

W O M E N R E F U G E E S I N I N T E R N A T I O N A L L A W

P R O F . D R I V A N A K R S T I Ć

DEFINITION OF A REFUGEE

1. Alienage
2. Genuine Risk (well founded fear of being persecuted)
3. Serious Harm
4. Failure of State Protection
5. Nexus to a Specific Status (race, religion, nationality, membership of a particular social group or political opinion)

Article 1 A (2) of the Convention on the Status of Refugees

No mention of 'sex' or 'gender' in grounds of persecution

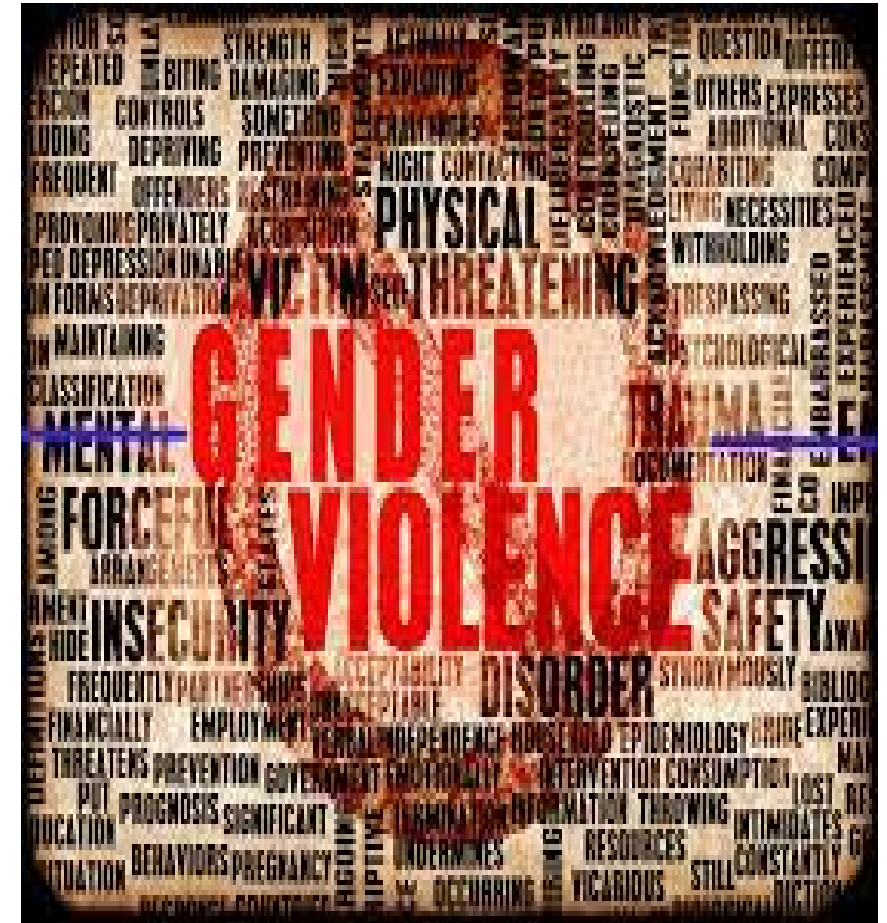
The non-discrimination clause in Article 3 recognizes only "race, religion, or country of origin" as prohibited grounds.

T W O W A Y S

- 1. To recognize women as a particular social group
- *Disputable*: the vulnerability of women to ill-treatment is institutionally and societally shaped and not an innate characteristic of certain groups
- Example: Guatemalan women
- Women suffer from an “overwhelming incidence of gender violence committed with impunity” in Guatemala and that there is an increasingly high rate of violence, femicide committed with brutality, and impunity for male perpetrators
- 2. When gender intersects with other grounds of persecution
- Example: rape against ‘Tutsi women’

WHAT IS A GENDER-BASED VIOLENCE?

- Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), (Article 3d):
- Violence that is directed against a woman because she is a woman or that affects women disproportionately



INTERNATIONAL SOURCES

Inter-American Convention to Prevent, Punish and Eradicate Violence against Women (Convention of Belém do Pará)

1994

2003

Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol)

Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention)

2011

C E D A W

- *Article 6*
- States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.
- General recommendations: GR no. 12 on violence against women, GR no. 19 on violence against women, GR no. 35 on gender-based violence against women

CEDAW and the refugee law

GR no. 32 from
2014 on the
gender-related
dimensions of
refugee status,
asylum, nationality
and statelessness of
women

CEDAW complements the international refugee law, especially because explicit gender equality provisions are absent from the 1951 Convention relating to the Status of Refugees and the 1967 Protocol.

Even though gender is not specifically referenced, it can influence or dictate the type of persecution or harm suffered by women and the reasons for such treatment.

It serves to prohibit sex- and gender-based discrimination at every stage: during the refugee status determination procedure, throughout the return or resettlement process and throughout the integration process for women who have been granted asylum.



Persecution

No definition in 1951 Convention

Characteristics:

- 1) it is inflicted by person(s)
- 2) it is unjust/discriminatory
- 3) it is cruel or serious
- 4) it is persistent

Qualification Directive 2011/95/EU, Article 9

Acts of persecution are “sufficiently serious by its nature or repetition as to constitute a severe violation of basic human rights” and are “accumulation of various measures,” including human rights violations that are sufficiently severe

ACTS OF PERSECUTION, ARTICLE 9 (2)

acts of physical or mental violence, including *acts of sexual violence*

prosecution or punishment which is disproportionate or discriminatory

denial of judicial redress resulting in a disproportionate or discriminatory punishment

prosecution or punishment for refusal to perform military service in a conflict

acts of a *gender-specific* or child-specific nature

male genital mutilation

violation

of human
rights



WHEN IT QUALIFIES FOR A REFUGEE STATUS?

- aggravated or cumulative forms of discrimination against women amounting to persecution in a country of origin
- trafficking in women
- the threat of female genital mutilation
- forced/early marriage
- threat of violence and/or so-called "honour crimes"
- rape and other forms of sexual assault
- serious forms of domestic violence
- forced sterilization
- political or religious persecution for holding feminist or other views and the persecutory consequences of failing to conform to gender-prescribed social norms

T H B A N D T H E R E F U G E E S T A T U S

Trafficking of a person or the well-founded fear of being trafficked when the State is unable or unwilling to protect

It is a form of persecution (form of gender-based violence)

Persecution is considered to include fear of serious harm or serious human rights violations such as threats to life or freedom

Persecution must be linked to their actual or imputed race, religion, nationality, membership of a particular social group, or political opinion

REFUGEE (1)

- Persecution has been experienced during trafficking, even if it is now a thing of the past, especially of a brutal nature, and when the person in question continues to experience traumatic psychological consequences that make returning to the country of origin unbearable



REFUGEE (2)

- The victim's cooperation with the authorities in the country of asylum or in the country of origin in the investigation may lead to the risk of retaliation by traffickers upon return to the country of origin, especially if the perpetrators are an international trafficking network



REFUGEE (3)

- The victims may fear that upon return they will be exposed to severe stigmatization, ostracism, discrimination or punishment by the family and/or the local community, and in some cases by the authorities



WHAT IS NECESSARY TO IMPLEMENT A GENDER APPROACH?

- Many asylum systems continue to view women through the lens of traditional gender roles, which can result in their claims to asylum not being properly assessed or being rejected.
- How this can be overcome

