

Gender guidelines for the UK

by Nathalia Berkowitz

On 5 December 2000, the UK's Immigration Appellate Authority (the immigration and asylum tribunal) launched its *Asylum Gender Guidelines* for use in the determination of asylum appeals in the UK. The guidelines aim to assist judiciary at the Immigration Appellate Authority (IAA) in fully considering all aspects of asylum seekers' claims to international refugee protection and in ensuring that the gender of the asylum seeker does not prejudice their application.

Specifically, the guidelines note that the dominant view of what constitutes a 'real refugee' has been of a man and this has meant that women asylum seekers in the UK may not benefit equitably from the protection offered by the Refugee Convention. Two main reasons for this are suggested: firstly, because the case law has not fully considered the specific issues raised by women's needs for protection or has considered them from a framework of male experiences and, secondly, because procedural and evidential requirements of the asylum status determination procedures may not be equally accessible to women as men.

However, these guidelines are not solely of application to female asylum seekers: they are gender guidelines, not women's guidelines. This is made clear in the introduction to the guidelines which states: "Most of these guidelines are applicable to the asylum claims of both men and women. They address the role of gender in the asylum determination process rather than simply the position of women asylum seekers or the role of biological sex. In these guidelines, the terms 'women', 'woman', 'she' and 'her' apply equally to men."

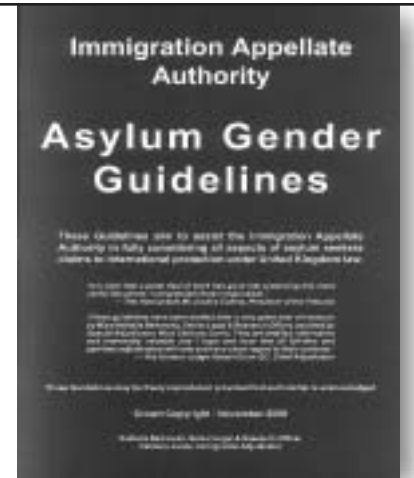
In adopting the *Asylum Gender Guidelines*, the UK builds upon the guidelines in existence in a number of other countries. While earlier guidelines share many features, they do differ from each other and are addressed to different audiences. The UK's guidelines are specifically geared to the needs of judiciary as opposed to immigration officers and, as such, contain more law and legal

analysis than previous guidelines and specifically address the need for gender-sensitive procedures to be adopted in the hearing room.

Earlier steps in the history of gender guidelines include UNHCR's adoption, in 1991, of *Guidelines on the Protection of Refugee Women*, followed in 1995 by *Sexual Violence Against Refugees: Guidelines on Prevention and Response*. These guidelines deal with a range of issues of relevance to female refugees including safety and access to resources in refugee camps but also include useful sections of relevance to the determination of asylum claims such as the problems of female victims of sexual violence from military personnel and the need for gender-sensitive interviewing and procedural requirements.¹

Canada was the first country to formally issue guidelines relating to women's asylum claims. Its *Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution* (1993, updated in 1996) have been hailed as 'ground-breaking'.² Addressed to decision makers at the Canadian Immigration and Refugee Board, they were developed after consultation with both governmental and non-governmental groups and individuals. They were the first national guidelines to formally recognize that women fleeing persecution because of their gender could be recognized as refugees.

In 1995, the American Immigration and Naturalization Service followed the Canadian example and adopted *Considerations for Asylum Officers Adjudicating Asylum Claims from Women*.³ These guidelines aimed to assist asylum officers in interviewing women refugees and making asylum decisions. The Australian *Guidelines on Gender Issues for Decision Makers*, issued in 1996, are aimed at immigration officers and are very comprehensive in scope stressing both procedural and jurisprudential issues affecting women's asylum claims.⁴ At European Union level there are no gender guidelines but some steps have been taken to recognize the issue of gender in asylum claims, for



example, in its *Minimum Guarantees on Asylum Procedures*.

The adoption of gender guidelines by the UK's IAA owes much to the guidelines previously issued by other countries, to the support for guidelines by the UN, including the UN Special Rapporteur on Violence Against Women, and to the campaigning work of groups such as the Refugee Women's Legal Group which, in 1998, issued its own gender guidelines, directed at asylum caseworkers in the Immigration and Nationality Division of the UK Home Office, and obtained support for the principle of gender guidelines by a large number of Members of Parliament. With the launch of the IAA's *Asylum Gender Guidelines* in December 2000, the immigration judiciary, asylum caseworkers, asylum applicants and their representatives will have a tool to assist in ensuring that gender aspects of asylum claims are fully considered in the UK.

The Immigration Appellate Authority's *Asylum Gender Guidelines* will be available on-line at www.ein.org.uk/iaa

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1 UNHCR: www.unhcr.ch/

2 Canadian Guidelines: www.irb.gc.ca/human_rights/hrp_reports_mainhp.htm/

3 US guidelines: www.state.gov/global/

4 Australian guidelines: www.austlii.edu.au/