

# Rethinking gender in the international refugee regime

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**Currently the instruments of refugee status determination make asylum claims depend on images of women that are characterised by victimisation and motherhood.**

The international refugee regime, defined by the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, inadequately addresses gender-related persecution and, in particular, the asylum claims of refugee women. The Convention is based on a liberal rights narrative relying on 'gender neutrality' and universal applicability – but with gender not mentioned in the Convention, it cannot take account of the gender-related persecution that affects women primarily.

While the figure of the refugee woman has emerged as the iconic portrait of modern-day forced migration in the popular imagination, asylum-seeking women, and gender as a concept more broadly, have historically been at the margins of the refugee regime. It was, for example, not until the 1990s that gender-specific and gender-related persecution began shaping Refugee Status Determination (RSD).

Feminist activists' and scholars' attempts to integrate women's experiences into this legal framework culminated in the liberal discourse of 'women's rights are human rights' and its codification into the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).<sup>1</sup> This framework, however, obstructs protection for those fleeing gender-related persecution by its representation of asylum-seeking women as victims, poor 'Third World' women and mothers, and particularly through its amalgamation of women and children into a single category. These representations of asylum-seeking women are problematic.

Female asylum seekers flee persecution for many of the same motives as their male counterparts. But many more suffer further persecution and loss of additional political and socio-economic rights. Various expressions of gender-specific harm such as female genital mutilation, forced marriage, so-called honour crimes and forced sterilisation

are common in women's asylum claims. The gendered nature of such forms of harm is significant for the ways in which difficulties continue to arise in bringing these gender-related claims within the scope of refugee law.

Specifically, refugee women are categorised as a Particular Social Group in the terms of the 1951 Convention. A Particular Social Group is considered to be a group of persons who share a common characteristic as well as their risk of being persecuted, or who are perceived to share a common, innate or unchangeable attribute relating to their identity. Women's dominant gender roles then become their definition as members of a Particular Social Group and that definition becomes the default ground for women's claims for asylum.

## The 'essential' woman

Creating a space for women in the legal framework has been one way in which feminists have attempted to counter women's invisibility in the Convention. However, fitting women into the Convention through the 2002 Guidelines on Gender-Related Persecution<sup>2</sup> has only been achieved by painting a monolithic picture of women as passive, dependent, vulnerable victims and thus peripheral to international politics and without agency.

Measures to improve RSD and expand the Convention definition for gender-related persecution have tended to portray 'essential' refugee women's identities that are constructed by UNHCR, the media and governments but not by refugee women themselves. Key to this victimhood narrative are certain images and categories, such as the lumping together of 'women and children' in one of the most often quoted statistics in refugee policy and literature, that women and children constitute 80% of the world's refugees. Since women and children

generally make up 80% of a population, regardless of whether they are refugees or not, this representation problematically chooses to represent refugee women as maternal figures consigned to a particular narrow gendered role. The conflation of women with children identifies men as the norm against which all others may be grouped into a single leftover and dependent category, rather than as independent actors.

Secondly, such a characterisation perpetuates a paternalistic narrative of the state, as saviour to protect 'women and children'. A study on RSD in the UK shows a direct correlation between the granting of refugee status and the adherence of the asylum seeker to the narrative of victimhood.<sup>3</sup> To gain state protection, a woman must demonstrate that she behaves in the proper way for a woman, that is, as a de-politicised, voiceless victim of an oppressive culture. This silencing of her agency is more likely to achieve a successful refugee claim.

A more powerful approach would incorporate multiple forms of identity and relations – those related not exclusively to gender. In order to adequately ensure the protection of refugee women, UNHCR – the UN Refugee Agency, mandated by the Refugee Convention to be responsible for refugee protection – should ensure that gender-related persecution is appropriately considered and understood. The process of reform implied by this will require more fundamental changes than nuancing the reading of the Convention through the application of the Guidelines. In order to have a serious impact on the lives of displaced women and men, there needs to be a sustained focus on opening up alternative political and legal spaces. The nature of the institutions that manage the response to refugees is not going to change merely due to a greater, mainstreamed 'gender focus' in which women are conceived as a group with special needs.

The RSD Guidelines have only been adopted in a minority of jurisdictions worldwide and many of the challenges that asylum-seeking women face are often overlooked. UNHCR is the key actor in its ability to influence states in this regard,

particularly in the Global North. Though UNHCR cannot bind states *per se*, it is a highly persuasive authority and states have an obligation to cooperate with the agency. It thus remains the key body for guidance in this area on good gender practice. It can play a leading role by providing an adequate framework to influence a change in the way gender is in practice characterised in RSD processes.

### Conclusion

The law and process of RSD have tended to be marginalising and, above all, disempowering for women. A more critical view of refugee women would represent them as agents in their own right beyond categories of 'women and children' or victims to be saved. Inclusion of women's voices is necessary in order to shift dominant representations of refugee women and their protection overall.

By their very nature UNHCR and the Guidelines can only inform and not constrain a state's legal policy towards female refugees. In any case the Guidelines that are used to assist in interpreting gender-related persecution claims are underpinned by assumptions about the category or stereotype expected of an idealised refugee woman, while the law has simply incorporated a concept of gender that is detrimental to female asylum applicants. What is required is a way to undermine the essentialist concepts of gender on which current decision making, case law and legal doctrines are predicated. The Refugee Convention is a living instrument that may need to change and evolve in order to meet the challenges and requirements of refugees.

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1. [www.un.org/womenwatch/daw/cedaw/](http://www.un.org/womenwatch/daw/cedaw/)

2. UNHCR (2002) *Guidelines on international protection: Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees* [www.unhcr.org/3d58ddef4.pdf](http://www.unhcr.org/3d58ddef4.pdf)

3. Crawley H (1999) 'Women and Refugee Status: Beyond the Public/Private Dichotomy in UK Asylum Policy' in Indra D (Ed) *Engendering Forced Migration*. Berghahn Books.