The Gender Dimension of the Hague Declaration on the Future of Refugee and Migration Policy

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'The willingness of rich countries to welcome migrants, and the way that they treat them, will be a measure of their commitment to human equality and human dignity. Their preparedness to adjust to the changes that migration brings will be an indicator of their readiness to accept the obligations as well as the opportunities of globalization, and of their conception of global citizenship. And their attitude to the issue will also be a test of their awareness of the lessons and obligations of history.'

Text of Secretary-General Kofi Annan’s Emma Lazarus Lecture on international flows of humanity, delivered 21 November 2003 at Columbia University

In this presentation of the gender dimension of The Hague Declaration on the Future of Refugee and Migration Policy (The Hague Declaration) I would like to start by explaining the process that has led to the draft and presentation of The Hague Declaration and to the process which is taking place to implement it. I will also look at the gender dimension of this process and make suggestions as to the steps that can be taken to deepen the gender dimension in the future of the Hague Declaration.
The Hague Declaration

A group of some 550 persons, with different backgrounds and coming from different geographical regions, from both the North and the South, who are involved in the field of refugee and migration policy were brought together in 1999 for a period of three years in their individual capacities by the Netherlands Chapter of the Society for International Development. They came from different disciplines and worked in different organizations: governments, supranational bodies, intergovernmental organizations, academia, faith groups, corporate sector and civil society organizations. Some of them had the direct personal experience of flight, displacement or migration. The aim of the process was to think freely and creatively about the future of refugee and migration policy. The added value was to address both issues, refugee movements and voluntary migration, together on a parallel manner because they influence each other at the levels of policy formulation and practical implementation as well as at the level of the daily reality of people on the move. To discuss the different issues, seven seminars and a special hearing took place within a period of three years. The participation was organized on the basis of everyone contributing in their individual capacities. The discussion followed the ‘Chatham House rules’, which guarantees openness and freedom of expression, and states that no comment or statement will be cited outside the meeting in such a way as to identify the speaker. The whole process was made possible through financial support by many NGOs, governments, international and supranational organizations.

The first step was to (re)think the long term interests of States and societies as well as the aspiration and needs of the people on the move. This three-year process was concluded with the production of The Hague Declaration on the Future of Refugee and Migration Policy. The Declaration was launched at the Peace Palace in The Hague on November the 22nd 2002 where it was presented to the General-Secretary of the United Nations, Mr. Kofi Annan. The Declaration consists of 21 Principles and a Commentary on each principle to provide a foundation for the advancement of policy in the field of migration and refugees, with a rights-based approach. The Declaration of The Hague has now been published in the six UN languages (Arabic, Chinese, English, French, Russian, Spanish) as well as in Polish.
The Hague Process

It became clear during the Forum Debate at the launch of the Declaration that all participants wished a follow-up of the project. The need was acknowledged by starting an elaboration of the Principles of the Declaration. After a transitional period the second phase (2004-2008) was entered to be called: ‘The Hague Process on the Future of Refugee and Migration Policy’ (The Hague Process). It is a worldwide attempt to advance the refugee and migration agenda from a multidisciplinary, complementary, and innovative practical perspective. It brings old and new stakeholders together: international organizations, policy makers, governments, intergovernmental organizations, refugees and migrants, academia, the civil society and the corporate sector. They consult each other in order to arrive at concrete attainable steps. ‘The Hague Process’ remains an independent initiative aimed at promoting positive policies and practices in the field of refugees, asylum and migration in a rapidly changing world. It aims at complementing efforts that are already under way, by filling the gaps that exist in the international migration field, and by using its unique characteristics to promote discourse and harmonization.

The point of departure is the Hague Declaration, the approach is ‘action-with-result’ driven. The group which has participated in the primary process that led to the Hague Declaration, the Hague Network, is still involved in the process and has grown to more than 800 people. To further facilitate ‘The Hague Process’ The Club of Hague was set up as an independent advocacy platform whose purpose is to promote and implement The Hague Declaration. It includes several prominent and distinguished international leaders from the North and South who represent many different stakeholders in the refugee and migration field. The Club of The Hague serves as a high level advisory body to The Hague Process, supports its work and issues ‘position statements’ for use by The Hague Process. It complements other initiatives and works in partnership with existing institutes, organizations and initiatives like the Bern Initiative and the Global Commission on International Migration where governments are the major players.
The different roles of The Hague Process are:

**Advocacy**
To engage in advocacy, by acting as a catalyst for further discussion and debate, by facilitating discussion between various sectors in the refugee and migration debate involving the business community and to have an impact on policy and decision makers. Policy makers often do not have the adequate tools to make informed decisions and develop innovative and forward-thinking refugee and migration policies. Although a large body of research exists in this field, policy makers need assistance to distinguish the relative value of different studies. In addition, The Hague Process could distil and disseminate the knowledge that already exists, and provide policy makers with concise and practical information. This would be an effective tool in promoting visionary leadership in this field, which is currently lacking.

**Bridge builder**
The multi-institutional nature of The Hague Process would also enable it to be an effective ‘bridge builder’ and to facilitate communication and coordination between various stakeholders, for example civil society and governments, policy decision makers and academia. In addition, it will give the opportunity to involve the corporate sector, a group that is currently underrepresented in this area.

**Compiling best practices**
Another important task that The Hague Process could undertake and which would fill in an existing gap would be to compile a list of best practices with regard to refugee and migration policy, with a link to development, integration and human rights, in order to see which policies are effective and which are not. This information could be disseminated to decision makers and would assist governments in implementing and building upon successful policy practices. It would also help harmonize refugee and migration policy built upon proven, successful best practices.

**Dialogue**
The Hague Process globally stresses the need to elaborate the relevant policies in countries where refugees and migrants originally come
from, in the transit countries and in the host countries. At the moment there is insufficient dialogue between these countries. The existing dialogue only concerns short term migration management needs. It is important to link the countries of origin and the host countries so that they can work together to coordinate and improve their refugee and migration policies, to incorporate development, integration and human rights, and to develop initiatives that would benefit countries of origin, host countries and the transnational subject as well.

**Complex analysis**

This having been the first and second phases of The Hague Process the question arises: what is the gender dimension to this? Before answering that question I will add up a couple of factors to show the broad spectrum we are dealing with when looking at the issue of gender and movement of people. First of all we need to acknowledge that the world has become more and more complex with so many invisible elements influencing decisions and actions of individuals and societies at the local level that we need at least an equally complex analysis to understand the factors that influence the lives and choices of migrants and refugees. Such analysis is needed to have a broad view of the layered facts underlying the challenges. Besides we need to understand that the short term, simplistic solutions, like closing borders or ‘emanipating foreign women’, as many politicians are proposing, are not the solution. They only give a distorted image of the situation and give false hope to the electorate and, eventually, the migrant or refugee is going to be blamed if the solution fails.

**Decisions**

The second point we need to consider is the process and reality of decision making in refugee and migrant situations. Besides government leaders, major decisions concerning refugees and migrants are made by the refugees and migrants themselves, their families, and (formal or informal) employers. The clearest example of neglecting or misunderstanding this reality is seen when governments in the North invest billions in border control, but with little effect on undocumented migration. In some countries in the North like the United States the number of undocumented refugees, migrants and other displaced persons has
actually increased in the past few years. The dynamics of the decision process by refugees and migrants themselves and by their families has not received sufficient attention. How their aspirations, dreams, frustrations, needs and survival skills affect that process has unfortunately many times been problematized and criminalized. Refugees and migrants make choices, sometimes these are even choices between life and death. Although the choices are made under enormous external pressure, they still are choices. Different people confronted with the same or similar situation act and choose differently. Acknowledging that people choose to migrate or flee influences the perception of refugees and migrants as people who make choices. We should recognize their potential.

**Ground of operation**

Thirdly, I would like to look at the ground of operation. The cultures and structures of the countries receiving migrants and refugees, their fears and aspirations and interests are not analyzed properly in the process of understanding their responses and policies towards migrants and refugees. Unfortunately state interests are perceived on an ad-hoc basis with little regard to long-term strategies. Politicians exploit existing fears and ignorance towards foreigners and this has a negative impact on the integration and cohesion in societies. To quote the High Commissioner for Refugees Mr. Lubbers on State responsibilities:

> We need to find more effective ways of managing the asylum-migration nexus, so that people in need of international protection find it, people who wish to migrate have appropriate opportunities to do so, and abusive manipulation of entry possibilities is curtailed. International migration can no longer be addressed solely from the limited perspective of national sovereignty. A multilateral approach is required, which addresses migration and forced displacement in a concerted, comprehensive and forward-looking manner, focusing on root causes, human rights protection and labor needs.\(^1\)

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**Linking Migration and Refugee**

An added value of The Hague Process has been the focus upon the complex linkages between refugee movements and voluntary migration. Due to volatile political situations a person who was a tourist can become a refugee overnight, ‘sur place’ or as an Internally Displaced Person (IDPs). Or, like in the 1960s and 1970s with refugees from (North) Africa and the Middle-East in Europe, refugees can work as ordinary migrant workers because it is the easiest way to get a stay permit (at that time due to the economical needs in Europe). Another recent example concerns the 1980s and 1990s where, in Europe and many industrialized countries in the North, the only ground to ask a stay permit, apart from family reunion, was by asking asylum. And at the same time a huge practice of undocumented work is part of the daily labor reality. By addressing the issues of refugee movements and voluntary migration together The Hague Process aims to create a space to find solutions without pushing the challenge to either one or the other of these policy terrains.

**The Gender dimension**

In the first phase of The Hague Process, gender issues within the migration and refugee issues were addressed in different seminars. The examples put forward were about vulnerability as well as the needs, resilience and responsibilities of women on the move. These inputs led to the drafting of Principle 16 and its Commentary:

**Principle 16. Refugee and Migrant Women**

Greater focus is required on the particular needs of refugee and migrant women particularly as the patterns of migratory movements and displacement change. Very often women constitute a significant proportion of the respective populations. They bear a heavy burden to ensure the protection and survival of their families. Protection policies need to be more sensitive to their needs. State and local authorities should acknowledge their special potential to facilitate integration and preserve cultural traditions.
Commentary

16. Refugee and Migrant Women

The number and role of women involved in refugee and migrant movements in the world is all too little known or acknowledged. Of the 50 million refugees and IDPs in the world some 80% are women and children. The majority of trafficked people are women, especially those abused in the world’s sex industries, mainly coming from South Asia, South East Asia and some of the nations of the Commonwealth of Independent States (CIS). It is further estimated that 40% of all other migrants are women.

Some 170 countries are party to the 1979 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Other important Guidelines, particularly those produced by the UNHCR, IOM and ILO, present a solid framework for the protection of refugee and migrant women.

The traditional one-dimensional view of the ‘vulnerable woman victim’ is now redundant and must give way to greater gender sensitivity. This applies to all aspects of dealing with refugee and migrant women, in particular issues relating to the security of women. The specifics of their cases in refugee status determination require special attention in national and international asylum policies.

A greater recognition of the role of women in future refugee and migration policy will draw on their potential in strengthening the process of integration and in contributing to processes of reconciliation, peace-making and the building of bridges between cultures and communities. A valuable new development is the UN Security Council’s support for the greater inclusion of women in major negotiations on peace and resettling uprooted populations.

Diversity

During the first phase of The Hague Process gender issues were raised especially with regard to the position of women and not so much in terms of power relations between women and men. Also the issue of the new international division of labor was neglected. Now that The Hague Process has entered its second phase a renewed attention needs to be given to gender aspects in relation to the broadest possible scope of implementation of The Hague Declaration.

The commentary gives space to address the roles, needs and aspirations of migrant and refugee women worldwide. A prerequisite is to give attention to a better understanding of gender related issues. This is going to be a very challenging process because of the complexity of
the matter: When we talk about migration issues in relation to gender we tend to look at the effects of migration on women. A broader analysis can offer more appropriate tools. A diversity perspective can be such an instrument.

This analysis can be helpful because it can show the different aspects that influence the position and interaction of migrants and refugees in their host communities, and how these affect their personal identity, their position in the host countries as well as in their country of origin. A diversity approach takes into account variations according to gender, race, class, age, color, religion, educational background etc. In migrant people’s interactions with the host countries there can be many differences, but also similarities with the local population. That has an implication on their position, it can influence the challenges and successes to secure their rights in the host countries.

In some countries in Africa there has been a long pattern of migration of individual women and these migrations have given them economic space and independence to pursue their dreams as well as a better position in their own societies. Many times these women have invested in the development of their own village. This fact is mostly not known by the host societies where these women live and work, because of their appearances; many wear their traditional dresses and veils. This is often a reason to perceive them as illiterate oppressed women. Instead these women could be considered as important resource persons in the field were they have been active for so many years. They could be consulted so that lessons can be drawn on issues like project ownership and mobilization of resources in relation to the diaspora societies.

Society reacts differently to female and male migrants depending on the needs of the host societies and on their prejudices about the gender differences in the society of origin, which adds up to the prejudices of the ‘foreigners’, be they migrant or refugees. The gender-based labor division in these countries and societies influences the status and the insertion of migrants and refugees in the labor force. We see many women from Eastern Europe and certain countries in Asia going to the United States and Canada to work as researchers in a field which was originally associated with men. At the same time we see male domestic workers in the Middle East and in Southern Europe. The elite discourse in societies is often influenced by economic realities and politi-
cal aspirations of leaders, and short term interests tend to polarize the host society. The diversity perspective can create a vision that obliges us to shift our paradigm and create space for new solutions. It can create alliances that transcend the narrow divide between the genders or between foreigners and citizens.

**Labor market**

Migrant women mostly work in two sectors: as sex workers or as domestic workers. More research is needed on other professions as well. To understand the dynamic of the needs and opportunities at the workplace we need to look at the position of men doing the same work. We need to assess the gender-based differences and similarities between migrant workers rights by addressing the common issues where migrant workers need to be protected and by using the different international legal instruments available to ensure those rights. We often see that migrant workers, for example live-in domestic worker, by the nature of their work do not have the space nor the right to have a family life. While at the same time they are the ones who create the opportunity for families in the industrialized world to pursue their career. While the division of labor between women and men in those households remains the same only a woman from abroad is filling in the gap giving a distorted image of her own level of emancipation.

The second issue we need to focus on concerns different aspects of labor migration as created by the globalized economy in order to involve the employers, multinationals, small businesses or the informal economy. For example, many people migrate to the oil producing countries, where in some regions the majority of the population are migrant workers. In many African countries there are many women entrepreneurs who travel frequently. Labour migration encompasses cross border seasonal work in agriculture, ICT workers, scientists from the Eastern and Central European countries moving to the US, Canada and/or Australia. By addressing the issue in its broadness, possibility is created to show the magnitude of the issue so that the migration issue can be brought from the margin to the centre of globalization and states and corporations can be asked to take their responsibilities.
Remittances
The money which people send back to their relatives at home is a substantial source of income for developing countries. These remittances received by developing countries were estimated at $93 billion in 2003, up 14% from the previous year and approximately three times the level of 1990. In some receiving countries remittances amount to twice the total of development aid. The effects of remittances is receiving a lot of attention lately from NGOs, governments and the IMF. Further understanding is needed to assess gender differences in the remittances and their effects in the country of origin.

As the costs associated appear to be unduly high, as much as 20% of the funds remitted for small transfers, a lobby is needed to reduce them. The big winners at this moment are the already powerful financial institutions and banks, which do not invest in the local communities of the countries receiving the funds. The transfer costs are mostly felt by small households many of whom are run by women who support their families back home. As migrants generally do not have the right for family reunion their children remain in their home countries and the remittances are meant to support them, to provide for food, shelter and education. And sometimes the money sent to the home countries is even invested collectively to create infrastructure in certain remote areas where the government is not investing. This could get more attention and partnership could be created between these private initiatives and international donors as long as the ownership remains with the people and is not abducted by large organizations.

Rights
The above mentioned aspects of the labor position of migrants has also effects on the labor position of refugees once they are admitted to the countries of resettlement or after they have received the right to stay in one country. Even though the rights of refugees in general and in the labor market in particular are influenced by the Geneva Convention of 1951, the general climate and attitude towards migrant workers in the countries of residence influence their position. The rights-based discussion makes it even more visible that the 1990 International Convention on all Migrant Workers and their Families needs to be ratified by the industrialized countries, to have the necessary effects. This issue was put forward during this colloquium by Mrs. Gabriela Rodriguez, Special Rapporteur on the Human Rights of Migrants.
Protection instruments

Women and men facing challenges that make it necessary for them to apply for international protection have an impressive amount of international human rights laws that can be applicable to grant them safety, like the Geneva Convention relating to the status of Refugee of 28 July of 1951 and the Protocol relating to the status of Refugee of 31 January 1967. Besides, there are regional instruments like the Organization of African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa of 1969 and the different legal instruments in the Americas and the different conventions in Europe like the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950. These international instruments do exist but the challenge remains to make them applicable.

‘At the root of many of the dilemmas confronting the protection of refugee rights today lies not the regime of rights itself, but rather some confusion about how to determine who is responsible to protect these rights.’

The majority of forced migrants flee for reasons not recognized by the international refugee regime, and many are internally displaced persons (IDPs) who have not crossed a national frontier from a strictly legal point of view and remain under the formal responsibility of their own state. Certain legal instruments can also be invoked by women when their fundamental human rights need to be protected or when they face oppression based on their gender.

Refugee definition and gender

The definition of a refugee does not include gender as an independent enumerated ground for a well-founded fear of persecution warranting the recognition of convention refugee status. However in the past 15 years the United Nation High Commissioner for Refugees (UNHCR),

2 Executive Committee of the High Commissioner’s Programme (54th Session) Statement by Ms. Erika Feller, Director, Department of International Protection, Effective Protection in Today’s World.

3 Universal Declaration of Human Rights; International Covenant on Civil and Political Rights International Covenant on Economic, Social and Cultural Rights; Convention on the Elimination of All Forms of Discrimination Against Women; Convention on the Political Rights of Women; Convention on the Nationality of Married Women; Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment; Declaration on the Elimination of Violence Against Women.
its Executive Committee and the Office of the UNHCR have produced many guidelines and publications relating to the status of refugee women. The UNHCR has noted repeatedly that refugee women have special needs for protection. There is major concern especially during mass influx of refugees and in protracted refugee situations especially in the camps. The situation puts a lot of constraints to grant safety. The focus is on preventing sexual and gender-based violence; improving the protection of women and children; maintaining the civilian character of refugee camps4.

Gender-related persecution is a form of persecution which can and should be assessed by the authorities of the destination county. This has been more widely recognized and is an expanding area of the law regarding refugee protection. When a woman claims to have a gender-related fear of persecution, the central issue is the need to determine the linkage between gender, the feared persecution and one or a combination of the enumerated grounds: race, religion, nationality, membership of a social group or political opinion. There is increasing international support for the application of the particular social group ground to the claims of women who allege a fear of persecution solely by reason of their gender. Some countries like Canada have developed and applied special guidelines relating to women refugee claimants fearing gender related persecution. The issues are whether the violence, experienced or feared, is a serious violation of a fundamental human right for a Geneva Convention ground and in what circumstances the risk of that violence can be said to result from a failure of state protection. Even here we can see that in refugee protection analysis we always place the responsibility to protect the rights of individuals on the government of their own country. This confronts us with the dilemma of how to assert protection under weak states, where non-state agents violate human rights and the state is not capable of giving protection.

An increased attention is being placed on the situation of women who are acting in opposition to the social, cultural, traditional and reli-

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gious norms and laws affecting their lives in their country of origin. The violations and the fear for persecution ought to be assessed with reference to human rights instruments which provide a framework of international standards for recognizing the protection needs of women. What constitutes permissible conduct by the agent of persecution towards women may be determined, therefore, by reference to international instruments such as the Convention on the Elimination of All Forms of Discrimination Against Women, CEDAW; the Convention on the Political Rights of Women; the Convention on the Nationality of Married Women; the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment; the Declaration on the Elimination of Violence Against Women.5

Looking at the process taking place we can see that there is a legalistic tendency in refugee protection and many times the person in question does not follow the discussions relating to her. The persecution ground and the attention given to it is connected to the issues which are relevant in the country of asylum. Relating to women there is a tendency to orientalism and that makes it much more likely for a woman to be defined as victim of her culture than as a political activist. The impact of the definition of political activism and the form in which the political activism is undertaken by the women involved are not understood. Recognizing the refusal of women to abide to certain cultural practices, dress codes, female genital mutilations (FGM), forced marriage etc. as a political action, we recognize women as agents of change in their society and in their power. Further into the refugee determination process the challenge for many women is the fact that certain activities employed as political activities are done by women mostly in their daily work, like cooking, washing clothes etc. But when this activities are done for the ‘rebels’ or ‘freedom fighters’ these are seen as political activities by the governments of their home countries and can lead to persecution. At the same time these women encounter difficulties in explaining the political dimension of their activities because they do not fit the image of activism in many western industrialized countries. This leads to the situation in which

5 Women Refugee Claimants Fearing Gender-Related Persecution Guidelines Issued by the Chairperson Pursuant to Section 65(3) of the Immigration Act, Immigration and Refugee Board Ottawa, Canada Effective date: November 13, 1996.
women cannot get the protection they need because they do not fit
the definition for eligibility. Beside dilemmas or questions that need
answers is the difficulty in understanding the private/public dichotomy
in the refugee eligibility process. It is difficult to recognize sexual vio-
ence as a form of persecution because it has often been perceived as
a private act of violence and not as an act of persecution. All these
challenges in securing access and protection need a permanent focus
on those officials responsible for the implementation of the legal
instruments of protection, be they immigration officials, social workers,
lawyers or judges. By following their actions, assessing and exposing
the results a permanent checks and balances is created and maintained
to fit the quality of protection the international community finds
appropriate, and where needed education can be provided. Because if
one does not have the possibility to enter the process the protection
instruments have no value. Many officials are scared by the number of
women who might be exposed to certain violations preventing them
to access protection and think: ‘Most women in your country are
faced with that risk so why do you need protection’. As if a violation
committed to a large enough group of people and often enough
became a norm and thus failed to qualify as persecution.

Conclusion
What are the steps forward? For The Hague Process the following
activities are planned for the coming years (2004-2008)
I. Develop The Hague Process as a global viable platform
II. Advocate vis-à-vis policy makers, particularly at the regional and
national levels
III. Involve the corporate sector as a voice for orderly migration
IV. Promote and improve ‘integration’ and social inclusion of refugees
and migrants
V. Reduce costs of remitting within the frame of ‘migration-develop-
ment’
The challenge will be to implement all these activities with a gender
focus that will bring differentiated results addressing reality more closely.
Many points have been raised in this presentation. From a diversity
analysis actions can be taken by all stake holders. These can have con-
crete effects on the lives of migrants, refugees, the societies of the
countries of origin, transit and destination.
To conclude I would like to recommend that we assess our actions based on their effectiveness towards the people we aim to protect. Are the State and international organizations policies meant to protect women who are trafficked or smuggled effective not only to stop them from entering countries but also to consider the aspirations of these persons for a better life? To test the effects of our actions we need to have a clear understanding of the parameters we use to check our successes, as stated by the UNHCR’s reflection on what they understand with ‘effective protection’: ‘it has to find its base in respect for refugee and human rights law, and it has to be practiced with its humanitarian objectives to the fore, in a manner consistent as much with the spirit as the letter of the refugee protection regime. Effective protection should be the end product of all UNHCR strives to achieve for refugees. It should, at the same time, be the goal of States in their multilateral cooperative efforts to address asylum challenges. Why stress the word ‘effective’? Because it can only be through implementation and in observance that international standards are transformed from rhetoric into reality; that what is preached is indeed practiced. Protection, to be effective, needs a policy, a legal and a practical dimension.\endnote{6}

Acknowledgment
Parts of this report are based on the internal reports for the Club of the Hague members and on the Business Plan of The Hague Process, written by Mr. Frans Bouwen, senior International consultant coordinator of the whole Hague Process. Any question on The Hague Declaration and The Hague Process can be directed to him. Mr. Frans Bouwen can be reached through the Secretariat at Eisenhowerlaan 120-II, NL Den Haag, Netherlands, at +31 (0) 70 338 32 87 or f.bouwen.dihr@socires.nl

\endnote{6} Executive Committee of the High Commissioner’s Programme (54th Session) Statement by Ms. Erika Feller, Director, Department of International Protection, Effective Protection in Today’s World.