

# **Gender Guidelines for the Determination of Asylum Claims in the UK**

The 1951 UN Convention relation to the Status of Refugees and the 1967 Protocol (the 'Refugee Convention') has often been approached with a partial perspective and interpreted through a framework of male experiences. The Guidelines aim to enable interviewers and decision-makers to apply the Refugee Convention in a way which embraces the totality of human experience, and to assert and affirm the rights of women to effective international protection under UK law.

**Refugee Women's Legal Group**

July 1998

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*Gender Guidelines for the Determination of Asylum Claims in the UK (July 1998)*

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Refugee Women's Legal Group (RWLG)  
c/o Immigration Law Practitioners' Association (ILPA)  
Lindsey House  
40-42 Charterhouse Street  
London EC1M 6JH  
Fax: 0207 251 8384

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The **Refugee Women's Legal Group (RWLG)** was established at the beginning of 1996 by individuals and organisations concerned about the impact of changes in immigration law on women seeking asylum in the UK. Central among its aims is the development of a gendered perspective on refugee law and policy. To this end, the RWLG published ***Women as Asylum Seekers: A Legal Handbook*** in June 1997. The Handbook has provided a valuable source of information and support for legal representatives and others working with women asylum seekers regarding ways in which the process of asylum determination can be made more accessible and responsive to the experiences of women seeking protection from persecution.

Following publication of the Handbook, RWLG established a Drafting Committee to produce Gender Guidelines for the determination of women's asylum claims similar to those which have been adopted in other refugee-receiving countries. The Drafting Committee has drawn upon a wide-range of legal and other expertise from experienced solicitors, barristers, practitioners and academics, and includes representatives from Amnesty International, Asylum Aid, the Immigration Law Practitioners' Association (ILPA), the Joint Council for the Welfare of Immigrants (JCWI), the Immigration Advisory Service (IAS), Refugee Action, the Refugee Council, the Refugee Legal Centre (RLC), Southall Black Sisters and UNHCR. The drafted document was circulated for consultation and discussion to refugee community organisations, women's groups, human rights groups and non-governmental organisations working with refugees and asylum seekers in the UK as well as refugee and asylum seeking women themselves. These Guidelines represent the culmination of this process.

We are grateful for the advice and support which we have received from numerous individuals and organisations and in particular Susan Rowlands (ILPA). The process of drafting of Gender Guidelines has been very generously supported by financial assistance from OXFAM, Joseph Rowntree Charitable Trust, Barrow Cadbury Trust and the Law Society.

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## SECTION 1

# Framework

### **Why Current Interpretation Fails Women**

1.1 The 1951 UN Convention relating to the Status of Refugees and 1967 Protocol (the 'Refugee Convention') has often been approached with a partial perspective and interpreted through a framework of male experiences during the process of asylum determination in the UK.

1.2 Women suffer the same deprivation and harm that is common to all refugees. For example many are targeted because they are political activists, community organisers, members of women's movements or persist in demanding that their rights or those of their relatives or community members are respected.

1.3 The experiences of women in their country of origin often differ significantly from those of men because women's political protest, activism and resistance may manifest itself in different ways. For example:

- Women may hide people, pass messages or provide community services, food, clothing and medical care;
- The authorities in some countries exploit family relationships to intensify harm;
- Women who do not conform to the moral or ethical standards imposed on them may suffer cruel or inhuman treatment;
- Women may be targeted because they are particularly vulnerable, for example, those with caring responsibilities or young women who can easily be sexually abused;

- Women may be persecuted by members of their family and/or community.

1.4 Women are currently unable to benefit equitably from protection under the Refugee Convention. The reasons are two-fold:

- Procedural and evidential barriers prevent women's access to the asylum determination process;
- In interpreting the Refugee Convention, women's experiences have been marginalised. For example, whilst overt expression of a political opinion through conventional means such as involvement in political parties may be considered as a basis for political asylum, less conventional forms of political resistance, such as refusal to abide by discriminatory laws or to follow prescribed rules of conduct, are often wrongly categorised as personal conduct.

1.5 Increased emphasis on the role of gender is intended to ensure that all aspects of a woman's asylum claim are fully and fairly considered. This approach does not alter the meaning or interpretation of the Refugee Convention. Even where gender is not the central issue, giving conscious consideration to gender-related aspects of a case should assist interviewers and decision-makers to fully understand a woman's experiences.

1.6 These Guidelines represent good practice and in many respects are also applicable to the asylum claims of men. Regular training is essential to ensure that procedural and substantive concerns are properly responded to.

1.7 These Guidelines aim to raise awareness of women's experiences of persecution and to enable interviewers and decision-makers to apply the Refugee Convention in a way which embraces the totality of human experiences, to respond to the particular experiences and needs of women, and to assert and affirm the rights of women to effective international protection within the asylum determination process.

## **Definitions**

1.8 There has been a tendency for the term 'gender' to be used synonymously with the term 'sex'. 'Gender' is not the same as 'sex' which is biologically defined. 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 refers to the social organisation of sexual difference;
- Gender acquires a socially and culturally constructed meaning;
- Gender is a primary way of signifying relations of power.

1.9 Gender relations, and therefore gender differences, are historically, geographically and culturally specific, so that what it means to be a woman or a man varies over place and time. Any analysis of the way in which gender (as opposed to biological sex) shapes the experiences of asylum seeking women, must therefore *contextualise* those experiences.

1.10 Gender is a social relation that enters into, and partly constitutes, all other social relations and identities. Women's experiences of persecution, and of the process of asylum determination, will also be shaped by differences of race, class, sexuality, age, marital status, sexual history and so on. Looking at gender, as opposed to sex enables an approach which can accommodate specificity, diversity and heterogeneity.

1.11 In order to comprehend, and appropriately respond to, the role of gender in shaping women's experiences of persecution, it is important that interviewers and decision-makers understand clearly the relationship between gender and the elements of the refugee definition. The concept of women being persecuted as women is not the same as women being persecuted *because* they are women.

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1.12 The concept of women being persecuted as women addresses *forms of persecution that are gender-specific* including, for example, sexual violence, female genital mutilation, forced abortion and sterilisation and denial of access to contraception. Understanding the ways in which women are violated as women is

critical to naming as persecution those forms of harm which only or mostly affect women.

- 1.13 To say that a woman fears persecution *because* she is a woman addresses the causal relationship between gender (as socially constructed) and persecution. For example, sexual activity outside a socially condoned relationship may result in persecution.
- 1.14 Gender-specific persecution is therefore a term used to explain 'serious harm' within the meaning of persecution. Gender-related persecution is used to explain the basis of the asylum claim (i.e. the grounds of the persecution). A woman may be persecuted *as* a woman (e.g. raped) for reasons unrelated to gender (e.g. activity in a political party), not persecuted *as* a woman but still *because* of gender (e.g. flogged for refusing to wear a veil), and persecuted *as* and *because* she is a woman (e.g. female genital mutilation).
- 1.15 Gender-specific violations do not necessarily constitute persecution *because* of gender. For example, if a man's genitals are subjected to electric shocks, he is certainly being tortured in a gender-specific way, but it does not follow that he is being persecuted *because* of his gender.

## **Structure**

- 1.16 These Guidelines systematically analyse women's asylum claims in relation to the essential elements of the refugee definition in Article 1(A) of the Refugee Convention.<sup>1</sup>
- 1.17 Within this framework, persecution is defined as "*the sustained or systematic violation of basic human rights demonstrative of a failure of state protection in relation to one of the core entitlements which have been recognised by the*

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<sup>1</sup> According to Article 1(A) of the 1951 UN Convention Relating to the Status of Refugees, the term 'refugee' shall apply to any person who "owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside [her] country of origin and is unable, or, owing to such fear is unwilling to avail [herself] of the protection of that country; or who, not having a nationality and being outside the country of [her] former habitual residence as a result of such events is unable or, owing to such fear, is unwilling to return to it."

*international community*.”<sup>2</sup> The concept of persecution within the Refugee Convention therefore raises two questions:

- **Is there a violation of human rights which amounts to ‘serious harm’?**

This is addressed in Section 2 of these Guidelines

- **Is the state unable or unwilling to offer effective protection?**

This is addressed in Section 3 of these Guidelines

**‘Persecution’ = Serious Harm + The Failure of State Protection**

1.18 Having established whether persecution or a fear of persecution exists, the next step is to establish whether the persecution or fear of persecution is for one of the reasons enumerated in the Refugee Convention. This is addressed in Section 4 of these Guidelines.

1.19 Particular procedural and evidential issues arise in the asylum claims of women. These are addressed in Section 5 of these Guidelines.

### **The International Framework for Protection**

1.20 The Refugee Convention is only one of many international instruments which set minimum human rights standards. These other instruments may be useful tools in interpreting the Refugee Convention and in evaluating a claim to ensure proper protection. These include, but are not limited to:

- The Universal Declaration of Human Rights (UDHR) (1948)
- The 1926 Slavery Convention and Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery of 1956
- The 1949 Geneva Conventions on the Laws of War and the two Additional Protocols of 1977

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<sup>2</sup> James Hathaway 1991 *The Law of Refugee Status*, Butterworth, 112

- The Convention for the Suppression of the Traffic in Persons and the Exploitation of Prostitution of Others (1949)<sup>3</sup>
- The European Convention on Human Rights (ECHR) (1950)
- The Convention on the Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (1962)
- The Convention on the Elimination of All Forms of Racial Discrimination (1965)
- The International Covenant on Civil and Political Rights (ICCPR) (1966)
- The International Covenant on Economic, Social and Cultural Rights (ICESCR) (1966)
- **The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (1979)**
- The UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) (1984)
- The Convention on the Rights of the Child (CROC) (1989)
- **The UN Declaration on the Elimination of Violence Against Women (1993)**
- **The UN Platform for Action (1995)**

1.21 In addition to the *Handbook on Procedures and Criteria for Determining Refugee Status* (1979), the Executive Committee (EXCOM) of the UNHCR has issued a number of notes and conclusions relating specifically to refugee women. The UNHCR has also issued several relevant publications of interest. These

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<sup>3</sup> This Convention only relates to trafficking for sexual purposes, however there are currently moves at the European level to broaden and update this Convention and its focus.

include *Guidelines on the Protection of Refugee Women* (1991) and *Sexual Violence Against Refugees; Guidelines on Prevention and Response* (1995).

- 1.22 The determining authorities in Canada, the United States and Australia have produced Gender Guidelines which alert interviewers and decision-makers to the specific difficulties many women face gaining protection under the Refugee Convention.
- 1.23 Where a woman is not recognised as a Convention refugee but could be at risk if removed from the UK, or where there are other compassionate or humanitarian circumstances, she should be given permission to remain or leave to enter or remain. This option should not be seen as an alternative to providing proper legal protection in cases where the woman should be recognised as a refugee within the meaning of the Refugee Convention.
- 1.24 Where a woman is likely to be subjected to torture or to inhuman or degrading treatment or punishment, her removal is prohibited by Article 3 of the European Convention on Human Rights (ECHR).

## SECTION 2

# The Meaning of 'Serious Harm'

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- 2.1 To be recognised as a Convention refugee an asylum applicant must fear a form of harm which can be characterised as persecution.
- 2.2 Whether an instance of harm, including harm which is gender-specific, amounts to persecution should be assessed on the basis of internationally recognised human rights standards as set out in Section 1 of these Guidelines.
- 2.3 Torture or cruel, inhuman or degrading treatment, the threat of execution, slavery, or enforced conformity of belief always constitute 'serious harm' within the meaning of persecution. Similarly the risk of arbitrary arrest or detention, house arrest by family or community members, denial of freedom of movement, opinion, association or privacy, is usually to be equated with 'serious harm'.
- 2.4 A discriminatory measure, in itself or cumulatively with others - for example, restrictions on rights to earn a livelihood, to practice or not practice a religion, to have access to public places or normally available educational, legal, welfare and health provision - may amount to 'serious harm'.
- 2.5 The fact that violence against women is universal is irrelevant when determining whether gender-specific forms of harm amount to 'serious harm'.
- 2.6 There are many forms of harm that are specific to, or more commonly affect women that also constitute torture or cruel, inhuman or degrading treatment. These include, *but are not limited to*, sexual violence and abuse, rape, female genital mutilation, marriage-related harm, violence within the family or community, domestic slavery, forced abortion and forced sterilisation. Gender-specific violence does not differ analytically from beatings, torture or other forms of violence that are commonly held to amount to persecution.

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- 2.7 Sexual violence can include, *but is not limited to*, enforced nakedness; sexually abusive taunts and threats; rape; mechanical or manual stimulation of the erogenous zones; the insertion of objects into the body openings; the forced witnessing of sexual acts; forced masturbation or to be masturbated by others; fellatio and oral sex; a general atmosphere of sexual aggression and threats of

the loss of the ability to reproduce and/or enjoyment of sexual relations in the future.

2.8 Sexual violence has serious physical, social and psychological consequences and is a grave violation of the fundamental human right to security of the person including the right not to be subjected to torture or other cruel inhuman or degrading treatment or punishment.

2.9 Sexual violence carries traumatic social repercussions which may be affected by a woman's cultural origins or social status. These may include, *but are not limited to*, rejection by (or of) the spouse and by family or community members, stigmatisation or ostracism by the wider community, and punishment and/or deprivation of education, employment and other types of assistance and protection. Where a victim of sexual violence may have no alternative but to marry her attacker or become a prostitute, these are also human rights violations.

2.10 Forced abortion, sterilisation and female genital mutilation constitute torture and are infringements of the basic right not to be treated inhumanely or degradingly, of the right to private and family life, and of the right to marry and have a family.

2.11 'Serious harm' related to marriage includes, *but is not limited to*, forced marriage, 'dowry death' or bride burning, 'honour killings' and 'temporary pleasure marriages.'

2.12 Social and cultural norms regarding appropriate gender roles and behaviour may mean that lesbians face violations of their human rights. Lesbians may experience different forms of 'serious harm' than those characteristically targeted at gay men. For example, many lesbians have effectively been denied the right to sexual orientation because they have been forced into marriage.

2.13 Physical and mental abuse within the family is a wide-spread and often gender-specific form of 'serious harm' and a violation of women's human rights.

2.14 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. This can include, *but is not limited to*:

- Family and personal laws;
- Dress codes;
- Employment or education restrictions;
- Restrictions on women's freedom of movement and/or activities.

2.15 Such restrictions may in themselves constitute 'serious harm'. For example, dress codes may violate a woman's right to freedom of conscience, expression or religion, either in themselves or because of the consequences of the refusal, failure or inability to comply.

2.16 A broad range of penalties may be imposed for disobeying restrictions placed on women. Such penalties will often constitute 'serious harm', particularly where the level of punishment for violating discriminatory norms is disproportionately severe.

2.17 Adverse social consequences that constitute 'serious harm' may be associated with, for example, arranged or child marriage, remaining single, mixed marriage, separation, divorce or widowhood, or seeking to obtain any rights in respect of custody of children.

2.18 Decision-makers are reminded that the legal obligation to eliminate all forms of discrimination against women is a fundamental tenet of international human rights law.

## SECTION 3

# The Failure of State Protection

3.1 In addition to establishing a well-founded fear of 'serious harm', a woman must also show that the state has failed to protect her. A failure of state protection exists in the following situations:

- If 'serious harm' has been inflicted by the authorities or by associated organisations or groups **or**;
- If 'serious harm' has been committed by others and the authorities are *unwilling* to give effective protection **or**;
- If 'serious harm' has been committed by others, and the authorities are *unable* to give effective protection.

3.2 International legal obligations of the state are found in international treaty and customary law and include specific obligations to protect women's human rights.

3.3 State protection must be meaningful, accessible, effective and available to a woman regardless of her race, ethnicity, sexual orientation, disability, religion, class, age, occupation or any other aspect of her identity. In some cases there may be protection in theory, but actual practice must be examined. Corroborative evidence will not always be available.

3.4 Conduct by those associated with the state, including sexual violence, is the responsibility of the state.

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- 3.5 Gender-based discrimination is often enforced through law as well as through social practices. The existence of a law or social policy can itself amount to a failure of state protection, for example, a law or policy could be inherently persecutory, or it may have a 'legitimate' goal but be administered through persecutory means, or the penalty for non-compliance with the law or policy may be disproportionately severe.
- 3.6 State responsibility includes those instances where social mores dictate gender-related abuse as an acceptable practice and where there are no effective means of legal recourse to prevent, investigate or punish such acts. Where the state fails to provide adequate protection, it does not matter whether this derives from collusion, indifference or impotence; it amounts to official acquiescence.
- 3.7 The state is liable for human rights violations by private individuals where it refuses or is unable to provide effective protection or redress. State inaction includes, *but is not limited to*, official legislation (for example, marital rape exemptions in law), lack of police response to pleas for assistance and/or a reluctance, refusal or failure to investigate, prosecute or punish individuals. Where a state facilitates, accommodates, tolerates, justifies, or excuses denials of women's rights, there is a failure of state protection.
- 3.8 A claim should not be rejected simply because a woman comes from a situation where the state is unable to provide protection.
- 3.9 It is not always reasonable or possible for a woman to alert the authorities to her need for protection, for example, if by doing so she risks violence or harassment, or has reasonable doubts that she will be protected. In such circumstances, the fact that a woman has not alerted the authorities ought not to be held against her.
- 3.10 The implications of gender in determining the reasonableness of an internal flight alternative must be recognised. For example, financial, logistical, social, cultural and other barriers may significantly affect a woman's ability to travel to another area of the country, and stay there without facing hardship, insecurity or the right to be with her family.

**SECTION 4**

## Convention Grounds

### General Proposition

4.1 Although gender is not specifically enumerated as one of the grounds for establishing status within the Refugee Convention, these Guidelines encourage decision-makers to let gender inform their assessment under race, religion, nationality, political opinion or membership of a particular social group. 'Religion' and 'political opinion' in particular need to be properly interpreted to include women's experiences. In some cases 'women' (or some sub-category thereof) may qualify as a 'particular social group'.

4.2 The predominant interpretation of persecution on the grounds of political opinion exemplifies the problem of a definition which has typically been seen in terms of male experience. The archetypal image of a political refugee as someone who is fleeing persecution for direct involvement in conventional political activity, does not always correspond with the reality of many women's experiences.

4.3 It is important to recognise that a woman may face persecution because of a Convention ground which is attributed to her. Where the persecution of women is concerned, an *imputed or attributed* Convention ground may be important.

4.4 It is important to recall that the preamble to the Refugee Convention specifically refers to the intention of the signatories to uphold fundamental rights. When determining the ambit of actual or imputed (attributed) Convention grounds, for example political opinion, it is therefore vital to look to the core human rights instruments in international law as outlined in Section 1 of these Guidelines.

4.5 For some women there may be an additional likelihood of persecution simply by virtue of being returned to her country of origin.

## **Race**

4.6 Whilst actual or attributed racial identity is not specific to women, it may operate in tandem with gender to explain why a woman fears persecution. For example, whilst the destruction of ethnic identity and/or prosperity of a racial group may be through killing, maiming or incarcerating men, women may be viewed as propagating ethnic identity through their reproductive role, and may be persecuted through, for example, sexual violence or control of reproduction.

## **Nationality**

4.7 The term 'nationality' does not only mean 'citizenship'. It can include membership of an ethnic or linguistic group and may overlap with the terms 'race', 'religion' and 'political opinion.'

4.8 Whilst actual or attributed national identity is not specific to women, it may operate in tandem with gender to explain why a woman fears persecution. Persecution for reasons of nationality may result from legal and social practices which deprive a woman of her nationality or citizenship rights in certain situations, for example, through marriage to a 'foreign' national.

## **Religion**

4.9 A woman may face harm for her adherence to or rejection of a religious belief or practice. Religion as the persecution ground may include *but is not limited to*, the freedom to hold a belief system of one's choice or *not to hold* a particular belief system and the freedom to practise a religion of one's choice or *not to practise* a prescribed religion.

4.10 There is often overlap between religious and political persecution. The *political nature* of oppression of women in the context of religious laws and ritualisation must be recognised. Where religious tenets require certain kinds of behaviour

from a woman, contrary behaviour may be perceived as evidence of an unacceptable political opinion regardless of what a woman herself actually believes.

4.11 A woman's religious identity may be aligned with that of other members of her family or community. Imputed or attributed religious identity may therefore be important.

### **Actual or Imputed (Attributed) Political Opinion**

4.12 The International Covenant on Civil and Political Rights (ICCPR) recognises that there is a fundamental right for an individual to freely hold an opinion, to freely express opinions and to enjoy freedom of conscience.

4.13 It is important not to underestimate or overlook the political dimensions of a woman's experiences of persecution even though a woman may not regard herself as making a political statement. She may not directly claim, orally or in writing, that she has been persecuted for reasons of political opinion and may find it difficult to explain the reasons for her persecution.

4.14 Many women are visibly active in conventional political activities such as belonging to political parties or other groups/associations/movements, making speeches, attending demonstrations and writing publications. However women are also directly involved in non-conventional forms of political activity. An activity is rendered political by its context. For example, women may hide people, pass messages or provide community services, food, clothing or medical care. All of these political activities put women at risk of harm on the basis of an actual or imputed political opinion.

4.15 Frequently the penalty for political activity in the broadest sense, whether actual or imputed, will be even more severe for women due to the breach of social and cultural norms which preclude women's involvement.

4.16 'Private' issues commonly associated with women are not inherently less political than those taking place in the 'public' sphere. Conflicts concerning the demarcation of privacy (for example, freedom to choose to wear the veil or not, to have an education or undertake certain work, to be sexually active or not, to

choose her partner, to be free from male domination and violence, to exercise reproductive rights and to reject female genital mutilation) are conflicts of a political nature.

4.17 A woman who opposes institutionalised discrimination against women or expresses views of independence from the social or cultural norms of society may sustain or fear harm because of her actual political opinion or a political opinion that has been or will be 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 is political.

4.18 Where a woman does not directly or intentionally challenge institutionalised norms of behaviour she may nonetheless be imputed (i.e. attributed) with a political opinion. This can be seen, for example, in the characterisation of a raped woman as adulterous, in the social ostracism of an unmarried, separated, divorced, widowed or lesbian woman, and in the politicisation of (unintentional) violations of dress codes.

4.19 A woman may suffer harm on the basis of an imputed (attributed) political opinion as a result of the perception that her political views are aligned with those of dominant family or community members (usually male).

4.20 Claims for asylum which are based on sexual orientation are not fundamentally different from other claims for asylum. It should be noted that in some contexts a woman's fear of persecution for her political activities or opinions, may be exacerbated because her choice of sexual orientation, whether actual or attributed, is used as a pretext for persecution.

### **Membership of a Particular Social Group**

4.21 Most women can be protected within the other Convention grounds, i.e. race, religion, nationality and political opinion, whether actual or imputed. However in

some cases gender may be a factor in recognising membership of particular social group or an identifying characteristic of such a group.

4.22 Particular social groups can be identified by reference to innate or unchangeable characteristics that a woman should not be expected to change or cannot change for historical reasons. Examples of such characteristics may include, but are not limited to, sex, age, marital status, family and kinship, past economic status/class, occupational history, disability, sexual history and ethnic, tribal or clan affiliation.

4.23 Whether these factors are unchangeable, depends on the cultural and social context in which the woman lives, as well as the perception of the agents of persecution and those responsible for providing state protection. The important principle to consider is whether the persecution suffered or feared is *for reasons of membership of a particular social group*.

4.24 External perception may be a factor in the identification of a 'particular social group'. Persecutory conduct, whilst not in itself creating a 'particular social group', may constitute evidence of such a perception.

4.25 Family or kin associations may define a particular social group. There are cases where women are persecuted solely because of their family or kinship relationships, for example, a woman may be persecuted as a means of demoralising or punishing members of her family or community, or in order to pressurise her into revealing information.

4.26 The fact that the particular social group consists of large numbers of the female population in the country concerned is *irrelevant* - race, religion, nationality and political opinion are also characteristics that are shared by large numbers of people.

## SECTION 5

# Procedural and Evidential Issues

5.1 Procedures for refugee determination are critical. These have been modelled on the assumption that refugees are *politically active men* who have been persecuted by the state as a result of those activities. The asylum determination process can be made more responsive to the experiences of women if interviewers and decision-makers are aware of, and respond to, the procedural and evidential difficulties that face women.

### **Access to the Determination Process**

5.2 Some women asylum seekers arrive alone. Others arrive as part of a family unit and are sometimes not interviewed or are cursorily interviewed about their experiences even when it is possible that they, rather than, or as well as, their male relatives, have been persecuted. Male relatives or associates may not raise relevant issues because they are unaware of the details or their importance or are ashamed to report them.

5.3 It is important not to assume that a woman's status is derivative; a woman's claim to refugee status may in some cases be as strong as, or stronger than, that of her male relative or associate.

5.4 Where a woman applies for asylum as a dependant, she should be informed *in private*, and in terms she understands, of her right to make an independent application for asylum at any stage, and should be advised to consult a legal representative before doing so. Adverse inferences about her credibility should not be drawn from any delay in making an application.

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5.5 Information provided by a woman must not be disclosed or used for any purpose other than a determination of her own asylum claim without her specific written consent.

### **Interviews**

- 5.6 If a full interview is considered necessary, it should not take place on arrival.
- 5.7 The purpose of the interview is to enable a woman to describe her experiences. It is the duty of the interviewer to facilitate this process.
- 5.8 Women face particular difficulties in making their case to the authorities, especially when they have had experiences that are difficult and/or painful to describe. The interview should be non-confrontational and exploratory. This is critical for the full discussion of experiences relating to a woman's claim.
- 5.9 Women may be stigmatised by the *assumption* that they have been sexually abused if, for example, they have been arrested, detained or involved in conflict. The stigma associated with sexual violence means some women who have *not* been sexually abused, may be unable or unwilling to describe their experiences.

### ***Finding Out About Women's Experiences***

- 5.10 It is important that the interview room and surrounding environment be conducive to open discussion. There must be sufficient time available and there should be no disturbances. Interviewers and decision-makers should be aware of, and take into account, for example, women's responsibilities as carers, distances to be travelled, issues of privacy, the need to provide refreshments and breaks, and the potentially traumatic effects of interviews.
- 5.11 Interviewers and decision-makers should be aware that any indication that a woman's claim may not be treated as confidential is likely to seriously hinder her willingness to provide full details of her claim, and may even discourage her from making a claim.
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- 5.12 Post-Traumatic Stress Disorder (PTSD), depressive disorders, trauma, anxiety, shame or anger may affect a woman's ability or willingness to describe her experiences.
- 5.13 Women from societies where, for example, the preservation of virginity or marital dignity is the cultural norm, may be reluctant to disclose certain information relevant to their asylum claim or that of other members of their family.

Women do not necessarily understand the importance of disclosing their experiences, particularly those of sexual violence or abuse. There may be good reasons not to tell, which can range from the fact that it is very hard to do, to the fear that her experiences may become known to others and/or lead to her being ostracised from her family and/or community.

- 5.14 If it becomes apparent that a woman needs additional support of any kind, for example referral to a rape crisis centre or other specialist service, then the offer of a referral should be made before the determination process is concluded.

### ***Presence of Family Members***

- 5.15 Female victims of violence, discrimination and abuse often do not volunteer information about their experiences and may be particularly reluctant to do so in the presence of family or community members.

- 5.16 Women should be asked *privately* whether they want to be interviewed outside the hearing of other members of their family, especially male family members and children. Whilst the giving of information is a highly stressful experience for anyone, women may only be able to communicate experiences of sexual abuse or other kinds of harm when family members are not present. Sexual violence in particular may be viewed as a failure on the part of the woman to preserve her virginity or marital dignity.

### ***Interviewers and Interpreters***

- 5.17 Interviewers and decision-makers should appreciate the difficulties inherent in speaking through an interpreter.

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- 5.18 The role of the official interpreter is to interpret truly, accurately, fully, distinctly and audibly using appropriate language and emphasis. It is the duty of the interviewer to ensure that this role is fulfilled.

- 5.19 A woman who has suffered sexual abuse may be reluctant, or may find it difficult or even impossible to talk about her experiences through a male (or even female) interpreter who is a member of her community.

5.20 Many women have been abused by men. Coupled with a fear and distrust of authorities, this fact is likely to seriously inhibit the capacity of a woman to divulge details of her experiences to a male interviewer or through a male interpreter.

5.21 If a woman is interviewed in connection with her asylum claim, she should have access to a woman interviewer and interpreter.

5.22 Merely being female does not guarantee an awareness of gender issues. Regular training on the issues raised in these Guidelines and interview skills training more generally is essential.

### ***Asking the Right Questions***

5.23 Interviewers should familiarise themselves with the status and roles of women in the country from which a woman has fled and should refer to paragraphs 5.43 and 5.44 for further information.

5.24 The information revealed during the course of the interview may reflect the ways in which questions are asked. Unless the right questions are asked it is unlikely that a woman will be able to describe her experiences.

5.25 For example, interviewers should not focus their questions on political activities narrowly defined. Political activities also include, *but are not limited to*, community activism, providing food or shelter, message taking, hiding people or refusing to conform to particular social norms. Women may also have a different perception of torture, which may not equate with the types of harm they fear, for example sexual violence, violence within the family, marriage-related harm, female genital mutilation and forced abortion and sterilisation.

2.26 Non-confrontational open and/or indirect questions should be asked in order to establish a woman's reasons for fleeing.

2.27 More direct follow-up questions should be asked to ascertain details of the woman's full experiences. Depending on what a woman says, the following types of questions may be of assistance:

- Why did you leave your country?
- Did you have any problems?
- Were you treated badly?
- Was anyone you know treated badly?
- Why did you think this happened?
- Who was responsible?
- How did you feel?
- What difficulties did these experiences cause you?
- Did you complain to the authorities? If not, why not?
- What would happen to you if you were to return to your country?

This is *not* a prescriptive or sequential list. Interviewers must consider relevant follow-up questions. For example:

- What else happened to you?

### ***Culturally Sensitive Communication***

5.28 The failure to appreciate cross-cultural differences may jeopardise the quality of the information revealed by a woman and prevent an effective interview taking place.

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5.29 Women may find it difficult to recall painful or sensitive events. Active listening skills play an important part in the flow of the interview. These include:

- Reflective listening (i.e. paraphrasing what has been said by the woman);
- Not talking at the same time as the woman;
- Not making judgmental comments;
- Maintaining composure if the woman gets angry or upset;
- Ensuring minimum interruptions and/or distractions;

- Ensuring the interpreting is an accurate reflection of the woman's testimony (e.g. relative length of translation, reaction from the woman) .

5.30 Body language can be interpreted in many different ways. It is important that interviewers ensure they avoid gestures which may be perceived as intimidating or culturally insensitive or inappropriate and inhibiting.

5.31 Interviewers and decision-makers should be aware that cultural and other differences and trauma play an important role in determining demeanour i.e. how a woman presents herself physically, for example, whether she maintains eye contact, shifts her posture or hesitates when speaking.

5.32 The level and type of emotion displayed by a woman during the recounting of her experiences should not adversely affect her credibility. A lack of displayed emotion does not necessarily mean that the woman is not distressed or deeply affected by what has happened.

## **Credibility**

5.33 Many women face additional problems in demonstrating that their claims are credible.

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5.34 A woman's priority is to achieve safety for herself and/or family members. She may not claim asylum whilst she is able to achieve safety, however temporary or illusory, through another means, whether legal or illegal. This may account for the delay in claiming asylum and should not negatively affect credibility.

5.35 An inability to provide information relevant to a claim should not of itself undermine credibility. In many cultures men do not share information about their political, military or even social activities with their female relatives. Gaps in a woman's knowledge should not be construed as lack of credibility.

- 5.36 When two or more people give an account it is inevitable that differences occur due to recall, emphasis and perspective. This should not necessarily be interpreted as indicating that they are not giving accurate accounts of their experiences.
- 5.37 Women in particular may not be forthcoming with full information about their experiences if gender-sensitive interviewing procedures are not followed.
- 5.38 Torture and other persecutory treatment can produce a profound shame response. Humiliation and shame are often desired goals of the perpetrator. This shame response may be a major obstacle to disclosure. Experience has shown, for example, that incidents of sexual abuse may not come to light for months or even years.
- 5.39 Delay in submitting the application, or in giving a full account of experiences after the initial application, or once a claim has been refused, should not of itself undermine the credibility of a woman's application.

## **Evidence**

- 5.40 Where human rights reports indicate that a risk of harm exists, a genuine fear of persecution in a country is likely to be well-founded. Conversely, the absence of information should not necessarily be taken as an indicator that human rights abuses do not occur.
- 5.41 Information to support a woman's claim may not be readily available. Women's experiences of persecution frequently differ from those of men and they may be unable to document their experiences. For example, they may not be able to provide membership cards or newspaper cuttings relating to their political involvement because they have been indirectly involved through a supporting role or because the political opinion has been imputed to them. Similarly, information about violence within the family or community may be difficult to find.
- 5.42 Background reports and country information often lack analysis of the position and status of women. Statistical data on the incidence of sexual or other violence is often inadequate or lacking.

### ***Documentary Evidence and Country Reports***

5.43 Interviewers and decision-makers should familiarise themselves with the role, status and treatment of women in the country from which a woman has fled. It is essential to consider a number of issues when gathering information. These include, *but are not limited to*:

- *Position of women before the law* including their standing in court, the right to bring a complaint and give evidence, divorce and custody law, the right to own property, reproductive rights, freedom to travel, and the political, social and economic rights referred to below;
- *Political rights of women* including the right to vote, to hold office and belong to a political party;
- *Social and economic rights of women* including the right to marry the person of their choice, the right not to marry and the right to divorce, the right to determine their own sexuality, the right to an education, a career, and a job or remunerated activities, the status of single women, widows or divorcees, and freedom of dress;
- *Consequences for women who refuse to abide by or who challenge social, religious or cultural norms regarding their behaviour* including, for example, norms regarding virginity and pre- or extra-marital sex or pregnancy, norms around the institution of the family including arranged marriages and divorce, and norms about behaviour and dress;
- *Incidence and form of violence against women* and the forms it takes (such as, *but not limited to*, violence within the family, sexual abuse, honour killings, bride burning);
- *Efficacy of protection available to women* and the sanctions or penalties on those who perpetrate the violence;
- *Consequences that may befall a woman on her return.*

5.44 Where it is difficult to obtain evidence relevant to a woman's claim, interviewers and decision-makers should consider:

- Researching the position of women in countries of origin from articles, newspapers, studies and reports, including those published by government departments, inter-governmental organisations, non-governmental organisations, women's and community organisations;
- Accessing on-line information available on the Internet or sources such as the UNHCR's RefWorld on CD-Rom;
- Contacting specialists and experts (whether in the UK or elsewhere) who are familiar with the region and/or the gender issues involved.

### ***Medical and Other Evidence***

5.45 If an interviewer or decision-maker receives medical, psychological, professional or other related expert evidence at any stage, it should be considered with care and assessed impartially.

5.46 It should be noted that there is frequently no physical evidence in cases involving rape or sexual violence. In addition interviewers and decision-makers should be aware that torturers and abusers often choose methods precisely because they do not leave marks.

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### **The Standard of Proof**

5.47 An asylum seeker has to show a 'reasonable degree of likelihood' that she will be persecuted if removed from the UK. This standard of proof is in recognition of the difficulties asylum seekers face in proving their claim and the serious consequences of a wrong decision.

5.48 An assessment as to whether the fear of persecution is well-founded should not simply be based on general conditions in her country of origin but should take into account the particular experiences of women. An assessment should also be made of the claimant's particular fear and of whether any changes in country

conditions are meaningful and effective enough for her fear of persecution to be no longer well-founded.

5.49 A change in country circumstances, generally viewed as a positive change, may have no impact, or even a negative impact, on a woman's fear of persecution.

5.50 In many cases harm occurs at the hands of non-state agents (which includes family and community members) whose actions are ignored or condoned by the authorities. Notwithstanding that changes may have occurred, such agents of persecution are seldom brought to justice and there is no accountability by the state for the acts of persecution inflicted on the woman.

5.51 For some women the risk of return may be even greater than for their male counterparts, for example, because of the authorities' and societies' attitude towards women travelling alone.

## The Implementation of Guidelines

**“UNHCR endorses the principle of gender specific guidelines and recognises the need for such guidelines in the UK. We congratulate the RWLG on compiling such a quality document.”**

Hope Hanlan

*Representative of the United Nations High Commissioner for Refugees*

*May 1998*

**“State parties to the 1951 Refugee Convention are urged to adopt guidelines with respect to gender-related asylum claims.”**

*Report of the UN Special Rapporteur on Violence against Women*

*26<sup>th</sup> January 1998*

Calls for the adoption of guidelines with respect to women's asylum claims have also been made by the UN Division for the Advancement of Women (9<sup>th</sup>-12<sup>th</sup> November 1997). The UN Platform for Action (1995) similarly supports and promotes efforts by states towards the development and application of gender guidelines.<sup>4</sup>

In October 1996 the UK Immigration Appeal Tribunal (IAT) held that gender guidelines 'ensure that vital issues are objectively canvassed in weighing refugee claims where gender is a factor.'<sup>5</sup>

The principle of gender guidelines for the determination of asylum claims in the UK has been advocated and endorsed by a wide spectrum of individuals and

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<sup>4</sup> See for example Article 147

<sup>5</sup> *Gimhedin (Almaz Woldu) v SSHD*, 21<sup>st</sup> October 1996 (14019) unreported

**Refugee Women's Legal Group**  
***Gender Guidelines for the Determination of Asylum Claims in the UK (July 1998)***

organisations including women's organisations, refugee community groups, non-governmental organisations, local authorities, health practitioners, judges, academics and legal practitioners as well as UNHCR.

Simply making women visible is not enough, rather an entirely different approach is needed. Guidelines are a beginning not an end, a process rather than a product. These Guidelines are only a first step towards ensuring that women are able to benefit equitably from protection under the Refugee Convention.

These Guidelines are founded upon the body of experience of women asylum seekers and refugees, refugee community groups, legal practitioners and academics. ***We call upon the United Kingdom government to adopt and apply these Guidelines immediately.***