

# Gender, persecution and the concept of politics in the asylum determination process

by Heaven Crawley

The particular difficulties facing many women as asylum seekers stem not from the absence of 'gender' in the Refugee Convention's grounds but rather from the failure of decision makers to acknowledge and respond to the gendering of politics and of women's relationship to the state when applying that definition to individual cases.

Current interpretation of the 1951 UN Convention relating to the Status of Refugees (the 'Refugee Convention') presents considerable difficulties for women when their fears of persecution arise out of forms of protest or ill treatment which are not considered 'political'.

The Refugee Convention does not specifically refer to gender as one of the grounds upon which an individual can be recognized as a refugee and given protection. It is this which has largely been seen as the basis of women's marginalization and which has led some to call for the refugee definition to be rewritten and for 'gender' to be added to the Convention's grounds alongside race, nationality, religion, social group and actual (or imputed) political opinion. It has also led to calls for women to be recognized as 'members of a particular social group' within the meaning of the Convention and offered protection on this basis.<sup>1</sup> This article questions, however, whether such approaches, in highlighting the specificity of women's experiences, have adequately reflected upon the role of gender, as opposed to sex, in shaping those experiences and the problems experienced in the determination process.

In many respects, the failure to incorpo-

rate the gender-related asylum claims of women is a product of the general failure of refugee law to recognize social and economic rights and its emphasis instead on individual targeting and specific deprivation of civil and political rights. This is despite the fact that social and economic rights may be violated for political reasons. However, it is also related to a larger criticism of human rights law and discourse: that it privileges male-dominated 'public' activities over the activities of women, which take place largely in the 'private' sphere.

Although international law is gender-neutral in theory, in practice the public/private distinction is used in such a way that what women do and what is done to them is often seen as irrelevant. Many of the existing analyses have sought to explain the differential treatment of women by reference to their status as women (ie their sex) rather than the construction of gender identity in specific geographical, historical, political and socio-cultural contexts. Moreover, the terms 'gender' and 'sex' have tended to be used interchangeably. Unlike 'sex' which is biologically defined and therefore innate, the term 'gender' refers to the social construction of power relations between women and men, and the implications of these relations for women's (and men's) identity,

status, roles and responsibilities. Gender relations and gender differences are historically, geographically and culturally specific, so that what it is to be a 'woman' or 'man' varies through space and over time. Any analysis of the way in which gender (as opposed to biological sex) shapes the experiences of asylum-seeking women must therefore contextualize those experiences.

This distinction between gender and sex and the focus on the political context in which women's experiences take place are important because the continuing focus on women as opposed to gender in forced migration research and practice replicates and reinforces the marginalization of women's experiences. Equating 'gender' with women leads to a tendency to generalize about the experiences of women as asylum seekers and this is problematic for several reasons.

Firstly, it results in confusion about what is meant by the term 'gender-related persecution' and, in particular, a lack of understanding about the relationship between the form of harm suffered or feared and the relevant enumerated ground. Secondly, while there are often significant differences between the experiences of women and men, there are also critical differences between women within and between particular countries and contexts. The tendency of academics, practitioners and policy makers to treat 'women' as an homogeneous category in order to emphasize the ways in which the experiences of women generally have been marginalized means that these critical differences between women have often been ignored.

## Male versus female models

The problem with many of the current approaches to women as asylum seekers therefore is that they often counter-pose the 'male experience' of persecution with

a 'female model'. This model generalizes about women's experiences of 'gender-related persecution' and overemphasizes sexual violence at the expense of other forms of resistance and repression that are experienced by women in their countries of origin. Differences between women, however, have significant implications for their experiences of both persecution and the process of asylum determination. For example, because nationalist agendas are more open to incorporating some groups of women than others, the apparatus and institutions of the state may establish differential policies towards them.

One unintended but very serious effect of merely

adding 'women' to existing analyses without an understanding of the differences between women is that women appear only as victims: refugee women are presented as uniformly poor, powerless and vulnerable, while Western women are the reference point for modern, educated, sexually-liberated womanhood. This in turn leads to the depoliticization and decontextualization of women's experiences of persecution and their conceptualization as passive victims of, for example, 'male oppression' or 'oppressive cultures, religions or traditions'.

## The concept of politics

The concept of 'politics' is critical to the process of determining whether an individual applicant should be recognized as a refugee within the meaning of the Refugee Convention. It has been suggested that because women are much less likely than men to be involved in politics, the concept of 'political opinion' is unlikely to be central in the claims of women seeking asylum.<sup>2</sup> However, this fails to take into account the context in which women's participation and resistance take place.

Gendered critiques of politics and political participation are particularly useful because they shed new light on the relationship between women and politics, both by pointing to the structural features of political life which have tended to exclude women from positions of power and by revealing the history of women's involvement in political action. In addition they have challenged the ten-

dency to separate the public world of politics and employment from the private sphere of family and interpersonal relations.

Women are as vulnerable to political violence as their male counterparts even though their political participation often takes place at a so-called 'low level'.

In many societies, indeed, the penalties for political participation and resistance are even more severe for women than for men because of cultural and social norms that preclude women's involve-

ment. For example, women who are imprisoned by the authorities run the risk of 'double

punishment'. They are punished not only because they oppose the regime in some way but also because they shun the traditional role of women by being politically active at all. As a result, they are often 'put back in their place' by prison guards or military men.

Violence against those who oppose regimes is not confined to the public sphere because politics and political resistance are not exclusive to the public sphere. Political violence by the state aims to disable opposition or resistance by so intimidating a population as to forcibly 'depoliticize' it. Bringing violence into the 'private' sphere of the home and family appears to be a particularly effective means of achieving this aim. As a result, even where women do not participate in formal politics, a woman nonetheless may be harmed as a means of intimidating, coercing or harming other family members who hold dissenting political views or who engage in political activities which are disapproved of by the persecutor.

In addition, women who have had little or no involvement in formal political institutions often take up all sorts of practical and innovative ways to exert pressure on the political scene in times of conflict. These forms of political participation by women often grow out of and subvert their gender roles as providers and nurturers; because women are seen as political innocents, they are able to use this immunity to take initiatives and responsibilities of a covert political nature.

A gendered critique of politics suggests that the extent of women's political participation has been underestimated. In addition, however, it indicates a tendency to misrepresent gendered forms of persecution and resistance as personal rather than political. In the context of growing struggles over national identity, prevalent ideologies have articulated policies that have proved particularly detrimental to women because the role of gender in the construction of national identity becomes reflected in state policies.

Many anti-colonial nationalist projects aim to recover or reinvent 'tradition' in order to develop a new nationalist consciousness. Within this process, national difference is often constructed in cultural terms against the West and, because this difference is often located in the private sphere, in family and sex roles, women have been constructed as the bearers of an authentic/authenticated culture. In many parts of the world, women who do not live up to the moral or ethical standards imposed on them by their societies are imputed with a political opinion and as a consequence suffer cruel or inhuman treatment. Refusing to marry, having sexual relations outside marriage, providing unsatisfactory dowry or even wearing certain dress can result in persecution.

Perhaps one of the clearest examples of the way in which political participation and resistance is gendered can be seen in the politics of dress codes and, specifically, the veil. Women's opposition to the imposition of dress codes during the process of Islamization should be seen in the context of the political symbolism of the veil. The concept of 'honour' has become strongly associated with women's sexual behaviour in many contexts. Any actual or perceived violation of what are deemed to be 'appropriate' gender relations is viewed as defiling the honour of the woman and, in turn, the honour of the nation itself. Protecting the honour of the woman and the nation therefore gains political significance and will be enforced either directly through the state - as seen in legislated discrimination and laws regulating women's behaviour - or through a woman's family and community.

The implications of these processes for women can be seen in the experiences of those seeking asylum under the Refugee Convention. Women may be subjected to discriminatory treatment which is

enforced through law or through the imposition of social or religious norms which restrict their opportunities and rights. The consequences for women of failure or refusal to comply with social norms and mores regarding their behaviour can vary enormously.

At one extreme, a woman may fear that she will be subjected to threats on her life if she is forced to return to her country of origin. Even where a woman does not fear threats on her life, she is often forced to submit to measures to retain or re-establish her honour. The

harm experienced or feared in these cases will often be marriage-related including forced marriage, a form of abuse that is often not recognized. In many cases of women who refuse to agree to such arrangements, it will be the punishment inflicted as a refusal to abide by discriminatory social mores, rather than the marriage itself, which will rise to the level of 'serious harm'. The repercussions for women of divorcing their husbands or entering into mixed marriages may be equally devastating.

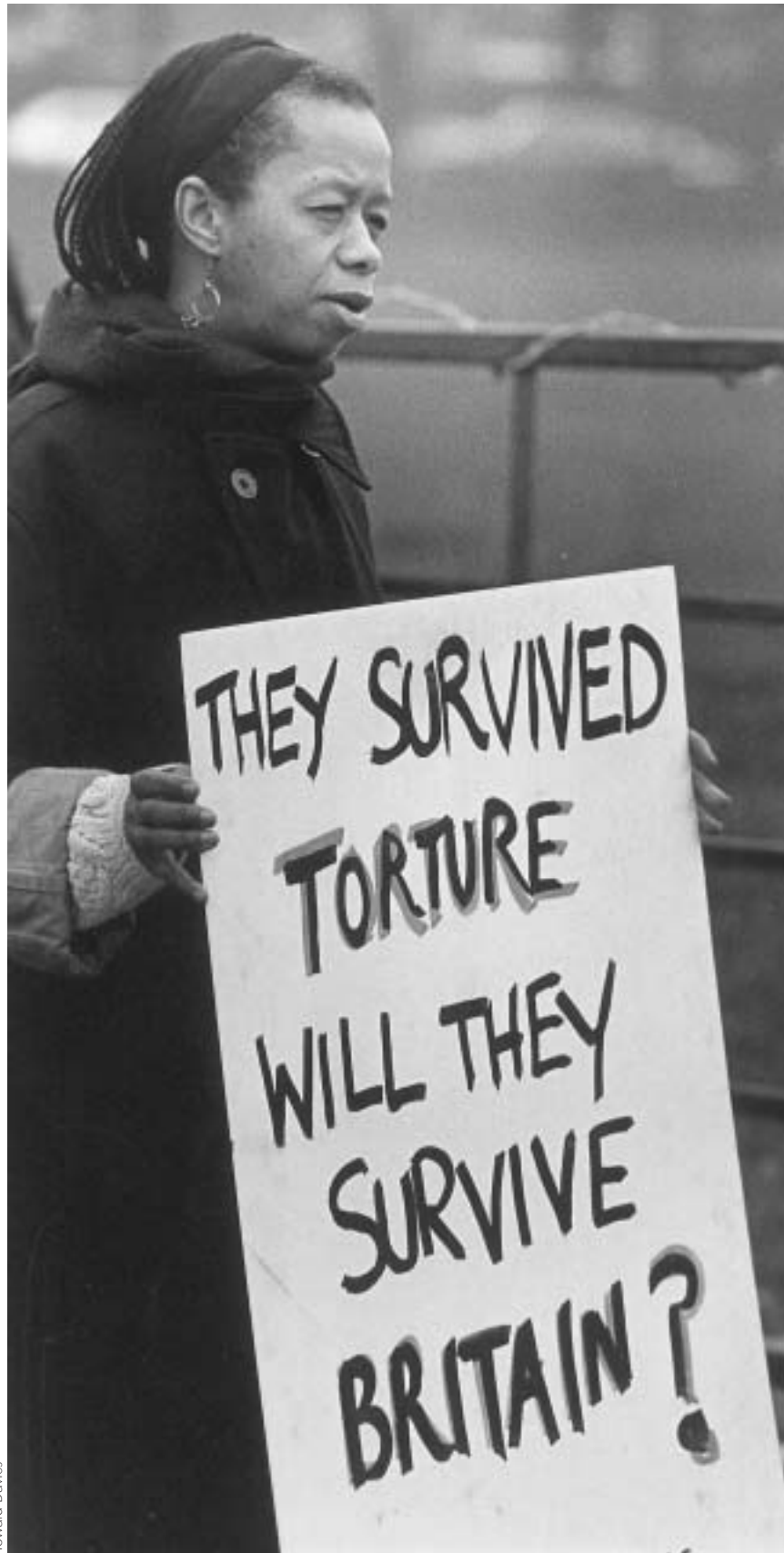
In other contexts, there may be pressure on women to have or not to have children; according to different national projects, under specific historical circumstances, some or all women of childbearing age groups would be called on, sometimes bribed and sometimes even forced to have more or fewer children. This can be seen, for example, in the experiences of some women from the People's Republic of China.

### Content versus interpretation

This approach to the experiences of women seeking asylum suggests that the framework for asylum determination needs to be transformed to accommodate the inclusion of women not as a special case deviating from the norm but as one of many different groups whose experiences must be contextualized if they are to be properly understood. This approach suggests that the 'problem' is not so much the actual invisibility of women but rather how their experiences have been represented and analytically characterized.

Both actual (and imputed) political opinion and 'membership of a particular social group' within the meaning of Article 1(A) of the Convention can and should provide a legal basis for the recognition of women as Convention refugees. Political opinion in particular should be properly interpreted to include women's opposition to extreme, institutionalized forms of oppression; a woman who opposes legislated discrimination against women or expresses views of independence from the social or cultural dominance of men in her society may be found to have been persecuted or to fear persecution because of her actual political opinion or a political opinion that has been or will be

*Demonstrators outside Rochester prison in Kent protesting against detention of asylum seekers.*



imputed to her. She is perceived within the established political/social structure as expressing politically antagonistic views through her actions or failure to act. If a woman resists gendered oppression, her resistance should be regarded as political activity.

In addition, there are cases where women do not directly or intentionally challenge institutionalized norms of behaviour but are nonetheless imputed with a political opinion as a consequence of their experiences. This can be seen, for example, in the characterization of a raped woman as adulterous, in the social ostracism of an unmarried, separated, divorced, widowed or lesbian woman, and in the politicization of (unintentional) violations of dress codes.

The development of this approach to the Refugee Convention is important to ensure that the asylum claims made by women are properly and consistently considered by decision makers and

that the legal and theoretical arguments are coherent and able to stand the test of time. Looking at gender, as opposed to sex, enables an approach which can accommodate specificity, diversity and heterogeneity. It also ensures that the asylum claims of women are not routinely dismissed as culturally relative and therefore outside the mechanisms for protection available under the Refugee Convention.

Following years of neglect of the needs of refugee and asylum-seeking women, a new awareness and willingness to take gender into account in policy development and implementation have emerged and there have been many encouraging recent developments legitimizing the factual basis for women's asylum claims. Human rights groups in particular have increasingly focused their attention on gender-specific human rights. Meanwhile, UNHCR has also begun to turn its attention to gender-related persecution and Canada, the US and Australia have extended their interpretation of the Convention to women making claims on this basis.

In the UK, the Refugee Women's Legal Group has produced its own Gender Guidelines for the Determination of

Asylum Claims in the UK, launched in 1998. Although these guidelines have not been accepted by the Home Office, they are clearly reflected in guidelines published in December 2000 by the Immigration Appellate Authorities for decision makers hearing appeals against the refusal of asylum.<sup>3</sup>

## Conclusion

Gender guidelines can serve an important role in raising awareness of the specific difficulties facing women as asylum seekers and in addressing a range of substantive and procedural issues. They are also important in ensuring that a wide range of individuals and organizations - individual lawyers and practitioners, NGOs, women's groups, academics - challenge current policy

and practice at a variety of levels: in the gathering of information, in the formulation of individual claims, at the initial decision-making stage

and on appeal. However, it is important to recognize that the underlying problems experienced by women stem not simply from the fact that they are women *per se* but from the conceptualization of key elements of the Refugee Convention and, in particular, the concept of politics.

It is this conceptualization and the continuing tendency among decision makers to allow a public/private dichotomy to engender the determination process as a whole that most seriously undermines the protection available under the Refugee Convention. This problem cannot easily be addressed by the implementation of guidelines alone.

***Dr Heaven Crawley is a founder member of the Refugee Women's Legal Group in the UK and author of Women as Asylum Seekers: A Legal Handbook (1997). A revised and updated second edition entitled Refugee Law and Process: Gendered Perspectives will be published by Jordans in January 2001. Email: heaven@crawley30.freeserve.co.uk***

For more information on the Refugee Women's Legal Group, the gender guide-

lines and Dr Crawley's new book, plus links to other sources of information and support, visit [www.rwlg.org.uk](http://www.rwlg.org.uk)

1 The use of the particular social group basis of the refugee definition to extend protection to women who face persecution for having transgressed religious or social mores finds strong support in the pronouncements of the UNHCR and governmental bodies and the administrative decisions of several countries.

2 This understanding is also implicit in those analyses which focus upon 'membership of a particular social group' as the most appropriate, or indeed only, basis on which women can be protected under the Refugee Convention.

3 See piece opposite by Nathalia Berkowitz.

## EU women lobby for equal rights in seeking asylum

On 6 December 2000, the European Women's Lobby (EWL) launched a year-long campaign to highlight forms of persecution unique to women and to ensure that they are able to claim refugee status "in their own right" under future EU asylum procedures.

The EWL, a coalition of 2,700 member organizations in the EU, believes that the 1951 Geneva Convention and the follow-up Protocol of 1967, which together provide the legal basis for granting asylum worldwide, fail to explicitly address gender-specific acts of persecution, including sexual violence and other forms of human rights violations.

Throughout the year-long campaign, the EWL will monitor progress on a draft directive on minimum standards on procedures in EU member states for granting and withdrawing refugee status, now being considered by the European Parliament. As part of the campaign, the EWL is distributing tens of thousands of postcards throughout Europe, highlighting four different areas of concern - female genital mutilation, rape as a weapon of war, forced marriage and 'guilt by association' - and asserting that "persecution is not gender blind". On 6 December 2001, the postcards and electronic petition will be submitted to Belgium, which will then hold the rotating EU Presidency.

**See: [www.womenlobby.org/asylumcampaign/](http://www.womenlobby.org/asylumcampaign/)**