



**GENDER, DISPLACEMENT,
AND VIOLENCE:
70 YEARS OF THE REFUGEE
CONVENTION**

July 2021

Guidance Note

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INTRODUCTION

At the 70th anniversary of the 1951 Refugee Convention, gender justice beyond borders remains a goal yet to be achieved. As an international protection framework that has assisted displaced persons over many decades, the Convention sets out legal standards for asylum and refugee rights.

Yet, the Convention is subject to criticism for being outdated and for being non-responsive to particular kinds of displacement. This non-responsiveness is especially evident with regards to gender dynamics in the context of violence.

Violence is often a cause for displacement. Women* and girls, as well as LGBTQIA+ and gender diverse persons flee their countries of origin to escape gender-based violence (GBV) and other harmful practices.

According to the Human Dignity Trust (2019), fourteen countries worldwide still criminalize trans persons. Relatedly, Human Rights Watch (2021) reports that at least sixty-nine countries across the world have national laws criminalizing same-sex relations. These laws vary in scope and application: while in some countries, specific sexual acts are punished, in other countries, laws are more general and vague, leaving room for varying interpretations and harmful use against LGBTQIA+ and gender diverse persons.

An important aspect to consider in this context is the harmful practice of “conversion therapy.” OutRight International found that in 2019, 172 countries still allow this practice.

Furthermore, femicides - generally understood as the intentional murder of women* and girls - have been on the rise (not least due to the COVID-19 pandemic) and have led to increased flight and displacement. (WHO, 2012 & UN News, 2020).



INTRODUCTION

Violence, however, also occurs along migratory routes and in destination countries.

For instance, based on data from the US Department of Homeland Security (2017), 60-80% of women* and girls who cross Mexico to get to the US border are raped along the way. Research by the Women's Refugee Commission (2019) further shows that 83% of those who passed through Libya to Tunisia experienced violence or abuse.

Additionally, Save the Children (2016) reported that about half of all unaccompanied children treated by the organization's doctors in Italy had a sexually transmitted infection (STI), likely due to sexual exploitation during migration.

Yet, in Uganda, one of the top five destination countries globally to host persons seeking protection, LGBTQIA+ and gender diverse displaced persons face violence due to pervasive homo- and transphobia (Sexual Minorities Uganda (SMUG) and OutRight International).

These varied experiences of violence along the displacement continuum (origin-, passing-, and destination country) necessitate a critical (re-)interrogation of existing international protection frameworks and prompt the question:

Who is left behind in current international protection frameworks - especially in the Refugee Convention?

It is this pressing question that framed our 2021 United Nations Commission on the Status of Women (UN CSW) parallel event and that premises our discussion in this Guidance Note.



INTRODUCTION

This Guidance Note draws on research, advocacy, and education based on our ongoing Spotlight Project “Beyond Borders and Binaries: 70 Years of the Refugee Convention” and engages with lived experiences and expertise shared in working groups at our UN CSW event with partners from across the world including the Amal Alliance, Catholic Charities, the Center for Justice and Peace, the Forcibly Displaced People Network, the Hungarian Helsinki Committee, Immigration Equality, the Kota Alliance, Venezuelans and Immigrant Aid, Venezolanas Globales, and the Women’s Refugee Commission.



**WOMEN'S
REFUGEE
COMMISSION**
Research. Rethink. Resolve.



Hungarian Helsinki Committee



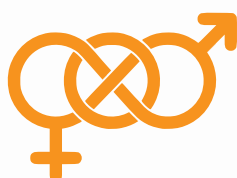
INTRODUCTION

In this Guidance Note, we address four key areas in international protection frameworks that have been overlooked at best and neglected at worst: children and youth, sexuality and gender identity, GBV, and health.

We show that although gender-responsive protection frameworks have been established over time, these frameworks remain fragmented in that most operate along gender binaries and accountability mechanisms are often not in place because of non-binding characteristics.

By centering lived experiences and expertise at the gender-displacement nexus within the context of violence, we demonstrate that - at this critical juncture in time - the framing, interpreting and understanding of the Refugee Convention as well as the Convention's relationship to other bodies of international law and the Convention's implementation in national law, policy, and practice, requires an intersectional approach in moving forward.

This can be achieved by establishing rights- and evidence-based frameworks with strong accountability mechanisms. To this end, we propose recommendations and outline several practices that are targeted towards gender dynamics in displacement.



Children & Youth

Sexuality & Gender Identity

Gender-Based Violence

Health



LEGAL-INSTITUTIONAL FRAMEWORKS

Various legal-institutional frameworks have been established over time that offer guidance on the scope and processes of protection as it pertains to gender dynamics in displacement.

While this Guidance Note focuses on the 1951 Refugee Convention, an early document, namely the 1948 Convention on the Prevention and Punishment of the Crime of Genocide provides important insights regarding violence-induced displacement prior to conceptualizations of asylum and refugee rights.

The “Genocide Convention” was unanimously adopted by the United Nations General Assembly (UN GA) on December 9, 1948 and defines genocide in legal terms.

Genocide comprises “acts committed with the intent to destroy, in whole or in part, a national, ethnic, racial or religious group” such as killing members of a specific group, causing serious bodily or mental harm to members of a specific group, deliberately inflicting on a specific group conditions of life calculated to bring about its physical destruction in whole or in part, imposing measures intended to prevent births within a specific group, and forcibly transferring children of a specific group to another group (Article 2).

Gender dynamics operate within the noted prohibited acts in the Convention’s genocide definition (i.e. prevention of birth) as well as in the list of included groups (i.e. intersectionality).

Indeed, crimes punishable under the Convention carry specific gendered implications and have been considered within other protection frameworks regarding violence-induced displacement such as the 1951 Refugee Convention.

The Refugee Convention details asylum standards and refugee rights at the international level, and is rooted in principles of non-discrimination, non-refoulement, and non-penalization.

It emerged in the context of post-World War II Europe. Until the 1967 Protocol Relating to the Status of Refugees, the scope of the Convention was limited to the original post-war European geographical and temporal context.



LEGAL-INSTITUTIONAL FRAMEWORKS

Article 1 defines a refugee as any person who:

“As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.”

Gender dynamics are not explicitly mentioned as grounds for persecution; however, “membership of a particular social group” (Article 1), for instance, has been used for claims pertaining to gender identity and/or sexuality in countries where asylum laws don’t explicitly recognize violence perpetrated in this context.

For instance, persecution based on “membership of a particular social group” (Article 1) has been used for claims pertaining to gender identity and/or sexuality in countries where asylum laws don’t explicitly recognize these gender dynamics.

Beyond these two international laws, several other protection guidelines, although non-legally binding, are important to outline here.

The 1991 United Nations High Commissioner for Refugees (UNHCR) “Guidelines on the Protection of Refugee Women,” for example, address gender-responsiveness in humanitarian settings.

The main purpose of the Guidelines is to provide a framework for humanitarian workers to identify specific protection needs of refugee women. In this context, the Guidelines outline “manipulation, sexual and physical abuse, exploitation, and sexual discrimination” as special protection needs (Section 3).

The Guidelines also include recommendations regarding accountability of perpetrators and assistance to survivors of violence. The scope of these protection guidelines mainly concerns women in refugee camps under UNHCR oversight.



LEGAL-INSTITUTIONAL FRAMEWORKS

In 2002, the UNHCR published “Guidelines on International Protection concerning Gender-Related Persecution.”

These Guidelines draw on the framework of the Refugee Convention to define gender-related persecution in the context of refugee status documentation.

The Guidelines outline persecution based on gender, sex, and sexuality, including - but not limited to - sexual violence, rape, physical violence, emotional and psychological violence, ‘dowry-related’ violence, female genital mutilation (FGM), domestic violence, trafficking, persecutory (including discriminatory) action on account of sexual orientation, forced or ‘sex-selective’ abortion, early marriage, and forced marriage, all within the meaning of Article 1 of the Refugee Convention.

Following these Guidelines, the UNHCR released a “Handbook for the Protection of Women and Girls” in 2008 which replaced the 1991 UNHCR “Guidelines on the Protection of Refugee Women.”

The Handbook discusses protection challenges faced by women* and girls and outlines strategies to address these challenges.

Throughout the Handbook, the importance of using a rights- and community- based approach, the mainstreaming of age, gender, and other characteristics, and the implementation of targeted actions to empower women* and girls in civil, political and economic areas are emphasized.

While these legal-institutional frameworks (binding and non-binding) speak to gender dynamics in various ways, there are additional frameworks to be highlighted in the specific context of the four key areas addressed in this Guidance Note: children and youth, sexuality and gender identity, GBV, and health.

These additional frameworks were discussed in the respective working groups and gaps between lived experiences and laws/policies were identified accordingly.

In the following, we provide an analysis of the Refugee Convention based on the four key areas and list other relevant legal-institutional frameworks for reference.



LEGAL-INSTITUTIONAL FRAMEWORKS



Children & Youth

- Grounds for persecution: no specific mention of children/youth/age
- Refugee definition: historically interpreted through male *adult* experiences
- Protection of children mentioned in the context of family protection
- No clear establishment of age in relation to protection responsibilities

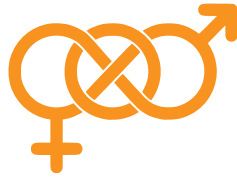
1951 Refugee Convention

Other Legal- Institutional Frameworks

- Convention on the Rights of the Child (1989)
- UNHCR “Refugee Children: Guidelines on Protection and Care” (1994)



LEGAL-INSTITUTIONAL FRAMEWORKS



Sexuality & Gender Identity

- Grounds for persecution: no specific mention of sexual orientation and/or gender identity
- Refugee definition: historically interpreted through male experiences

1951 Refugee Convention

Other Legal- Institutional Frameworks

- UNHCR “Guidelines on International Protection concerning Gender-related Persecution” (2002)
- UNHCR “Guidelines on Membership of a Particular Social Group” (2002)
- UNHCR “Guidelines on Sexual Orientation and/or Gender Identity” (2012)



LEGAL-INSTITUTIONAL FRAMEWORKS



Gender-Based Violence

- Grounds for persecution: no specific mention of gender-based violence
- Refugee definition: historically interpreted through male experiences

1951 Refugee Convention

Other Legal- Institutional Frameworks

- UNHCR “Sexual Violence Against Refugees - Guidelines on Protection and Response” (1995)
- UNHCR Policy “Prevention of Risk, Mitigation, and Response to Gender-Based Violence” (2020)



LEGAL-INSTITUTIONAL FRAMEWORKS



Health

- Grounds for persecution: no specific mention of health
- Refugee definition: historically interpreted through male experiences
- Refugees *should* have access to the same or similar healthcare as nationals of host country

1951 Refugee Convention

Other Legal- Institutional Frameworks

- UNHCR “Principles and Guidance for Referral Health Care for Refugees and Other Persons of Concern” (2009)
- UNHCR Guidance Note “Refugee Claims Relating to Female Genital Mutilation” (2009)
- UNHCR “Ensuring Access to Health Care: Operational Guidance on Refugee Protection and Solutions in Urban Areas” (2011)



GAPS

Despite these varied legal-institutional frameworks that have been established in order to address gender dynamics in displacement, the needs and challenges of women*, girl, LGBTQIA+, and gender diverse displaced persons in the context of violence often remain beyond the scope and processes of protection.

As we brought together lived experiences and expertise at our UN CSW event, we learned about the remaining gaps in international protection frameworks.

Across all four key areas - children and youth, sexuality and gender identity, GBV, and health - the pressing question of *who is left behind in international protection frameworks - especially in the Refugee Convention* was critically discussed.

Below, we present findings from each of the working groups that together form the content and trajectory of this Guidance Note. We situate these findings in a contemporary context and in available data on the respective key areas.



CHILDREN & YOUTH



In 2020, 36 million international migrants were children/youth and nearly half of all who identified as refugees and asylum seekers were children/youth - classified as under the age of 18 (UNICEF, 2021).

Children/youth face specific challenges and forms of violence along migratory routes and in destination countries due to their age and other intersecting identities. Studies have shown that many children/youth have to rely on traffickers and smugglers to reach their destination country, making them susceptible to abuse and violence.

For instance, 75% of interviewed children as part of a study on Libya (passing country) reported having been subjected to abuse and abduction. The incidences of abuse were higher for girls than for boys, and respondents reported difficulties in accessing food along their way to Libya (UNICEF, 2017, p. 4).

After reaching their destination country, inadequate living conditions in refugee camps or other reception capacities further endanger the lives of children/youth, leading to varied forms of exploitation and violence. In their study on accommodation conditions in several European countries, the European Union Agency for Fundamental Rights - FRA (2020) revealed that many facilities had dismal living conditions that put the lives of children/youth in danger.

According to the organization, the reception capacities in Cyprus, France, Greece, Italy, Malta and Spain were inadequate for children/youth needs.



CHILDREN & YOUTH



Indeed, France was subjected by the European Court of Human Rights for violating Article 3 of the European Convention of Human Rights which prohibits torture and inhumane punishment because it did not provide suitable accommodation conditions for a 15 year-old unaccompanied Afghan child.

Child labor exploitation is another significant aspect to highlight in this context: studies by the International Labor Organization (ILO) have indicated that nearly 63% of child laborers in Uganda were in fact migrants and that migrant girls make up nearly half of all domestic workers (ILO 2004 & 2010).

The Working Group on Children and Youth was co-facilitated by Danielle De La Fuente from the Amal Alliance, Zoltán Somogyvári from the Hungarian Helsinki Committee, and Trevor Riedmann from the Center for Migration, Gender, and Justice.

De La Fuente is the Founder and Executive Director of the Amal Alliance, an NGO that ensures that all children - regardless of migration status or background - are protected and educated, and that there is a strong infrastructure of teachers, psychologists, and caregivers to provide for the needs of children affected by displacement.

Somogyvári is a chief legal officer at the Hungarian Helsinki Committee's refugee program. The Hungarian Helsinki Committee offers legal support to migrants, including in matters of family reunification which constitutes Somogyvári's main area of work.



CHILDREN & YOUTH



Key aspects discussed in this working group concerned child-centered approaches in international protection frameworks, meanings of the “best interest of the child” principle, as well as the prioritization of emotional and social needs of children and youth in the context of displacement. Further experiences and expertise shared included:

Amal Alliance:

- limited access to education exacerbated due to COVID-19 pandemic
- needed assistance with social and emotional competencies
- establishment of targeted back-to-school transitions (post-pandemic)

Hungarian Helsinki Committee:

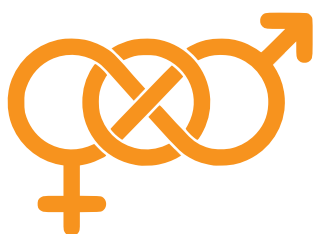
- heightened detention of children
- decreased family reunification procedures due to COVID-19 pandemic
- extended assistance with family counseling, mentorship, and therapy

Based on these experiences and expertise shared, as well as the contemporary context and available data provided, the following gaps in international protection frameworks with regards to children and youth were identified:

- varying socio-cultural norms
- lack of early childhood programming
- language barriers
- reconsiderations of “best interest of the child” principle
- limited attention to unaccompanied minors



SEXUALITY & GENDER IDENTITY



Gender dynamics across the displacement continuum (origin-, passing-, and destination country) are complex and often interconnected.

For instance, based on a country's laws and policies regarding gender matters, gender identity and sexuality might premise a reason for flight and displacement but might also affect experiences along migratory routes and in destination countries.

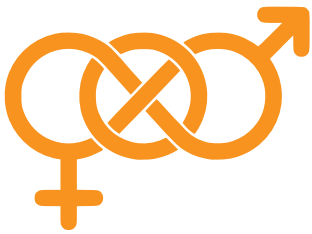
Research has suggested that LGBTQIA+ and gender diverse persons face persecution and violence, including domestic violence, rape, and murder, as well as discrimination in areas like education, employment, housing, and healthcare across the displacement continuum.

A study by Human Rights Watch (2020) on LGBTQI+ migrants from El Salvador, Guatemala and Honduras, for example, revealed that migrants were subjected to violence by their family members, forcing them to flee their countries of origin as early as eight years old.

While some interviewed migrants described experiencing bullying and discrimination in education, others expressed difficulties in finding jobs which eventually forced them into sex work. Furthermore, the study found that poverty and houselessness makes LGBTQI+ migrants more vulnerable to exploitation and violence by gang members and public authorities.



SEXUALITY & GENDER IDENTITY



As Rainbow Railroad (2020) reported, homo- and transphobia are especially pronounced in border cities such as in Tijuana (Mexico) where LGBTQI+ migrants face hostility from cartels, the police, and the government. LGBTQI+ persons - specifically transgender women* and men - have been frequently trafficked, kidnapped and killed while waiting at the border.

With fourteen countries worldwide still criminalizing trans persons, respective laws are not only used to arrest and detain trans persons, but also to limit their access to rights and justice (Human Dignity Trust, 2020). Women* are more likely to experience violence, trafficking, abuse and persecution before, during, and after migrating. As UNFPA found (2018), 71 % of human trafficking victims are women* and girls.

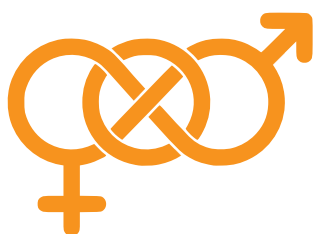
The Working Group on Sexuality and Gender Identity was co-facilitated by Tina Dixson from the Forcibly Displaced People Network, Kristin Thompson from Immigration Equality, as well as Dr. Lara-Zuzan Golesorkhi and Olivia Brimhall from the Center for Migration, Gender, and Justice.

Dixson is the Co-Founder and Program Manager at the Forcibly Displaced People Network, an Australian LGBTQI+ refugee-led NGO that focuses on empowering and supporting LGBTQI+ persons who have been forcibly displaced through community efforts and connection to resources.

Thompson is the Communications Director for Immigration Equality, a US-based NGO that provides legal assistance to LGBTQI+ and HIV-positive persons by means of education and advocacy.



SEXUALITY & GENDER IDENTITY



Key aspects discussed in this working group concerned gender definitions beyond the binary, violence experienced by LGBTQIA+ and gender diverse persons along the displacement continuum (origin-, passing-, and destination country), as well as intersectionality as a policy and analytical tool.

Further experiences and expertise shared included:

Forcibly Displaced People Network:

- lack of data/knowledge
- limited access to resources and services (gendered health)
- increased violence/assault in host communities during COVID-19 pandemic

Immigration Equality:

- pervasive violence/assault in detention
- arbitrariness in migration courts and asylum decisions during COVID-19 pandemic

Based on these experiences and expertise shared, as well as the contemporary context and available data provided, the following gaps in international protection frameworks with regards to sexuality and gender identity were identified:

- lack of protection for intersex persons
- gender definitions beyond the binary
- human-rights based approaches vs. vulnerabilities/victimization approaches
- lack of documentation of trans persons
- access to LGBTQIA+ inclusive and gender re-affirming healthcare



GENDER-BASED VIOLENCE



Gender-based violence (GBV) is defined as “harmful acts directed at an individual based on their gender” and may include “sexual, physical, mental and economic harm” as well as threats of violence and coercion (UNHCR, n.d.).

Research has shown that GBV not only occurs in countries of origin and presents a reason for flight and displacement (i.e. femicide); GBV also occurs in passing- and destination countries. In Honduras, El Salvador and Guatemala, GBV comprises the main reason for flight and displacement of women* and girls.

Together, these three countries have the third highest rate of femicide in the world despite their small population - with Honduras having the highest rates of femicide in the world (Atlantic Council, 2018).

The COVID-19 pandemic had exacerbated the domestic violence targeted against women*, leaving them with limited options of escape and limited judicial recourse due to court closures (International Commission of Jurists, 2020).

In their study, Keygnaert et al. (2014) found that more than half of all interviewed refugees, asylum-seekers, and migrants (of other statuses) living in eight European countries (Belgium, Greece, Hungary, Ireland, Malta, The Netherlands, Portugal, Spain) reported having experienced either GBV or peer victimization of sorts.



GENDER-BASED VIOLENCE



In discussing experiences of GBV through a qualitative approach, Freedman's (2018) examination of Greece, Serbia and France shows that GBV experienced by women* seeking protection was perpetrated by smugglers and traffickers, other persons seeking protection, as well as family members.

The interviews carried out in this study indicate that smugglers and traffickers demand sexual relations from women* who do not have enough money to cover migratory routes in return for passage. Freedman's discussion also demonstrates that poor accommodation in refugee camps that leaves women* sharing toilets and rooms with unknown persons increases the risk of GBV.

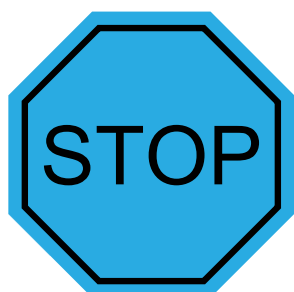
The Working Group on GBV was co-facilitated by Beatriz Borges from the Center for Justice and Peace, Héctor Arguinzones and Niurka Meléndez from Venezuelans and Immigrants Aid, as well as Carolina Cortes and Emma Wells from the Center for Migration, Gender, and Justice.

Borges is the Executive Director of the Center for Justice and Peace, a non-profit organization that works to promote and defend democratic values, human rights, and a culture of peace in Venezuela.

Arguinzones and Meléndez are Co-Founders of Venezuelans and Immigrants Aid, a 100% volunteer based grassroots community organization that helps Venezuelan forced migrants in New York.



GENDER-BASED VIOLENCE



Key aspects discussed in this working group concerned regional protections frameworks, pervasive femicide, as well as human trafficking.

Further experiences and expertise shared included:

Center for Justice and Peace:

- threatened social-, civil-, and reproductive rights as well as pervasive femicide
- attacks on communities and grassroots efforts
- lack of enforcement of the Cartagena Declaration

Venezuelans and Immigrants Aid:

- exacerbated legal challenges due to COVID-19 (i.e. temporary protected status - TPS)
- limited access to health resources and services
- compromised livelihood creation (i.e. housing, food etc.)
- heightened experiences of GBV along displacement continuum (origin-, passing-, and destination country)

Based on these experiences and expertise shared, as well as the contemporary context and available data provided, the following gaps in international protection frameworks with regards to GBV were identified:

- lack of applicable international protection frameworks on GBV
- limited access to education, employment, and social protections
- exploitation by multiple actors (i.e. state, interpersonal, family, etc.)



HEALTH



Health, as a cross-cutting issue in matters of displacement, carries specific gender dynamics in origin-, passing-, and destination countries.

Health as a reason for flight and displacement, as well as gendered health experiences in passing- and destination countries, often intersect with other aspects, not least poverty and religious-cultural dimensions (in the case of female genital mutilation - FGM, for instance).

As a survey of female Nepalese migrants in the Middle East and Malaysia (2018) showed, women* from lower socioeconomic status experienced higher vulnerability to poverty and subsequent health problems, thereby creating a reinforcing cycle of poor health and endangered livelihoods.

Refugees and asylum-seekers - in particular - often lack access to health resources and services across the displacement continuum (origin-, passing-, and destination country), while healthcare providers struggle with cultural and linguistic differences as well as lack of institutional capacities. Refugees and asylum-seekers also face greater risk for mental and physical illness during flight and in host countries (UNHCR, 2021).

Lack of access to health resources and services is especially pronounced for women* seeking protection. In refugee camps, access to basic necessities that are essential for both physical and mental health, are often inadequate or completely absent. Overcrowding in facilities further exacerbates these experiences, especially as it concerns menstrual hygiene (see: Human Rights Watch, 2019; Relief Web, 2020).



HEALTH



Female genital mutilation (FGM) as a ground for persecution deserves more attention here. FGM is the “partial or total removal of external female genitalia or other injury to the female genital organs for non-medical reasons” (WHO, 2020).

FGM violates a series of human rights such as the right to life, the right to non-discrimination on the basis of sex, the right to freedom from torture, the right to the highest attainable standards of health, and the right to bodily integrity. For this reason, UNHCR considers FGM or fear of FGM as claims for asylum within the framework of 1951 Refugee Convention (UNHCR, 2009). Analyzing FGM in the context of children and youth is especially important since most FGM survivors are girls (WHO, 2020). For instance, in 2011, 3,665 girls under the age 14 sought protection from FGM practicing countries in the EU (UNHCR, 2013).

The Working Group on Health was co-facilitated by Jaana Rehnstrom from the Kota Alliance, Fawzia Abdulle from Catholic Charities, as well as Grace Fortson and Miriam Samira Aber from the Center for Migration, Gender, and Justice.

Abdulle is a Case Manager Supervisor at Catholic Charities of Oregon (USA), an organization that ensures essential services and support (i.e. affordable housing, financial empowerment, mental health, counseling, etc.) to those historically marginalized.

Rehnstrom is the Founder and President, as well as Interim Executive Director of the Kota Alliance, an umbrella organization that elevates collaboration for women-centered nonprofits, NGOs, social enterprises and entrepreneurs.



HEALTH



Key aspects discussed in this working group concerned FGM as a reason for flight and displacement, mental health concerns along the displacement continuum (origin-, passing-, and destination country), as well as gendered health resources and services.

Further experiences and expertise shared included:

Catholic Charities:

- heightened mental health concerns along the displacement continuum (origin-, passing-, and destination country)
- targeted violence against trans migrants
- uptick in substance abuse due to COVID-19 pandemic

Kota Alliance:

- navigating FGM/C terminology/conceptions
- exacerbated challenges in accessing health resources and services due to COVID-19 pandemic
- paramount psychological and physical effects

Based on these experiences and expertise shared, as well as the contemporary context and available data provided, the following gaps in international protection frameworks with regards to health were identified:

- affordable and equitable access to health resources and services
- limited cultural sensitivity & language barriers in health resources and services
- lack of health data at migration-gender nexus



RECOMMENDATIONS AND PRACTICES

At the 70th anniversary of the Refugee Convention, gender justice beyond borders remains a goal yet to be achieved. At this critical juncture in time, the framing, interpreting and understanding of the Refugee Convention as well as the Convention's relationship to other bodies of international law and the Convention's implementation in national law, policy, and practice, requires an intersectional approach in moving forward.

This can be achieved by establishing rights- and evidence-based frameworks with strong accountability mechanisms. To this end, we provide recommendations and highlight practices by our partners that speak to gender dynamics in displacement.

RECOMMENDATION 1: TOWARDS RIGHTS-BASED FRAMEWORKS IN INTERNATIONAL PROTECTION

RECOMMENDATION 2: TOWARDS EVIDENCE-BASED FRAMEWORKS IN INTERNATIONAL PROTECTION

RECOMMENDATION 3: TOWARDS ACCOUNTABILITY FRAMEWORKS IN INTERNATIONAL PROTECTION

While these recommendations speak to gender dynamics in various ways, there are additional recommendations and practices to be shared in the specific context of the four key areas addressed in this Guidance Note: children and youth, sexuality and gender identity, GBV, and health.

These additional recommendations and practices were discussed in the respective working groups and are based on the previously established gaps between lived experiences and laws / policies.



RECOMMENDATIONS AND PRACTICES

RIGHTS-BASED FRAMEWORKS

We recommend rights-based frameworks in international protection that include all displaced persons irrespective of migration status (asylum- seeker, refugee, internally or other displaced).

While the 1951 Refugee Convention outlines asylum standards and refugee rights, displaced persons that do not fall within these legal categories are often left out of the protections granted by the Convention.

Indeed, the Convention provides that - at minimum - contracting states shall accord to refugees the same treatment as is accorded to non-nationals/citizens generally. The Convention, however, remains ambiguous in defining different migration statuses such as present lawfully, staying lawfully, and residing lawfully, and how they affect different levels of protection.

This gives contracting states significant discretion in the provision of rights; the Convention only provides that rights accrue to refugees incrementally depending on the legality of their situation in the destination country and the duration of the stay there.



RECOMMENDATIONS AND PRACTICES

EVIDENCE-BASED FRAMEWORKS

We recommend evidence-based frameworks in international protection that are premised on thorough research, critical analysis, and disaggregated data, and that explore the breadth of intersectional experiences of those displaced.

In 2020, the UNHCR reported that there were 79.5 million displaced persons worldwide, amounting to one percent of the total world population being displaced.

Out of the 79.5 million displaced persons, 45.7 million are internally displaced, 26 million are recognized refugees, and 4.2 million are asylum-seekers. 40% of all displaced persons are children, making women* and girls around half of any refugee, internally displaced or stateless population (UNHCR, 2021).

Yet, data on LGBTQIA+ and gender diverse displaced persons remain fragmented. Similarly, data on the lived experiences of women*, girl, LGBTQIA+, and gender diverse displaced persons along the displacement continuum (origin-, passing-, and destination country) are limited or convoluted in that uniformity of experiences, rather than the intersectionality thereof, are assessed and discussed.



RECOMMENDATIONS AND PRACTICES

ACCOUNTABILITY FRAMEWORKS

We recommend accountability frameworks in international protection in which those displaced are involved in the planning, implementation, and evaluation of policies / laws that govern them.

Within the context of varied experiences of displacement across the world, the 1951 Refugee Convention and other international protection frameworks present key documents to sustain livelihoods for those seeking protection.

As reflected in the limited and fragmented data on lived experiences of women*, girl, LGBTQIA+, and gender diverse displaced persons, gender dynamics in displacement, particularly those that are violence-induced, often remain beyond the scope of international protection frameworks and/or are addressed in non-legally binding guidelines and handbooks.

This lack of accountability mechanisms has left many behind. Limited representation in the planning, implementation, and evaluation of policies / laws that govern displaced persons has led to policy mismatches and compromised outcomes. These mismatches pose a challenge to creating inclusive approaches towards protection at the international level.



RECOMMENDATIONS AND PRACTICES



Children & Youth

Recommendations

- emphasize community-based approaches
- prioritize emotional and social needs
- establish early childhood programming and after school programming
- employ multi-stakeholder approaches: teachers, therapists, NGOs etc.
- implement creative and innovative child-centered solutions

Practices

- Amal Alliance - Rainbow of Education Program
- Hungarian Helsinki Committee - Children's Alternatives to Detention protecting their Rights in Europe project (CADRE)



RECOMMENDATIONS AND PRACTICES



Children & Youth

The **Rainbow of Education Program** aims to empower displaced children through holistic education and integration programs within four areas of focus:

- 1) Social-Emotional Learning
- 2) Psychosocial Support,
- 3) Early Childhood Development
- 4) Peacebuilding.

The trauma-informed programs meet kids at their confidence and capability level, enhancing children's cognitive, interpersonal, and emotional skills through informal education and structured play.

The curriculum incorporates kids' yoga, mindfulness, art therapy, dance, reading, and creative writing to create a safe space in which children cultivate their voice and self-worth.

By partnering with host community organizations, the Amal Alliance trains local leaders to teach the curriculum to refugee and host community children, providing skills development and contributing to the local economy through meaningful employment.

CADRE is a two-year project that seeks to promote the expansion, implementation and improvement of viable and effective alternatives to detention for migrant children in full respect of their rights in the European Union.

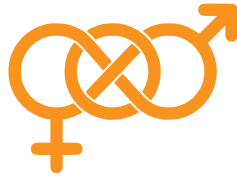
This project is implemented by ICJ-EI in collaboration with the Hungarian Helsinki Committee and other partners from Belgium, Bulgaria, Greece, Italy, Malta, and Poland.

The project partners will:

- hold three transnational workshops attended by at least 60 experts from seven EU countries followed by several online public conferences / talks;
- develop four training modules translated into six different languages and other e-learning tools;
- hold national trainings in the five focus countries, and
- widely disseminate all publications and materials, including through developing a webpage with a database and videos.



RECOMMENDATIONS AND PRACTICES



Sexuality & Gender Identity

Recommendations

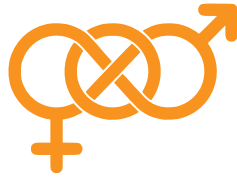
- expand grounds for protection to be inclusive of varied sexualities and gender identities
- employ intersectionality as a policy and an analytical tool
- ensure rights to identification/documentation of LGBTQIA+ and gender diverse persons
- enforce Yogyakarta Principles in the context of displacement
- address violence as perpetuated by different actors (state, interpersonal, family, etc.)

Practices

- Forcibly Displaced People Network - Canberra Statement
- Immigration Equality - Direct Legal Services and Impact Litigation



RECOMMENDATIONS AND PRACTICES



Sexuality & Gender Identity

The **Canberra Statement** sets out the outcomes of the “Queer Displacements: Sexuality, Migration and Exile (Queer Displacements)” conference held in November 2019 in Canberra, Australia.

Queer Displacements was the first conference in Australia to address and discuss the issues of LGBTIQ+ forced displacement in its complexity. It was attended by academics, NGOs, policy makers, government agencies, activists, asylum-seekers and refugees.

The Canberra statement is a policy document that can be signed on to by individuals and organizations affirming a need for a set of reforms to ensure access to safety and justice for LGBTIQ+ asylum seekers, refugees and other forcibly displaced persons.

The Canberra Statement has been signed by 420 stakeholders, including organizations, individuals/allies, and people with lived experience of forced displacement.

Direct Legal Services

Legal representation has an important impact in determining the right to asylum. For this reason, Immigration Equality provides free legal service to LGBTQ+ and HIV+ asylum seekers. Through this service, Immigration Equality assured 1,200 individual asylum status.

The project also carries out a detention hotline where asylum-seekers can reach legal services.

Impact Litigation

When a federal regulation was proposed in the summer of 2020 in the US, Immigration Equality submitted comments condemning the decision and demanded changes.

When no changes took place, Immigration Equality and Lambda Legal sued the Trump administration. In January 2021, a temporary restraining order was secured against the regulation.



RECOMMENDATIONS AND PRACTICES



Gender-Based Violence

Recommendations

- train border control officials for gender-sensitivity
- support survivors of human trafficking
- provide prevention, mitigation, and response to GBV across displacement continuum (origin-, passing-, and destination country)
- facilitate permanent protection for those who have experienced GBV
- include femicide as a ground for persecution in national asylum laws

Practices

- Center for Justice and Peace - Orange Network
- Venezuelans and Immigrants Aid - Legal Orientation



RECOMMENDATIONS AND PRACTICES



Gender-Based Violence

In 2015, the Center for Justice and Peace (CEPAZ) sponsored the event “How does violence affect women in Venezuela?” along with other NGOs that together created the “**Orange Network.**”

The Orange Network is a joint initiative that provides space for collaboration between organizations working for the rights of women fleeing from violence.

As part of the engagement in the Orange Network, CEPAZ addressed several individual GBV cases in the context of displacement.

For example, in 2018, Linda Loaiza, who was a victim of sexual violence, took her case to the Inter-American Court of Human Rights (IACHR) with the support of several organizations including CEPAZ. The case was concluded with IACHR holding the Venezuelan government responsible for acts committed to the detriment of Loaiza. This outcome is regarded as a historical victory with Loaiza’s case being the first Venezuelan case of GBV reaching international justice.

Venezuelans and Immigrants Aid's (VIA) goal is to strengthen assistance programs to Venezuelan forced migrants as it pertains to health, educational workshops, emotional support, and English Language learning.

To this end, the organization also provides **legal orientation** which includes providing information and resources relating to migratory options for permanent residency in the US. Most recently, VIA has been advocating for temporary protected status (TPS) for Venezuelans in the US.

TPS is a temporary immigration status granted by the US Secretary of the Department of Homeland Security (DHS) to individuals who are unable to return home safely due civil war, natural disaster, or other conditions or circumstances (such as violence-induced displacement) preventing their return to their country of origin.

In March 2021, Venezuela was designated for TPS for 18 months.



RECOMMENDATIONS AND PRACTICES



Health

Recommendations

- provide health information in varied and accessible language
- ensure confidential translators/interpreters
- train health professionals and social workers in cultural sensitivity
- destigmatize mental health provisions
- establish protections against intersex interventions and FGM

Practices

- Catholic Charities - COVID-19 Team
- Kota Alliance - Kota Academy



RECOMMENDATIONS AND PRACTICES



Health

Catholic Charities of Oregon's Refugee Services Program created a **COVID-19 team** that works to provide different migrant communities tailored engagement strategies around vaccine options and how to find vaccination appointments.

Funded by the Oregon Health Authority (OHA), the team is made up of migrants who have trusted relationships within their communities, can successfully engage with their fellow community members, and provide outreach around the vaccine and other COVID-19-related issues.

The COVID-19 team is both a culturally- and language specific team that works with the Rohingya, Zomi, Somali, and Congolese communities. Because the consequences of COVID-19 are potentially fatal, being able to share complex medical information in one's first language is crucial.

The **Kota Academy** brings services to underserved women and increases women's influence and power in society at large.

Through Kota Academy, the Kota Alliance expands visibility and impact for their partners by providing a platform for their trainings, workshops, programming and resource-sharing in two main areas: Workforce Development and Entrepreneurship / Health and Wellness.

For instance, in 2020, the Kota Alliance hosted a virtual roundtable discussion on "Women and Mental Health during COVID-19."

The discussion brought together experts from different fields and addressed important questions that highlight the importance of multi-stakeholder collaboration in matters of health - especially in the context of displacement.



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