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**At the Workshop on
Migrant Rights: War, Terrorism, and National Boundaries**

**Conference on: “Human Rights, An Endangered Concept:
The United Nations and the Advancement of Human Rights”
North Carolina State University Campus
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Distinguished participants,

It is with great pleasure that I join you this afternoon in this workshop on “Migrant rights: War: Terrorism and National Boundaries” to discuss the human rights aspects of migration, with particular attention to women refugees, asylum seekers and internally displaced. I congratulate the West Triangle and Wake County Chapters of the United Nations Association of USA for putting this important topic on the agenda of today’s conference.

Migration is not a new phenomenon. The movement of populations across the world for reasons related to, amongst others, climatic changes, demographic growth, wars, and alterations in trade and production patterns has always been part of human history. The recent processes of ‘globalization’ have led to an increase in the cross-border flows of people by facilitating interconnectedness in all aspects of contemporary life.

Women have long constituted a significant portion of the world’s international migrants. What is different today is the scale of the migration of women and the entry of women into migration streams that had previously been primarily male. At no time in history have as many women been on the move as today; women constitute nearly half of the world’s 191 million migrants.

While a majority of female migrants move voluntarily for family or work purposes, a smaller number have been forced to leave their homes as a result of, among other factors, conflict, repression, human rights violations, political instability, and natural disasters. Some are displaced internally whereas others move across national borders.

At the start of 2006, the number of people “of concern” to the Office of the United Nations High Commissioner for Refugees (UNHCR) – which includes refugees, civilians who have returned home but still need help, internally displaced persons (IDPs), asylum seekers and stateless people - rose to 20.8 million, up 6 per cent from the 2005 total of 19.5 million. Of those for whom demographic data was available, 49 per cent were women and 46 per cent were children under the age of 18.

Refugees have a special status in international law. The 1951 Convention relating to the Status of Refugees defines a refugee as a person who “owing to well-founded fear of being prosecuted 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”. Refugee status has been applied broadly to include other persons who are outside their country of origin as a result of armed conflict, generalized violence, foreign aggression or other circumstances that have seriously disturbed public order, and who therefore require international protection.

According to the 1951 Convention, which was complemented by the 1967 Protocol, States must refrain from *refoulement* of refugees to countries in which they would face persecution. The Convention has been interpreted to require States to determine the status of asylum applicants at their frontiers or inside their territories in order to determine if they have valid claims to refugee protection. While the only obligation to a refugee is *non-refoulement*, in practice this has often meant admission to and asylum in the host country.

To gain recognition as a refugee, asylum applicants must demonstrate, first, that the level of harm they have experienced rises to persecution; second, that their own Government cannot or will not protect them from the harm; and third, that the persecution is based on one of the protected grounds included in the definition contained in the Convention.

In 2002, UNHCR issued two sets of guidelines on international protection to assist States parties to the Convention and national authorities determining refugee status in gender-sensitive assessment and in the processing of asylum claims – the guidelines on gender-related persecution and the guidelines on membership of a particular social group. The guidelines on gender related persecution indicate that “Even though gender is not specifically referenced in the refugee definition, it is widely accepted that it can influence, or dictate, the type of persecution or harm suffered and the reasons for this treatment. The refugee definition, properly interpreted, therefore covers gender-related claims. As such, there is no need to add an additional ground to the 1951 Convention definition”. The UNHCR guidelines on membership of a particular social group define a social group as “a group of persons who share a common characteristic other than the risk of being persecuted, or who are perceived as a group by society. The characteristic will often be one which is innate, unchangeable, or which is otherwise fundamental to identity, conscience or the exercise of one’s human rights”.

Women, like men, may be persecuted for political, ethnic or religious reasons. In addition, a woman fleeing discrimination or severe persecution for her failure to conform to strict social codes has grounds to be considered for refugee status. Such persecution may emanate from a government authority or, in the absence of adequate government protection, from non-state actors. Sexual violence, such as rape may – depending on the

circumstances – constitute persecution. In order to be considered a refugee, such discrimination should have consequences that are significantly prejudicial.

In 1984, the European Parliament determined that women facing cruel or inhumane treatment because they seemed to transgress social mores should be considered a particular social group for the purpose of determining refugee status. A number of countries, including Canada, Germany, the Netherlands, Switzerland, the United Kingdom of Great Britain and Northern Ireland and the United States of America, now have guidelines related to gender-based persecution. In several countries, including France, Canada, the Netherlands, the United Kingdom of Great Britain and Northern Ireland and the United States of America, it has been officially recognized that female genital mutilation represents a form of persecution and a basis for refugee status.

Progress in establishing gender-sensitive asylum procedures has been slow. A study of European asylum practices carried out in 41 countries in 2004, demonstrated that there had been limited progress in ensuring gender-sensitive interpretation of the 1951 Convention and gender-sensitive asylum procedures. Only half of the surveyed countries explicitly recognized sexual violence as a form of persecution. Moreover, the study found a general lack of sex-disaggregated statistics on asylum applications and decisions, and inadequate guidance and training on assessing gender-related asylum claims. Only 40 per cent of the countries providing automatic and consistent access to procedures to all adults, including women who arrive with their husband or other male relative.

Another legal barrier faced by refugees and asylum seekers, and which affects many women migrants, is the lack of access to family reunification. Refugees often find themselves separated from their families, especially during conflict. Many states provide very limited opportunities for asylum seekers, particularly those granted temporary protection, to reunify legally with separated family members.

Over the last half century, several million people have been granted asylum worldwide. In recent years, however, the number of claims has been dropping steadily. In 2005, the number of asylum seekers was at its lowest in recent years. Though many factors may have contributed to this drop, one apparent cause is the increasingly restrictive measures taken by states to limit access to asylum as they attempt to manage migration and safeguard their security.

States that once had generous refugee policies have now begun to see the costs of asylum as outweighing its benefits. The 1951 Convention was produced largely to resolve the situation of the millions of refugees who remained displaced by the Second World War. In the years following the Second World War, many states welcomed refugees who met labour needs, arrived in manageable numbers and reinforced ideological or strategic objectives. With the end of the Cold War, however, some states began to see refugees as a burden rather than an asset. Since the 11 September 2001 attacks in the United States of America, state security concerns have come to dominate the migration debate, at times overshadowing the protection of individuals risking persecution in their countries.

As concerns about the costs of asylum, state security and ‘uncontrolled’ migration have led to a reshaping of asylum policies in many countries, two parallel trends have emerged, both impacting negatively on access to asylum and the treatment of refugees and asylum seekers. The first is the overtly restrictive application of the 1951 Convention and its 1967 Protocol, which has led to an increase in detention and exclusion and lack of due process. The second is the creation of alternative protection mechanisms that guarantee fewer rights than those contained in the Convention.

In some states there has been a gradual movement away from the rights-based approach towards more discretionary forms of refugee protection, based on the notion that the protection needs of refugees will be considered or addressed somewhere other than in the territory of the state where they have sought, or intend to seek, protection. Such mechanisms have included the notion of ‘safe third country’. Under this notion, asylum seekers are refused admission to a state’s territory and/or asylum procedures if they have arrived from a country that is considered to be ‘safe’ – i.e. that can provide asylum seekers with ‘effective protection’ - or where they could have submitted an application for refugee status. Some countries have designed all of their neighbours as ‘safe countries’ for the purpose of asylum application, which means that any asylum seeker is considered ineligible to submit a claim to refugee status and is liable to summary rejection and return to the border.

Visa restrictions and other controls which have been introduced in many countries have led asylum seekers to resort to the services of smugglers in order to reach a sanctuary. Being smuggled, however, carries a price beyond its financial costs. By resorting to the services of a smuggler, an asylum seeker can be prosecuted in the country of destination for illegal entry, and thus may compromise his or her claim to asylum. Furthermore, unknown numbers of asylum seekers perish on the way, as a result of unsafe conditions, such as overloaded boats or dangerous trips through deserts or other hostile environments.

Asylum seekers, refugees and internally displaced persons may also become victims of human trafficking. There is now growing evidence of large-scale trafficking of persons within and between countries by organized criminal networks. Evidence suggests that such trafficking is highly diverse and varied in terms of routes and destinations. Trafficking takes place within countries – for example when women and children are trafficked from rural areas into forced labour or for the exploitation of prostitution in urban areas – as well as internationally, across regions and continents. Displaced women and children are particularly vulnerable to trafficking due to their relative poverty and separation from their homes, families, communities, and livelihoods.

Whilst recognizing that states have legitimate concerns in the areas of security, uncontrolled migration and the costs of providing asylum, it is important to ensure that the human rights of refugees and asylum seekers are upheld. The fundamental principles of the 1951 Convention remain as valid and necessary as ever. The Convention has legal, political and ethical significance that goes well beyond its specific terms: legal, in that it

provides the basic standards on which principled action can be founded; political, in that it provides a truly universal framework within which states can cooperate and share the burden resulting from forced displacement; and ethical, in that it is a unique declaration by states party to the Convention and/or its 1967 Protocol of their commitment to uphold the rights of some of the world's most vulnerable people.

In an attempt to boost support for the international framework for protection principles, and to search for new approaches to enhance protection, UNHCR launched the Global Consultations on International Protection in 2001. The process aimed to promote a better understanding of protection dilemmas among both the beneficiaries of international protection and its providers. Rather than revising the 1951 Convention, action was taken to build upon it through multilateral dialogue and arrangements to improve burden sharing between countries. The Agenda for Protection, adopted as a result of the Global Consultations, identifies specific protection objectives. The programme of action contained in the Agenda for Protection calls upon States to, *inter alia*, meet the protection needs of refugee women and children. It also highlights the importance of applying a gender- and age- sensitive approach to the protection regime.

The rights of refugee women are also protected under other United Nations human rights treaties, including the 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). The CEDAW Convention, although not specifically mentioning refugees in its articles, applies to all women living in a State which is party to the Convention, including refugees, asylum seekers and internally displaced persons. The treaty body in charge of monitoring implementation of CEDAW – the Committee on the Elimination of Discrimination against Women – regularly addresses the issue of refugee women, internally displaced women and women asylum seekers in its consideration of States parties' reports and in its concluding comments. For instance at its last three sessions (i.e. thirty-fifth session held on 15 May-2 June 2006, thirty-sixth session held on 7-25 August 2007, and thirty-seventh session held on 15 January-2 February 2007) the Committee addressed the issue of women refugee and/or asylum seekers in its concluding comments on Austria, China, Cyprus, the Democratic Republic of Congo, Greece, India, Malaysia, Malawi, the Netherlands, and Poland.

In 1998, the Guiding Principles on Internal Displacement (E/CN.4/1998/53/Add.2), were developed at the initiative of the Secretary-General's Representative on Internally Displaced Persons, providing specific guidance with regard to internally displaced women. The Guiding Principles, although not a legally binding instrument, are based on binding international human rights, humanitarian and refugee law. They contain provisions regarding internally displaced women's participation in the planning and distribution of humanitarian assistance (principle 18), women's health (principle 19), identification documents (principle 20), and education (principle 23).

The need to adopt gender-sensitive and human rights approaches in addressing the situation of refugees, asylum seekers and internally displaced persons is crucial. The rights of women and girls who are refugees and internally displaced are often denied. They may not have access to shelter, food, water, health care, including reproductive

health care, and education. Large numbers of refugees remain in camps for years, unable to return to home communities owing to, inter alia, conflict and instability, without opportunities to work or access training or income-generating activities. The refugees have to rely on food rations, clothing and shelters provided by international donors. Economic dependency, isolation and lack of integration support may put asylum-seekers, especially single women, women with children and unaccompanied minors, at a further risk of sexual and gender-based violence, including sexual exploitation and forced prostitution.

Many factors contribute to the vulnerability of refugee and displaced women and girls to sexual violence and exploitation. For instance, traditional mechanisms for protection may be lost when refugees live in camps or reception centres, and security in the camps is generally inadequate to provide protection. Women refugees may fall victim of sexual violence as they walk long distances away from the camps in order to collect water and firewood. The proliferation of weapons in some refugee camps can further compound the protection problems facing refugee women. Refugee women who have escaped one risk situation in conflicts may find themselves exposed to equally dangerous situations in refugee camps.

Refugee women are not adequately consulted about or involved in planning, implementation and monitoring of policies and programmes in camps, even in projects ostensibly designed to assist them. However, during the past decade, there has been an increased recognition by the United Nations of the need to apply human rights and gender-sensitive approaches when addressing the situation of refugees, asylum seekers and IDPs,

Several United Nations entities apply human rights and gender-based approaches in their work with refugees, asylum seekers and IDPs. For instance, the World Food Programme (WFP) has adopted policies stating that women should control the family food aid entitlement in 80 per cent of WFP food distributions. The WFP guidelines also state that women should take a lead role in local decision-making committees on food aid management as well as the management of assets created through food-for-work programmes. The United Nations Population Fund (UNFPA) works to identify gender-specific needs and ensure that these are taken into account in planning and camp design, and to enhance the participation of women. UNFPA focuses in particular on reproductive health. The United Nations Children's Fund (UNICEF) also applies a gender- and rights-based approach in its work to protect and promote the well being of refugee and displaced children.

The United Nations Office for the Coordination of Humanitarian Affairs (OCHA) advocates for the accommodation of the needs and rights of civilians, particularly women, children, the elderly and other vulnerable groups. OCHA carries out its coordination function primarily through the Inter-Agency Standing Committee (IASC), which includes all humanitarian partners from UN agencies, funds and programmes to the Red Cross Movement and NGOs. The Standing Committee ensures inter-agency decision-making in response to complex emergencies, including in needs assessment,

consolidated appeals, field coordination arrangements and the development of humanitarian policies. In 2002, the Inter-Agency Standing Committee established a Task Force on Protection from Sexual Exploitation and Abuse in Humanitarian Crises mandated, within the overall objective of strengthening and enhancing the protection and care of women and children in situations of humanitarian crises and conflict, to make recommendations that specifically aim to eliminate sexual exploitation and abuse against refugee and internally displaced women.

Within the United Nations family, UNHCR is the lead entity mandated to safeguard the rights and well-being of refugees. In 1991, UNHCR issued the Guidelines on the Protection of Refugee Women in an effort to integrate the resources and needs of refugee women into all aspects of programming to ensure equitable protection and assistance activities. A decade later, in 2002, the Women's Commission for Refugee Women and Children, with the support of UNHCR, undertook an assessment of the extent to which UNHCR had successfully implemented the principles contained in the Guidelines. In all areas covered by the assessment, the team found positive examples of enhanced protection activities in accordance with the Guidelines, including improved capacities for gender-sensitive refugee status determination, more vigorous use of national laws for enforcing protection and human rights, and improved registration mechanisms that allow each individual to obtain his or her own card. Successful assistance efforts that promoted protection included: increased enrollment of girls in schools, measures to organize refugee women and include them in camp management, direct involvement of women in food distribution, incentives to employ more female staff in health and education programmes, wider availability of reproductive health services, safe houses and counseling services for victims of trauma or violence.

The United Nations Division for the Advancement of Women/Department of Economic and Social Affairs (DAW/DESA), which is the United Nations entity under my direction, advocates the improvement of the status of women of the world, and the achievement of their equality with men. In 2004, DAW contributed to the debate on refugees and displaced women, through the publication of the "World Survey on the Role of Women in Development. Women and International Migration". The World Survey dedicated a chapter to the situation of refugee and displaced women, and included a set of recommendations addressed to Governments, international organizations, civil society, and the private sector on the protection and empowerment of women refugees, asylum seekers and women who are internally displaced. DAW has also produced a document on the gender perspectives of nationality and citizenship: *Women 2000 and Beyond: Women, nationality and Citizenship*.

The United Nations' recognition of the importance of gender-sensitive and human rights approaches to addressing the situation of refugee, asylum seekers and IDPs is an important achievement. Increased efforts are, however, needed to ensure that refugees, asylum seekers and IDPs receive the protection they deserve under international law. Successful initiatives should be built upon and replicated to ensure that the human rights of refugee and internally displaced women are promoted and protected in all parts of the world.

The work carried out by the United Nations entities and non-governmental organizations does not, and could not, replace the responsibilities of Governments in ensuring protection of refugees, asylum seekers and IDPs, in accordance with their obligations under international human rights, humanitarian, and refugee law. This does not in any way detract from the important roles and contributions of the United Nations and other international organizations, or of non-governmental organizations working at different levels. The United Nations and other international bodies have critical roles to promote, facilitate, and support and monitor the efforts of Governments, particularly in the states where elevated security concerns have led to practices that ignore human rights standards. Non-governmental organizations also play important advocacy, support and monitoring roles. I therefore again congratulate the North Carolina Chapters for taking up this important issue today.

Thank you