

THE PROTECTION OF THE RIGHTS OF REFUGEE WOMEN



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Introduction

We wish to thank the organisers of this Colloquium for inviting the Office of United Nations High Commissioner for Refugees (UNHCR) to participate in it. The Office of the United Nations High Commissioner for Refugees is mandated to provide international protection and assistance for refugees and to seek permanent solutions to their problems. The promotion and dissemination of refugee law and protection principles and provision of humanitarian assistance to people of concern to UNHCR are integral parts of this responsibility. This forum provides us the opportunity to share with those members of the judiciary and public present here our concerns on human rights and protection of refugee women. As many of you may know, there are over 27 million refugees and internally displaced persons of concern to UNHCR and more than half of these numbers are women and children. The majority suffer in silence.

Refugee women constitute a special group. Persecution of refugee women takes many forms. They are invariably in vulnerable circumstances, having lost their traditional family and community support, and possessions upon fleeing from their homes in areas of conflict. The causes of their persecution include not only the traditionally recognised causes relating to race, nationality, religion or political opinions but also their gender. Gender-based persecution includes sexual harassment, exploitation and sexual favours by camp authorities and by camp inmates. Refugee women are subject to domestic violence, physical mutilation, rape, torture and persecution for transgression of mores.

Background

By way of background, apart from the 1951 Convention relating to the Status of Refugees (the 1951 Convention)¹ and the 1967 Protocol relating to the Status of Refugees (the 1967 Protocol),² I reiterate some of the basic principles and resolutions expressed in recent years in the various international fora and by UNHCR in particular, relevant to rights of refugee women.

¹ 189 UNTS 137, adopted on 28 July 1951, entered into force 22 April 1954.

² 606 UNTS 267. GA Res 21/2198 (1966), entered into force 4 October 1967.

We have all agreed that human rights are women's rights. As Jane Connors pointed out,³ several Governments that were participants in the Vienna Conference in 1993 declared that "the human rights of women and the girl-child are an inalienable, integral and indivisible part of universal human rights."⁴ This was endorsed again at the Fourth World Conference on Women in Beijing last year.

Refugee women have been categorised as a particular social group for purposes of refugee status determination. As far back as 1984, the European Parliament determined that women fearing cruel or inhuman treatment as a result of seeming to have transgressed social mores should be considered a "social group" within the meaning of the Refugee Convention.⁵ In 1985 the Executive Committee of the High Commissioner's Programme (EXCOM) specifically acknowledged that, in appropriate circumstances, women may be considered a "particular social group" within the scope of the refugee definition and adopted the following resolution:

"... States, in the exercise of their sovereignty, are free to adopt the interpretation that women asylum-seekers who face harsh or inhuman treatment due to their having transgressed the social mores of the society in which they live may be considered as a 'particular social group' within the meaning of article 1A(2) of the 1951 United Nations Refugee Convention."⁶

As has been mentioned earlier by other distinguished participants here, in 1993 the General Assembly of the United Nations in New York adopted, by consensus, the Declaration on the Elimination of Violence against Women.⁷ It explicitly targets "violence in public or private life", and calls on States to take measures to eradicate violence against women. In 1994, the Commission on Human Rights appointed a Special Rapporteur on Violence against Women.⁸ Most recently, the General Conclusion on International Protection adopted in October last year by the Executive Committee of the High Commissioner's programme:

"Call[s] upon the High Commissioner to support and promote efforts by States towards the development and implementation of criteria and guidelines on responses to persecution specifically aimed at women, by sharing information on States' initiatives to develop

³ Jane Connors, "General Human Rights Instruments and their Relevance to Women", in this volume, *supra*, p 27.

⁴ Vienna Declaration and Programme of Action, UN Doc A/CONF.157/24, para 18 (1993).

⁵ Resolution on the application of the 1951 United Nations Refugee Convention adopted by the European Parliament on 13 April 1984.

⁶ Conclusion No 39 (1985), *Refugee Women and International Protection*, para (k).

⁷ GA Res 48/104, UN Doc A/48/49, at 217 (1994), reprinted in 1 IHRR 329.

⁸ The mandate of the Special Rapporteur on Violence against Women, Its Causes and Consequences was established by Resolution 1994/45 of the United Nations Commission on Human Rights, CHR Res 1994/45 (4 March 1994).

such criteria and guidelines, and by monitoring to ensure their fair and consistent application. In accordance with the principle that women's rights are human rights, these guidelines should recognise as refugees those women whose claim to refugee status is based upon well-founded fear and persecution for reasons enumerated in the 1951 Convention and 1967 Protocol, *including persecution through sexual violence or other gender-related persecution.*"⁹

The first countries to have applied this new criteria in refugee status determination have been Canada and the United States. In March 1993, the Canadian Immigration and Refugee Board drew up guidelines on women refugee claimants fearing gender related persecution.¹⁰ In 1995, the US Immigration and Naturalization Service issued guidelines for asylum officers adjudicating asylum claims of women.¹¹

These are both wide-ranging and precise because they have codified a uniform and coherent approach to a difficult and complex subject.

When cases related to refugees come before the judiciary, judges can make a difference. The case of Fauziya Kasinga, who fled forced polygamous marriage and genital mutilation facing her in Togo is a stark example.¹²

UNHCR's action to promote rights of refugee women

Refugee women need special legal and physical protection. UNHCR has addressed these needs in a variety of ways, both within the refugee camps and amongst the relevant authorities of asylum-granting countries. UNHCR aims to ensure that judicial bodies, for instance, are better able to address gender issues by providing appropriate training to prosecutors, judges and other officials in handling cases involving rape, forced pregnancy in situations of armed conflict, indecent assault and other forms of violence against refugee women.

In February 1996 a Symposium on Gender-based Persecution was organised by UNHCR, bringing together policy-makers and adjudicators from 16 governments: Australia, Austria, Belgium, Canada, Denmark, France, Germany, Ireland, Italy, the Netherlands, New Zealand, Norway, Sweden, Switzerland, the United Kingdom and USA.

The Symposium focused on developing criteria for guidelines based on the nature of persecution and procedural methodology. For instance, to take the issue of procedural methodology — amongst many cultures,

⁹ Conclusion No 77 (1995), *General Conclusion on International Protection*, para (g), with emphasis added.

¹⁰ *Guidelines Issued by the Chairperson Pursuant to Section 65(B) of the Immigration Act: Women Refugee Claimants Fearing Gender-Related Persecution* (Ottawa, Immigration and Refugee Board, 1993).

¹¹ Phyllis Coven, *Considerations for Asylum Officers Adjudicating Claims From Women* (United States Department of Justice, 1995).

¹² See "When Judges Fail", *Washington Post*, 19 January 1996.

refugee women may only be interviewed by female officers. They also may need the privacy to conduct their interview without the presence of male relatives.

It is hoped that this group of governments may form the critical mass to activate the special consideration of cases relating to women in refugee-like situations and seeking refugee status.

The following recommendations were proposed at the symposium:

- exchange of personnel in training programmes
- sharing of training on interview techniques
- development of training videos
- ensure training is funded
- recommend that gender analysis be part of legal training
- further consultations during EXCOM/standing committee meetings networking through e-mail
- UNHCR's assistance in developing guidelines with interested countries

UNHCR has also plans to promote refugee-related legal literacy among concerned officials and members of the judiciary.

In 1991 UNHCR prepared *Guidelines on the Protection of Refugee Women*.¹³ In 1995, *Sexual Violence Against Refugees — Guidelines on Prevention and Response*¹⁴ followed. These guidelines have served as a useful tool to everyone dealing with refugee women from our implementing partners, non-governmental organisations, to governments and inter-governmental organisations. "A framework for people-oriented planning taking account of women, men and children" has also been disseminated by UNHCR.¹⁵ A training module on human rights and refugee protection is available and covers, inter alia "women in international refugee law and international human rights law and women in regional human rights instruments."¹⁶

In order for refugee women to fully benefit from their rights, the Division of International Protection is developing a module on rights awareness training for refugee women. The rights most frequently violated include the following:

- the right to life, liberty and security of person
- the right to freedom of movement

¹³ *Guidelines on the Protection of Refugee Women* (Geneva, UNHCR, 1991).

¹⁴ *Sexual Violence Against Refugees: Guidelines on Prevention and Response* (Geneva, UNHCR, 1995).

¹⁵ Mary B Anderson, Ann M Howarth and Catherine Overholt, *A Framework for People-Oriented Planning in Refugee Situations Taking Account of Women, Men and Children: A Practical Planning Tool for Refugee Workers* (Geneva, UNHCR, 1992).

¹⁶ Training Module RLD 5, *Human Rights and Refugee Protection, Part I: General Introduction* (Geneva, UNHCR, 1995) and *Human Rights and Refugee Protection, Part II: Specific Issues* (Geneva, UNHCR, 1996).

- the right to work
- the right to education
- the right to return to her country.

We hope that all of you judges and those present here will assist UNHCR in protecting and promoting these rights of refugees through your judgments, advocacy and interaction with others.