

## 5.2 Summary Conclusions: gender-related persecution

*Expert roundtable organized by the United Nations High Commissioner for Refugees and the International Institute of Humanitarian Law, San Remo, Italy, 6–8 September 2001*



The San Remo expert roundtable addressed the question of gender-related persecution and the 1951 Convention Relating to the Status of Refugees, basing the discussion on a background paper by Rodger Haines QC, Refugee Status Appeals Authority of New Zealand, entitled ‘Gender-Related Persecution’. In addition, roundtable participants were provided with written contributions from Justice Catherine Branson, Federal Court of Australia, Deborah Anker, Harvard Law School, Karen Musalo and Stephen M. Knight, Hastings College of Law, University of California, and the World Organization Against Torture. Participants included thirty-three experts from twenty-three countries, drawn from governments, NGOs, academia, the judiciary, and the legal profession. Deborah Anker, from Harvard Law School, moderated the discussion.

The following summary conclusions do not represent the individual views of each participant or necessarily of UNHCR, but reflect broadly the understandings emerging from the discussion.

The Convention is, *inter alia*, founded on the principle that human beings shall enjoy fundamental rights and freedoms without discrimination. Because men, women, and children can experience persecution in different ways, Article 1A(2) demands an inquiry into the specific characteristics and circumstances of the individual claimant. Accordingly, the below understandings follow:

1. The refugee definition, properly interpreted, can encompass gender-related claims. The text, object, and purpose of the Refugee Convention require a gender-inclusive and gender-sensitive interpretation. As such, there would be no need to add an additional ground to the Convention definition.
2. 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. Sex is biologically determined.

3. Even though gender is not specifically referenced to in the refugee definition, it is clear – and thus accepted – that it can influence, or dictate, the type of persecution or harm suffered and the reasons for this treatment.
4. Ensuring that a gender-sensitive interpretation is given to each of the Convention grounds can prove very important in determining whether a particular applicant has a well-founded fear of persecution on account of one of the Convention grounds. The main problem facing women asylum seekers is the failure of decision makers to incorporate the gender-related claims of women into their interpretation of the existing enumerated grounds and their failure to recognize the political nature of seemingly private acts of harm to women.
5. It follows that sex can properly be within the ambit of the social group category, with women being a clear example of a social subset defined by innate and immutable characteristics, and who are frequently treated differently to men.
6. In cases where there is a real risk of serious harm at the hands of a non-State actor (e.g. husband, partner, or other non-State actor) for reasons unrelated to any Convention ground, and the lack of State protection is for reason of a Convention ground, it is generally recognized that the nexus requirement is satisfied. Conversely, if the risk of harm by the non-State actor is Convention-related, but the failure of State protection is not, the nexus requirement is satisfied as well.
7. Where individual women do not meet the requirements of the refugee definition of the 1951 Convention, their expulsion may nevertheless be prohibited under other applicable human rights instruments.
8. Protection of refugee women not only requires a gender-sensitive interpretation of the refugee definition, but also a gender-sensitive refugee status determination procedure.