

Gender Related Persecution as Basis for Asylum

May 2015

Magdalena Aguilar Pulido, ASSOCIATE
PROTECTION OFFICER



WHAT IS GENDER?

“Gender refers to the relationship between women and men based on **socially or culturally constructed and defined identities**, status, roles and responsibilities that are assigned to one sex or another, while sex is a biological determination. **Gender** is not static or innate but **acquires socially and culturally constructed meaning over time**”

WHAT IS GENDER RELATED PERSECUTION?

“It is used to include the range of different claims in which gender is a relevant consideration in the determination of refugee status”.

“It is an established principle that the refugee definition as a whole should be interpreted with an awareness of possible gender dimensions in order to determine accurately claims to refugee status.”

UNHCR Guidelines on Gender-Related Persecution, dated May, 2002.

Gender related claims have typically encompassed acts of sexual violence, family/domestic violence, coerced family planning, female genital mutilation, punishment for transgression of social mores and discrimination against persons of certain sexual orientation.

EVOLUTION OF THE REFUGEE DEFINITION

Historically, the refugee definition has been interpreted through a framework of male experiences.

However, in the past decade, the analysis and understanding of gender in the refugee context has advanced substantially in:

- case law
- state practice generally
- in academic writing

EVOLUTION OF THE REFUGEE DEFINITION

Developments regarding gender-related asylum claims have run parallel to and been assisted by:

- developments in international human rights law & standards
- related areas of international law (e.g., jurisprudence of the International Criminal Tribunals for the former Yugoslavia & Rwanda)
- E.g. harmful practices in breach of international human rights law cannot be justified on basis of traditional, religious or cultural grounds.
(CEDAW)

UNHCR Guidelines on Gender-Related Persecution, dated May 2002

LEGAL FRAMEWORK

The Beijing Platform for Action, 1995.

The Special Rapporteur on Violence against Women, 2000.

UNHCR Guidelines on International Protection:
Gender-related persecution

The Council of Europe reference to gender-based violence

Convention on the Elimination of all forms of
Discrimination against Women

WELL FOUNDED FEAR OF PERSECUTION

- While female and male applicants may be subjected to the same forms of harm, they may also face forms of persecution specific to their sex.
- Laws that can be persecutory, since they emanate from traditional or cultural norms and practices.
- Even when a State may have prohibited a persecutory practice, but it **continues to condone** or **tolerate the practice** or **may not be able to stop the practice** effectively.

WELL FOUNDED FEAR OF PERSECUTION

If **penalty or punishment** for non-compliance with, or breach of a policy or law is

- disproportionately severe and has a gender dimension
- it can amount to persecution.

In cases where **laws or policies** have justifiable objectives, but methods of implementation lead to consequences of a substantially prejudicial nature for the persons concerned.

AGENTS OF PERSECUTION

“Serious discriminatory or other offensive acts committed by the local populace, or by individuals can be persecution. If such acts **are knowingly tolerated by the authorities**, or if the authorities refuse, or are unable, to offer effective protection”

UNHCR Guidelines on Gender-Related Persecution, May 2002.

1951 CONVENTION GROUNDS

- Membership of a Particular Social Group-- women asylum-seekers who face harsh or inhuman treatment due to having transgressed the social mores of the society in which they live.
- Political Opinion-- to consider gender related claims and recognition to the political context in which women's persecution occurs. Moreover, there may be some overlap between the grounds of political opinion and religion in gender-related claims for asylum.

COUNTRY OF ORIGIN INFORMATION

Information that is relevant to women's claims should be collected:

- position of women before the law
- political rights of women
- social and economic rights of women
- cultural and social mores of the country and consequences for non-adherence

POSITION/ACTIONS OF STATES

1993 Canada “Comprehensive gender guidelines on women refugee claimants fearing gender related persecution”

1995 US “Considerations for Asylum Officers Adjudicating asylum claims for women”

1996 Australia “Guidelines on Gender Issues for Decision Makers”

2000 UK “Asylum Gender Guidelines”

European countries are gradually developing such guidance

GOOD PRACTICE-BELGIUM

Belgium classifies gender-related claims according to the following list:

1. Sexual orientation and gender identity
2. 'Honour' crimes
3. Female Genital Mutilation
4. Forced Marriages
5. Domestic violence (other than sexual violence)
6. Sexual violence/rape
7. Forced sterilisation and forced abortion

See Gender Related Asylum Claims in Europe—European Parliament

Thank you!