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**Summary of background paper entitled “Displacement,
statelessness and questions of gender equality and the
Convention on the Elimination of All Forms of
Discrimination against Women”***

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Summary¹

Introduction

1. Discrimination on the basis of sex and inequality between men and women nullifies and impairs the enjoyment of rights and the full advancement of women and girls worldwide. Displacement arising from armed conflict, persecution and other serious human rights violations can intensify this discrimination and inequality. Sex discrimination and inequality can also be the cause, or a contributing cause, of displacement and a motivation for flight for many women and it can occur at all stages in the displacement cycle. Although all forcibly displaced persons face protection concerns, “women and girls can be exposed to particular protection problems related to their gender, their cultural and socio-economic position, and their legal status”.² Displacement, whether internal or international, weakens existing community and family protection mechanisms and exposes refugee and internally displaced women and girls to a range of human rights violations, including sexual and gender-based violence, abuse and exploitation. Similarly, many persons are at risk of statelessness because of gender-based discrimination in nationality laws and women who are already stateless face various protection problems, not least gender-based barriers to the recognition of nationality.

2. Much progress has been made within the United Nations system to advance the rights of displaced and stateless women and girls, including the elaboration of standards, policies and laws at national, regional and international levels. However, much remains to be done. Specifically, the background paper is interested in how the fundamental principles of the 1979 Convention on the Elimination of All Forms of Discrimination against Women (the Convention) apply within these two contexts. The rights to equality between women and men and non-discrimination on the basis of sex as laid down in the Convention are essential elements of the international protection regime for asylum-seeking, refugee, internally displaced and stateless women and girls, as well as during processes of repatriation, local integration and resettlement. As such, the Convention complements and reinforces the other parts of the framework, including the 1951 Convention relating to the Status of Refugees as amended by its 1967 Protocol, the two statelessness conventions and other human rights treaties. The paper was drafted for the purposes of a joint seminar between the Committee on the Elimination of Discrimination against Women (the Committee) and the Office of the United Nations High Commissioner for Refugees (UNHCR) in the hope of advancing collaboration and cooperation between these two entities on these important issues.

3. The paper centres on two main substantive sections: one on displacement and gender equality (section 3), the other on the right to a nationality, questions of statelessness and gender equality (section 4). These sections explain the many facets

¹ This is a summary of the background paper entitled “Displacement, statelessness and questions of gender equality under the Convention on the Elimination of All Forms of Discrimination against Women” prepared by Alice Edwards on behalf of the Office of the United Nations High Commissioner for Refugees, for a seminar between UNHCR and the Committee on the Elimination of Discrimination against Women, to be held in New York, on 16 and 17 July 2009. The views expressed in this summary are those of the author and do not necessarily reflect those of UNHCR.

² UNHCR, Executive Committee conclusion No. 105 (LVI), “Conclusion on women and girls at risk”, 6 October 2006.

of the gender dimensions of and influences on displacement and statelessness, drawing out the impact of gender inequality on women's access to and enjoyment of their human rights in these contexts and identifying relevant provisions of the Convention at issue and how they apply. In addition to these two main sections, there is also a section that outlines the fundamental principles of the Convention (section 2) and a section that reflects upon the institutional questions of how the Committee and UNHCR may further enhance their collaboration and cooperation on these issues (section 5). How these fundamental principles specifically apply to displaced and stateless women and girls is synthesized in the conclusion and recommendations in section 6. Finally, annex 1 contains definitions of some of the terminology in this area, such as sex, gender, gender mainstreaming, asylum-seekers, refugees, returnees, local integration, internally displaced persons and stateless persons.

Key findings

4. Women's experiences of displacement, asylum, statelessness, return, local integration and resettlement are very much shaped by their unequal position of power vis-à-vis men. That is, gender inequality can frame the context in which women experience displacement, asylum and statelessness. Gender is not, of course, the only influence on how a woman or girl experiences displacement, asylum or statelessness. Discrimination may be compounded, inter alia, because of her legal status (or lack of or precarious legal status) in the asylum country, or because of inaccessible, or loss of, documentation needed to access local services, including housing, in internal displacement situations; her socio-economic position; trauma arising from armed conflict or persecution; prior subjection to violent conduct; loss of livelihood and family; age; and cultural, social and linguistic differences between women and girls and their displacement country and/or community. Older women and women with disabilities may face a myriad of additional problems relating to their survival.

5. Given the political context after the cold war and after the terrorist attacks of 11 September 2001, in which the institution of asylum and the protection of refugees is increasingly under threat, efforts to strengthen the international protection regime for displaced persons by any means possible is increasingly necessary. In a nutshell, the paper finds that the equality framework of the Convention strengthens the international protection regime. The specific provisions of the Convention prohibiting discrimination on the grounds of sex serve as an important complement to international laws on statelessness and refugees, in which express guarantees against such discrimination and inequality were omitted.

6. The Convention, as one of several non-discrimination treaties at the international level and the principal women's human rights treaty, has been instrumental in consolidating and advancing many gains made for women's rights and in influencing other areas of international law. The Convention has been called the "international bill of rights for women". It sets out a range of civil, cultural, economic, political and social rights for women and covers a variety of situations in which women face discrimination, including in politics, the economy, the family, labour, education and health. Despite the many feminist criticisms of international human rights law in general and the Convention in particular, and recognizing that there is scope to improve the Convention itself and the work of the Committee,

many of these rights are relevant and can be applied effectively to displaced and stateless women and girls.

7. Like other human rights treaties, the Convention applies to all women regardless of their nationality, citizenship or other legal status, including immigration or marital status. Women's rights elaborated in the Convention are not subject to distinctions based on legal status, but are instead focused on their equality and advancement. This is to be contrasted to the legal instruments available within the context of asylum and statelessness, in which one must satisfy strict legal criteria in order to benefit from the rights contained therein. In order to protect displaced and stateless women, therefore, Governments must tackle the question of gender inequality, a fact well acknowledged by UNHCR.

8. Some States have attempted to incorporate gender-sensitive applications of international standards into national protection mechanisms for displaced women and to amend nationality laws that discriminate against women. A lot of this momentum can be attributed to parallel developments in international human rights law, in particular advances in women's rights. The Beijing Platform for Action, in particular, called on UNHCR and the Office of the United Nations High Commissioner for Human Rights (OHCHR) to "[e]stablish effective cooperation ... taking into account the close link between massive violations of human rights, especially in the form of genocide, ethnic cleansing, systematic rape of women in war situations and refugee flows and other displacements, and the fact that refugee, displaced and returnee women may be subject to particular human rights abuse". UNHCR's Agenda for Protection specifically calls on Governments "to consider acceding to" the Convention as a priority objective. The rights enumerated in the Convention have, for example, been influential in recognizing gender-related forms of persecution as legitimate grounds for claiming refugee status, and that discriminatory nationality laws can result in statelessness. Cross-fertilization has occurred in particular with reference to gender-related violence, such as rape and sexual violence, female genital mutilation and domestic violence, but there has also been progress in relation to economic empowerment and political participation in refugee settings.

9. The paper reiterates that under the Convention, the obligation to address all forms of discrimination against women requires a broad reading of equality that focuses on ending patriarchal domination and oppression and thereby opening up opportunities for equal participation and enjoyment of rights. More specifically, the Convention obligates States to eradicate social and cultural norms and stereotypes that reinforce and provide convenient excuses to prop up patriarchal systems, as well as negative, harmful and discriminatory laws, policies and practices. The paper thus emphasizes the need to eliminate both discrimination in national policies and laws and discriminatory measures perpetuated through societal norms and views. Noting that much of the violence and discrimination experienced by displaced and stateless women, like other women, takes place in their homes, the paper underlines that discrimination must be addressed within both the public and private spheres and in all fields, including civil, cultural, economic, political and social.

10. The complementarity of the Convention as an equality-centred treaty with other human rights instruments is also highlighted. For instance, the paper notes with regard to the lower attendance rate in schools of displaced girls compared to their male counterparts, that both the Convention on the Elimination of All Forms of

Discrimination against Women and the 1989 Convention on the Rights of the Child provide for protection of the right to education. Refugee girls not only have the right to education as such (Convention on the Rights of the Child, arts. 22 and 28) but also on an equal basis with boys (Convention on the Elimination of All Forms of Discrimination against Women, art. 10).

11. The paper further argues that the interlinkages between displacement, poverty and discrimination are now well recognized. It notes that the Special Rapporteur on violence against women, its causes and consequences has recently made clear that “[w]omen’s physical security and freedom from violence are inextricably linked to the material basis of relationships that govern the distribution and use of resources and entitlements, as well as authority within the home, the community and the transnational realm”. The same is true in relation to the structures governing refugee and displacement settings. The Special Rapporteur further recognizes that violence against refugee and internally displaced women is exacerbated by a lack of access to alternative housing for those living in refugee camps, with limited privacy and in close proximity to strangers.

Displacement and gender equality

12. Elaborating on the specific rights set forth by the Convention on the Elimination of All Forms of Discrimination against Women in the context of displacement, the paper notes that in addition to armed conflict, flight is often triggered, for example, by severe sex discrimination and gender-based persecution. Sex discrimination is often evident in refugee status determination procedures in many countries of asylum, in which the gendered nature of persecution may not be recognized or where sex/gender may not be seen as a legitimate ground for asylum. However, even before a woman or girl has access to asylum proceedings, there are many human rights factors that can prevent her from reaching her asylum destination. These can include restrictions on the freedom of movement of women in her country of origin, lack of access to necessary documentation, such as passports, because she is female, legal requirements for permission from husbands to travel, or cultural factors that put women travelling alone or without male family members at risk of harassment and violence. Women and girls may also be forced into providing sexual services in exchange for safe passage for themselves or their families, or to obtain necessary documentation or other assistance. Many of these same restrictions may also be imposed upon internally displaced women who attempt to travel from rebel- to Government-controlled zones, or vice versa.³ Thus, seeking asylum or being displaced is often a reflection of the human rights position of women (and others) in countries of origin. Thus, the better the human rights in the country of origin, the less the need for international protection. In this way, the Committee performs a preventive service as part of its regular work in monitoring State party performance with treaty obligations.

13. Failure to individually register all asylum-seekers and refugees can render them “non-persons” and unable to access the assistance and help that they need. Articles 3 and 15 of the Convention require that women shall be equal before the law and shall enjoy equality in all fields. Access to identity documentation and legal status must be ensured as a prerequisite to equal access and enjoyment of many

³ See arts. 1, 2 and 15 of the Convention and section 3.2 of the background paper, on gender-related dimensions of asylum and discrimination in individual asylum procedures.

rights. The paper finds that refugee and internally displaced women who lack adequate registration and personal documentation, including identity cards, marriage certificates, divorce certificates and birth certificates for their children, have often been denied freedom of movement and access to basic rights.⁴

14. Distribution systems that allocate food and non-food items to the “head of the household”, often interpreted as the male family member, have been found to deprive women and their children of food security and exacerbate the neglect and malnourishment of women and children. Many measures have been adopted to reduce this risk, such as distributing food and non-food items to women rather than men, in particular in camp settings. Nonetheless, these measures have yet to fully resolve the problem of family tensions and family-based violence. In fact, the introduction of such measures can exacerbate family violence if they are implemented without consultation with the community. Similar efforts to transport firewood to camps to reduce the need for women to walk long distances to collect it, which exposes them to the risk of sexual attack and banditry, have produced some important short-term benefits (reduction in such attacks), but they have done little to address the underlying causes of structural inequality.⁵ When refugee or internally displaced women return home to their countries of origin, for instance, UNHCR is unlikely to be present to be able to take charge of firewood or water distribution systems. Although much has now been done to address the shortcomings in some of these programmes, the problems persist.

15. In response to the omission of a provision outlawing violence against women from the Convention’s catalogue of rights, the Committee adopted a general recommendation recognising violence against women as a form of sex discrimination and therefore rightly within its mandate. This paper notes that it brings violence against women within the jurisdiction of international law and in many ways it has transformed the Convention from an anti-discrimination treaty into a gender-based violence treaty. Violence against women is squarely on the Committee’s list of priorities and it routinely addresses this issue in respect of almost every State, including occasionally in the context of displacement. The paper finds that exposure to sexual and gender-based violence is frequently exacerbated in times of displacement, if not one of the greatest human rights violations occurring in refugee and internally displaced person settings. In this context, and with the increased contribution of UNHCR to the Committee’s work through its confidential submissions, the Committee has identified immigrant and refugee women as being particularly at risk of violence and discrimination — both by members of the host community and within their own communities, including crimes of domestic violence and others related to “honour”. Living in camps has been identified by the Committee as a factor that increases the risk of sexual and other forms of violence linked to lack of access to health care, education and economic opportunities.⁶

16. Changed social settings can place emotional strains on families, including those recovering from armed conflict and trauma. As UNHCR notes: “Being part of

⁴ See articles 3 and 15, as well as articles 13 (b), 14, para. 2 (g) and 15, para. 4 of the Convention and section 3.3.2 of the background paper, on individual registration, identity and related rights.

⁵ See articles 1, 2 (f), 5 and 16 of the Convention and section 3.3.1 of the background paper, on discriminatory social and cultural roles, responsibilities and practices impacting on protection and rights.

⁶ See articles 2, 5, 11, 12 and 16 of the Convention and section 3.3.3 of the background paper, on violence against women, in particular sexual and gender-based violence.

an intact family is particularly important during displacement, when all other aspects of a normal life have disappeared.” Girls can, for instance, be burdened with additional care responsibilities and can be increasingly exposed to exploitation and to traditional harmful practices, including forced marriage. This would be in direct breach of article 16, paragraph 2, of the Convention, which prohibits the betrothal and marriage of children; the article also provides the same right to freely choose a spouse and to enter into marriage as men.⁷

17. The Committee has regularly and increasingly highlighted trafficking but not yet within the specific context of displacement. The Committee, has however, held that article 6 of the Convention on the Elimination of All Forms of Discrimination against Women can include the obligation to afford protection under the Convention relating to the Status of Refugees to trafficked women who seek asylum on grounds of gender-related persecution. This supports the approach of UNHCR to trafficking, in which it has recognized the links between displacement and risk of trafficking and between trafficking and the need for asylum.⁸

18. For refugees and other non-nationals, seeking redress for violations can be more complex, as they are frequently denied access to justice because of “cultural” excuses, especially as far as they relate to women’s claims or due to questions of jurisdiction. Local authorities may defer the matter to UNHCR, which has no judicial authority in this regard but may be able to offer some non-judicial remedies. Alternatively, local authorities may reject that they have authority over foreigners, sometimes due to being overwhelmed with their own domestic caseloads or, at other times, due to sex, race or ethnicity based discrimination. Poverty, uncertain or an “inferior” legal status compared with nationals, a general lack of willingness on the part of local authorities to become involved, cultural attitudes and unrepresentative refugee leadership are all factors that can hinder access to justice.⁹ Difficulties in accessing justice may also be due to the location of refugee and internally displaced person settlements, which at times are a long distance away from the local infrastructure.

19. The paper highlights that women must have equal access to income-generating and training opportunities as men, including access to microcredit. There may be a justified need for the introduction of temporary special measures, as recognized in article 4 of the Convention, targeting women for livelihood initiatives to enhance their self-reliance and integration prospects, especially in households headed by a female.¹⁰

⁷ See article 16 of the Convention and section 3.3.8 of the background paper, on equality and family life.

⁸ See article 6 of the Convention and section 3.3.4 of the background paper, on trafficking.

⁹ See articles 1, 2 (c), 3 and 15 of the Convention and section 3.3.5 of the background paper, on access to justice.

¹⁰ See articles 3, 4, 10, 11, 13, 14, 15, paras. 2 and 3, and 16 of the Convention (social and economic deprivation and empowerment); article 10 (education and literacy), and articles 3, 7 and 8 (political participation).

20. Factors that affect a women's ability to find a durable solution, be it return and reintegration into her home community, resettlement to a third country or local integration in the country of asylum, implicate many of the same rights in the Convention as outlined above.¹¹ The paper finds in this regard that some repatriation programmes do not make allowances for women or girls who have valid protection reasons for not wishing to return home to remain in their host countries or communities, or do not take account of their wishes and views on repatriation generally or on a basis of equality with men. Refugee women are also rarely involved in peace negotiation processes and the subsequent formation of new governments or interim administrations; and they may face legal and practical difficulties accessing property, land and housing upon return, especially under traditional legal systems that do not recognize women's rights to inherit property on an equal basis with men. UNHCR acknowledges that there are many gender-related factors that account for women's unequal access to resettlement opportunities, including that violations of women's rights may occur within the family and thus may be hidden from public view, and prejudice on the part of UNHCR staff carrying out assessments who may believe that women and girls exaggerate claims of sexual and gender-based violence in order to secure resettlement, or others who may not regard rape or sexual violence as a sufficient ground for resettlement due to its widespread prevalence.

Right to nationality and questions of statelessness

21. The importance of the right to a nationality is recognized in article 9 of the Convention. The paper emphasizes the impact of gender discriminatory nationality laws on women and their associated inability or difficulties to exercise other rights, including in relation to family, access to education, to equality before the law, freedom of movement, and so forth. It takes the view that women's nationality is probably best approached as an issue of both statelessness and dual nationality arising from the conflict of nationality laws of different States, as well as an issue of equality. Statelessness may be reduced by measures that reinforce women's equality in nationality matters.

22. The paper concludes that although provisions in the international treaty framework on nationality rights are neutrally drafted and many require their application to comply with principles of non-discrimination, the operation of citizenship laws in many countries nonetheless still directly or indirectly discriminates against women, and this exposes women to a greater extent than men to the risk of being rendered stateless. The Convention is particularly important in this regard, not least because the two statelessness conventions are not widely subscribed to.

Conclusions and recommendations

23. The paper identifies a number of recommendations relating to displacement and nationality rights, among them a call for the issuance of a general recommendation to be adopted by the Committee in order to consolidate the work done to date by both the Committee and UNHCR. The ultimate aim of these efforts is to further advance displaced and stateless women's enjoyment of their rights. The paper indicates the ways in which the treaty framework, machinery and procedures

¹¹ All provisions, including articles 1-3, 14, para. 2 (f) and (g), and 16, para. 1 (h) of the Convention and section 3.4 of the background paper, on gender-related dimensions of return and reintegration and section 3.5 on gender-related dimensions of resettlement.

of the Convention could be used to enhance protection in some of the situations described above.

24. The perceived weaknesses of the supervisory role of UNHCR in respect of the Convention relating to the Status of Refugees is discussed, including the fact that there is no periodic State reporting requirement equivalent to the treaty body system and the sometimes difficult position that UNHCR finds itself in as an intermediary between the authorities and the people it is mandated to protect. The paper highlights the importance of the independent monitoring role of the Committee in this regard. The recommendations made in the paper must, however, also be seen in the wider context of the need for strengthening of the enforcement mechanisms provided by international human rights law. Ultimately, without commitment and compliance at the national level, including in terms of policy, attitude, culture, capacity and political will, women and girls will continue to experience discrimination.

25. The paper has identified five principal advantages of employing the fundamental principles of the Convention on the Elimination of All Forms of Discrimination against Women and of engaging with the Committee on these issues:

(a) Firstly, the broad reading given to equality that focuses on ending patriarchal domination and oppression of women and opening up opportunities for equal participation and enjoyment of rights prioritizes a gender equality agenda within displacement and statelessness contexts;

(b) Secondly, the obligation to eradicate social and cultural norms and stereotypes that reinforce the perceived inferiority of women to men and provide convenient excuses to prop up patriarchal systems, calls upon Governments and UNHCR to take a longer term view of protection and assistance activities for displaced women and girls, including within the context of statelessness. The Convention requires more than merely eradicating the symptoms of women's inequality, for example, reducing rates of violence against women by bringing in firewood, but it requires also that the root causes of that violence be investigated and addressed, including, importantly, with women taking a leading role in designing and developing appropriate responses;

(c) Thirdly, the obligation to eradicate gender inequality in both public and private spheres of life provides a mandate to address many issues that are often perceived as "taboo", especially when dealing with non-nationals and associated ethnic or race dimensions, such as family violence, forced marriages, female genital mutilation and crimes of "honour";

(d) Fourthly, the close relationship recognized between civil and political rights on the one hand and economic, social and cultural rights on the other and their inclusion within a single instrument strengthens indivisibility arguments and the interconnections between, for example, poverty, violence and displacement;

(e) Fifthly, the independent and impartial monitoring role the Committee performs in ensuring States parties to the Convention implement their treaty obligations opens up possibilities for public dialogue with States parties on issues of displacement and statelessness, for avenues of redress for individual displaced or stateless women within the communications mechanism, and for the Committee to activate its inquiry function.

26. In the light of these findings, the paper recommends that UNHCR and the Committee continue their dialogue. Further collaboration could in particular be

explored in the areas of normative development, capacity-building and advocacy. This might include one or more of the following measures:

(a) Incorporating more systematically displacement and statelessness matters within the Committee's jurisprudence, as well as during the face-to-face meetings with States parties and within the concluding observations on State party reports;

(b) Dedicating further discussion on how UNHCR might work with and contribute to the State party reporting to the Committee, such as by reframing its interventions to the Committee so that they follow the structure of the Convention, by working to ensure that displacement and statelessness issues are already reflected in national reports, and by encouraging non-governmental organizations and other partners to submit shadow reports to the Committee on the extent to which the State party under review complies with its Convention obligations;

(c) UNHCR should continue its practice of orally presenting its confidential comments to the Committee in closed meetings, and explore the possibility of organizing briefing sessions between UNHCR thematic or country-focal points and the Committee in connection with the Committee's sessions. It might also involve the temporary secondment of a UNHCR staff member or expert adviser to the Committee or OHCHR.

(d) Disseminating information about the individual complaints procedure under the Optional Protocol to the Convention to relevant stakeholders to ensure displaced and stateless women and girls are aware of and have access to this avenue of redress. This includes systematic analysis and distribution of decisions adopted by the Committee;

(e) Dedicating further discussion to ways of improving the implementation of the Committee's concluding observations and recommendations at the field level, for instance through training and capacity-building;

(f) Considering the possible issuance of a general recommendation that would further facilitate the application of the principles of gender equality and non-discrimination on the basis of sex to the displacement and statelessness contexts.

27. In addition, issues of displacement and statelessness, especially the gender dimensions of these issues, should continue to be taken up throughout the United Nations system, including in the work of the other human rights treaty bodies, as well as within the special procedures of the United Nations Human Rights Council, in particular the work of the special rapporteurs and the universal periodic review. In many respects UNHCR has led the way in its "mainstreaming" of gender issues within its own work and in the integration of the same throughout the United Nations system, but there arguably remains a need for further systemization in its work in this regard. Non-governmental organizations also have an important role to play and would be encouraged, in particular, to identify some test cases for review under the individual communications procedure of the Convention.

28. The paper further recommends that, for its part, UNHCR should reconsider making some of its confidential written submissions to the Committee public whenever appropriate (balancing, of course, the advantages and disadvantages of doing so, and bearing in mind that this may well vary depending on the country in question and the relations between UNHCR and the Government); and to continue its tradition of mainstreaming gender issues within its own governance structures, albeit with more vigour in relation to statelessness.