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Legal Aspects of Conflict-Induced Migration by Women

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Abstract: *This paper surveys the international legal frameworks, including the many guidelines, handbooks, resolutions, toolkits, conclusions and manuals produced by various United Nations bodies, that confirm an awareness of the protection issues specific to women and girls displaced by conflict. It explores the extent to which these documents address the gendered impacts of conflict-induced migration, and the role of United Nations bodies as international governmental organisations in implementing these norms. The main focus is upon internally displaced women and women refugees. In addition to problems of enforcing compliance with existing guidelines, the paper concludes that two areas – developing strategies to accommodate the realities of long-term, even permanent displacement and enhancing women’s literal and legal literacy – require much greater attention on the part of governmental and non-governmental international organisations.*

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PEOPLE migrate to avoid anticipated conflict, to flee ongoing conflict and to escape the consequences of past conflict. The capacity to migrate and the migratory experience itself are inflected by gender. The purpose of this paper is to survey how international legal norms and institutions frame and respond to conflict-induced migration, with particular attention to the impact of gender on access to legal status and protection.¹

In conflict situations, women and girls tend to be less mobile than their male cohorts. Constraints include responsibility for children, elderly or disabled kin, and/or safety, cultural and financial obstacles to travel without male accompaniment. The majority of the world’s forcibly displaced population remains within state borders, and the majority of this population is also female.

If a woman flees ongoing or impending conflict but remains within the geo-political borders of a state, her migration is described as internal displacement, and she is labelled an internally displaced person (IDP). If she crosses an interna-

tional border into a neighbouring country that is a party to the 1951 UN Convention Relating to the Status of Refugees and/or the 1967 Protocol, she may qualify as a refugee. Other regional instruments may also offer refugee protection. More rarely, she may journey further afield, even to one of the industrialised states of the global North. Depending on how she travels, she may be categorised as a resettled refugee, an asylum seeker, a smuggled or trafficked person, or a non-status (“illegal”) migrant. Apart from refugee protection and the prohibition on the return of persons to face a substantial risk of torture under Article 8 of the Convention Against Torture, international law imposes few restraints on the expulsion of non-citizens.²

The nexus between armed conflict and violations of women’s and girls’ human rights is addressed by UN Security Council Resolution 1325.³ The Resolution exhorts Member states, parties to armed conflict, military and civilian personnel of peacekeeping missions, and other actors to attend to the specific vulnerabilities and needs of women and girls in armed conflict,

and to incorporate a gender perspective (and more women) into all phases of activity, including training, programming and field operations. Importantly, Article 1 of Resolution 1325 also “urges Member States to ensure increased representation of women at all decision-making levels in national, regional and international institutes and mechanisms for the prevention, management and resolution of conflict”. Other provisions emphasise the importance of “involving women in all peacekeeping and peacebuilding measures” (Article 6) and the need for “measures that support local women’s peace initiatives and indigenous processes for conflict resolution, and that involve women in all of the implementation of the peace agreements (Article 8(b)). The dual emphases on substantive protection of women and girls’ human rights *and* the imperative of including women in decision-making and governance processes at all stages and levels, is mirrored in various initiatives specific to women and conflict-induced migration.

The gender-specific social, economic, familial, sexual, physical and medical impacts associated with conflict-induced migration have been documented by scholars, activists, and international governmental and non-governmental organisations. A recent United Nations High Commissioner for Refugees (UNHCR) report usefully summarises the major human rights risks and vulnerabilities for women and girls:

- a) ...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) ...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) ...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.⁴

This paper focuses on the international legal frameworks related to migration, the extent to which they address these impacts, and the role of United Nations bodies (*qua* international governmental organisations) in implementing these norms. It is important to acknowledge that while armed conflict and displacement trigger a range of human rights violations by hostile forces, women displaced by conflict are also at heightened risk of domestic violence, coerced sex, harmful cultural practices, unequal access to resources and social exclusion from members of their own families and communities. Conflict and displacement do not create the structural inequality that underwrites systemic violations of women’s human rights, although both phenomena can and do exacerbate the manifestations of that inequality.

Internal displacement

Normative framework

The UN *Guiding Principles on Internal Displacement* (hereafter *IDP Guiding Principles*) defines its subject matter 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 generalised violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognised State border.”⁵

In brief, internally displaced persons (IDPs) are forced migrants located within the borders of their state of nationality. IDPs may remain in their home state for a variety of reasons, including the following: a desire to stay as close to their homes as possible; the presence of kin or

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