” resettlement criterion could be more efficiently used as a protection and durable solutions tool for refugee women and girls at risk. Resettlement States could also be encouraged to review their own practice for such individuals, whether this be under “women-at-risk” or other programmes such as emergency or urgent resettlement. This would enable a more comprehensive overview of challenges faced and help identify best practices that could be replicated to ensure more expeditious and flexible responses. Refugee women and girls may, for instance, not face a threat rising to the level needed for resettlement under the legal and physical protection needs criterion but may nevertheless be eligible for resettlement under the “Women-at-Risk” criterion because of their specific needs arising from past persecution and/or past trauma, severe hardship exposing them to the risk of abuse, exploitation and/or extortion, or their changed social status as a result of the suspension of, or deviation from, social norms.<sup>17</sup> This needs to be accorded an appropriate priority in the resettlement programmes of States, not only, or always predominantly, through use of the physical and legal protection needs criterion.

#### VIII. INTEGRATION OF WOMEN AND GIRLS RESETTLED UNDER “WOMEN-AT-RISK” PROGRAMMES

23. In view of the serious, often atrocious, forms of past persecution which many women and girls who have been resettled on the basis of the “Women-at-Risk” criterion have experienced, specific support, such as medical and psycho-social care, will often be needed to facilitate their recovery and integration into the resettlement country. Such measures are equally important in a local integration context.

24. A Conclusion could give examples of specific measures, services or specialized care that countries of resettlement or local integration need to offer refugee women and girls in order to facilitate their integration into their new society. In this context, a community-based approach is essential, as is support for women and girls to strengthen their own capacity to integrate.

#### IX. ALTERNATIVE PROTECTION RESPONSES AND SOLUTIONS FOR DISPLACED WOMEN AND GIRLS AT RISK

25. Even with enhanced use of the “Women-at-Risk” criterion, resettlement cannot benefit all displaced women and girls at risk. Alternative short, medium and long-term protection and durable solution responses need to be devised and/or strengthened. Women and girls in protracted refugee settings face particular problems. These include increased and often entrenched reliance on negative survival strategies, such as prostitution or other forms of exploitation, vulnerability to trafficking and other forms of sexual and gender-based violence.

26. The particular situation of internally displaced women and girls also requires attention, bearing in mind the responsibilities of the State concerned towards those within its jurisdiction and the importance of preserving the right to leave one’s country and to seek and enjoy asylum. Particular challenges in this context include lack of humanitarian access, for instance, because of State sovereignty concerns, and often widespread insecurity. Possibilities for emergency rescue or evacuation are also very limited, benefit extremely small numbers of people and tend to target specific populations.

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<sup>17</sup> See UNHCR *Handbook on Resettlement*, chapter 4.5.

27. Based on the principles set out in section V, the lessons learned and the good practices of States, UNHCR, other international organizations and NGOs, a Conclusion on displaced women and girls at risk could make concrete suggestions in addition to resettlement for innovative and practical responses to the challenges faced by refugee and internally displaced women and girls at risk.

#### X. RECOMMENDATIONS

27. The issues outlined above are a starting point for a new Executive Committee Conclusion on displaced women and girls at risk.<sup>18</sup> Such a Conclusion could help, amongst other things, to:

- (a) reinforce fundamental principles underlying the protection of displaced women and girls;
- (b) identify the factors which predispose displaced women and girls to risk;
- (c) establish a broader common understanding of the situation of women at risk generally;
- (d) provide guidance to staff members of UNHCR, other United Nations organizations, governments and non-governmental organizations to improve the identification of women at risk, both for resettlement and more generally;
- (e) clarify the scope and use of the “Women-at-Risk” resettlement criterion among UNHCR’s resettlement criteria;
- (f) promote reinforced use of “women-at-risk” programmes in resettlement countries; and
- (g) make concrete suggestions to help identify and promote alternative protection and durable solution responses for displaced women and girls who are at risk and cannot be resettled.

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<sup>18</sup> It is to be noted that although returnee women and girls also face particular challenges, these may be beyond the scope of any proposed Conclusion this year.