



Department of Immigration and Multicultural Affairs

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**REFUGEE AND HUMANITARIAN  
VISA APPLICANTS**

**GUIDELINES  
ON GENDER ISSUES  
FOR DECISION MAKERS**

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# 1 INTRODUCTION

1.1 These guidelines have been developed to help officers in assessing gender-based claims by applicants for protection visas in Australia or entry to Australia under the offshore Humanitarian Programme. The purpose of these guidelines is to ensure that applications are dealt with effectively and sensitively.

1.2 In recognising that women may experience persecution and discrimination differently from men, the guidelines provide advice on how decision makers can best approach claims of gender-based persecution. It should be noted that claims of gender-based persecution can be made by both men and women. However, the feminine pronoun is used in relation to the applicant throughout the guidelines in recognition of the fact that most gender-based claims are made by female applicants.

1.3 The guidelines provide practical guidance on procedural issues which can influence women applicants and which may affect their ability to present their claims, for example, in relation to receiving applications, managing interviews and ensuring confidentiality of information. They also offer assistance with the interpretation of the regulatory requirements of the various protection, refugee and humanitarian visa classes as they relate to claims put forward by applicants with gender-based claims, with the aim of ensuring that the assessment process is sensitive to gender issues.

1.4 The information provided in this guide should be read in the context of the Department's broader guidelines on refugee and humanitarian decision-making:

- for applications in Australia for protection visa: *Onshore Refugee Procedures Manual*, relevant chapters of the *Procedures Advice Manual (PAM III)*, including the *Refugee Law Guidelines*;

- for applications under the offshore Humanitarian Programme: relevant chapters of the *Procedures Advice Manual (PAM III)*, including the *Generic Guidelines B2: Offshore Humanitarian Visas*.

1.5 This document aims to give decision makers an additional level of understanding of the particular needs of women within existing policy frameworks for refugee and humanitarian applications; as such, it does not replace other relevant policy advice, but is intended to complement it.

1.6 These guidelines are designed to apply to officers in Australia and at overseas posts. Accordingly, they acknowledge that often different operational decision making environments exist. The advice contained in these guidelines should be adopted as far as practicable.

## 2 BACKGROUND

### The international protection framework

2.1 The international community's response to refugees is based on the *1951 Convention and 1967 Protocol relating to the Status of Refugees* (Refugee Convention) and the principle of non-refoulement. The United Nations High Commissioner for Refugees (UNHCR) is the international body that is responsible for providing international protection to refugees and promoting lasting solutions to their plight.

2.2 There are a number of international instruments in which obligations to protect the human rights of women, including refugee women, may be found. They include:

- Universal Declaration of Human Rights (UDHR)*
- International Covenant on Civil and Political Rights (ICCPR)*
- International Covenant on Economic, Social and Cultural Rights (ICESCR)*
- Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)*
- Convention on the Elimination of All Forms of Racial Discrimination (CERD)*
- Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)*
- Convention on the Rights of the Child (CROC)*
- Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages*
- Convention on the Nationality of Married Women*
- 1949 Geneva Conventions on the Laws of War and the two Additional Protocols of 1977*
- Declaration on the Protection of Women and Children in Emergency and Armed Conflict*
- Declaration on the Elimination of Violence Against Women*

2.3 The international community has devoted a considerable amount of effort and resources to refugees and displaced people. As a result there now exists a complex, if at times fragile, network of institutions, laws and agreements specifically designed to meet the needs of people who have been forced to leave their homeland. Refugee protection has thus taken a number of forms:

- admission to safety in the country of asylum and observance of the fundamental principle of non-refoulement;
- temporary protection until a lasting solution may be found - this may be (in order of preference) voluntary repatriation, local integration or resettlement in a third country; and
- the development of new strategies on prevention which are designed to address the causes as well as the consequences of forced displacement.

There is also an awareness in the international community that lasting solutions to the problem of human displacement will only be found if a concerted effort is made to protect human rights.

2.4 Recently there has been an increasing awareness and focus on the particular vulnerability of refugee and displaced women.

#### **Recognising the needs of refugee and displaced women**

2.5 Women compose the majority of people in vulnerable situations because they have been displaced or are refugees. UNHCR indicate that of an estimated 27 million refugees and displaced people in the world, the vast majority are women and children. Women are often particularly vulnerable - after fleeing persecution and violence they may face new threats of violence and abuse in their country of asylum. In addition, due to social and cultural mores they may not necessarily have the same remedies for state protection as men, or the same opportunities for flight.

2.6 The issue of gender persecution and problems facing women asylum seekers have received attention from the Executive Committee of the United Nations High Commissioner for Refugees' Programme (EXCOM), UNHCR and some governments. UNHCR adopted *Guidelines on the Protection of Refugee Women* in 1991. A number of EXCOM Conclusions have been adopted recommending the development of appropriate guidelines, culminating in 1995 with EXCOM's recommendation that:

"In accordance with the principle that women's rights are human rights, these guidelines should recognise as refugees women whose claim to refugee status is based upon well-founded fear of persecution for reasons enumerated in the 1951 Convention and 1967 Protocol, including persecution through sexual violence or other gender-related persecution".

2.7 International concerns regarding the plight of refugee women have not been confined to the mechanisms surrounding refugee protection. The 1995 World Conference of Women in Beijing drew attention to the violation of women's human rights experienced by refugee women and recommended the development of gender guidelines. The development of this document should be seen in this international context.

#### **Australia's response**

2.8 Australia accords a high priority to the promotion and protection of human rights in the international sphere. Australia also has a long-standing commitment to assist international efforts to prevent and alleviate humanitarian crises through diplomatic initiatives, participation in peace-keeping forces, aid, resettlement of refugees and other humanitarian cases through the offshore Humanitarian Programme and the granting of permanent residence to individuals who have been found in need of protection in Australia in accordance with our international obligations under the Refugee Convention.

2.9 Persons requiring resettlement from overseas may apply under the offshore Humanitarian Programme, which is subdivided into the Refugee component, the Special Humanitarian Programme and the Special Assistance Category. Australia has historically recognised some special needs of women via the Woman at Risk visa subclass of the Refugee component, which is specifically targeted at woman refugees or women registered as "of concern" to the UNHCR who are in danger of victimisation, harassment or serious abuse because of their sex. In addition, overseas staff of the Department who will be assessing applications under the offshore Humanitarian Programme receive cross-cultural and gender sensitivity training prior to taking up their positions overseas. In terms of the processing of applications by women for protection visas in Australia, officers have also received training in cultural and gender sensitisation.

2.10 Whilst women represent the majority of refugees worldwide, they represent a smaller proportion of the refugees who are resettled in Australia under the offshore Humanitarian Programme or granted protection visas in Australia. This may be a result of many factors, including women's inability or lack of resources to travel unaccompanied or the tendency of applications to be made by the male head of the household. Nonetheless, women's vulnerability remains.

2.11 Guidelines for officers which specifically address women's needs are important if women's claims of persecution, including gender-based persecution, are to be properly heard and assessed. When applying for humanitarian visas, women may face particular problems, such as difficulties in making their case to decision makers, especially when they have had experiences which are difficult and painful to describe. There may also be social and cultural barriers to lodging applications and/or pursuing claims related to their own experiences. For example: in families where the male head of household seeks asylum, claims relating to female members of the family unit may not be mentioned, may be ignored or may not be given any weight by either the male head of household, or the decision maker, or the female applicant herself.

2.12 Barriers to accessing the refugee and humanitarian visa system and the failure to fully explore women's claims can be compounded by difficulties in gaining recognition of the particular forms of persecution or discrimination manifested against women.

2.13 Guidelines for decision makers which focus on these gender-related issues assist in promoting a consistent, sensitive approach to women's claims. They are also consistent with international practice and meet the Government's objectives to provide equitable and accessible services.

2.14 The following chapters focus on two main areas where women may face difficulty in gaining recognition of their claims for protection:

- procedural issues; and
- the assessment of claims.

Focusing attention on gender-related persecution/discrimination will ensure that officers are conscious of forms of harm that may be inflicted on a woman uniquely or more commonly than on a man.

2.15 It should be noted that these guidelines do not advocate gender as an additional ground in the Refugee Convention definition. However, it should be accepted that gender can influence or dictate the type of persecution or harm suffered and the reasons for this treatment. Even where gender is not the central issue, giving conscious consideration to gender-related aspects of a case will assist officers to understand the totality of the environment from which an applicant claims a fear of persecution or abuse of their human rights.

### 3 PROCEDURES

3.1 The following procedures are primarily focused on women applicants for protection visas in Australia and women applicants applying under the offshore Humanitarian Programme. They may also be applied to male applicants who make claims of gender-based persecution. While procedures differ between Australia and overseas posts, reflecting the different criteria for each visa class and decision making environments, there are common elements that can be applied by officers required to examine and process visa applications, regardless of the particular visa class applied for.

3.2 The procedures outlined below should, nonetheless, be read in conjunction with the other instructions relating to specific visa classes. For example, applications for entry into Australia under the offshore Humanitarian Programme should be considered with regard to the *Generic Guidelines B2: Offshore Humanitarian Visas* and guidelines on specific visa classes and subclasses; applications lodged in Australia for protection visas should be considered with regard to the *Onshore Refugee Procedures Manual* and the *Refugee Law Guidelines*.

#### Preparing the case

##### Researching claims

3.3 Adequate research of the claims made in the application and an understanding of the situation in the country of origin of the applicant is important for the full exploration of a person's claims. Where gender related claims are raised, or suspected, an understanding of the role, status and treatment of women in the country of origin is particularly important. Adequate preparation allows a relationship of confidence and trust with the applicant to be developed and allows an interviewer to ask the right questions and deal with any problems that arise during an interview.

##### Sources of information

3.4 There are a variety of sources of information available, depending on the location of the decision maker. Officers in Australia have access to the online information databases of the Country Information Service Section of the Department (CISNET). Officers at overseas posts have access to a variety of local sources, including Department of Foreign Affairs and Trade officers, UNHCR and access to CISNET on CD-ROM.

3.5 The types of information which may be relevant in assessing gender-related claims are often similar to that relevant for other types of claims. However, research should also focus on the following areas:

- legal, economic and civil status of women in the country of origin

- the incidence of violence against women in the country of origin, including both sexual and domestic, and the adequacy of state protection afforded to women



- cultural and social mores of the country with respect to such issues as the role and status of women, the family, nature of family relationships, attitudes towards same-sex relationships, attitudes to 'foreign' influences, etc

- respect for and adherence to fundamental human rights

- the differential application of human rights for women

- issues directly related to claims raised in the application

3.6 It should be noted that violence against women, particularly sexual or domestic violence, tends to be largely under-reported or ignored in many countries.

The absence of information on the above topics for any particular country should not necessarily be taken as an indicator that abuses of women's human rights do not occur.

3.7 Identifying these issues will enable an officer to become aware of the cultural sensitivities and differences in a particular country before considering the applicant's claims.

#### Using the information

3.8 When assessing a woman's claims of well-founded fear of persecution (for the protection visa class and refugee visa subclasses), the evidence must show that what the woman applicant genuinely fears is persecution for a Convention reason as distinguished from random violence or criminal activity perpetrated against her as an individual. The general human rights record of the country of origin, and the experiences of other women in a similar situation, may indicate the existence of systematic persecution for a Convention reason.

A more detailed examination of assessing claims and facts against the refugee definition can be found in Part 4 'The Assessment of the Claims', the *Onshore Refugee Procedures Manual*, *Refugee Law Guidelines* and in *PAM3 Generic Guidelines B2 - Offshore Humanitarian Visas*.

Only the refugee subclasses of the offshore Humanitarian Programme (subclassess 200, 201, 203 and 204) require applicants to demonstrate that they are subject to persecution (ie for a Convention reason). The other visa classes and subclasses of the offshore Humanitarian Programme refer to criteria where applicants are subject to 'substantial discrimination' or who are in vulnerable situations. Policy advice for interpreting these criteria may be found in *PAM3 Generic Guidelines B2 - Offshore Humanitarian Visas* and the PAM3 guidelines on specific visa classes.

## Interviews

3.9 The objective of an interview is to obtain further information from the applicant on her claims and to clarify any details that are uncertain or ambiguous in the application. Interviewing officers should seek to clarify all matters material to the final outcome of the application.

3.10 It is important to identify the person included in an application who has the strongest claims. An application written by, or an interview with, a male head of household may place little or no emphasis on a female family unit member's experience of persecution or discrimination, even though her experiences may carry the most weight. A woman who is included in the application as a member of a family unit should be given the opportunity of a separate interview so that she is able, with appropriate assurances of confidentiality, to outline her experiences.

### Interview Process

3.11 Interviewing a woman who has/or may come forward with gender-related claims must be done in a sensitive and sympathetic way, with respect for confidentiality.

3.12 Many women face particular difficulties when discussing gender-related claims which may include rape, or other forms of sexual violence, domestic violence and discrimination. In particular, women may experience difficulty in recounting sexual torture or rape in front of family members. Some women, because of the shame they may feel over what has happened to them, may understandably be reluctant to identify the true extent of persecution they have suffered because of their continuing fear and distrust of people in authority. They may also be afraid to reveal their experiences because they are so traumatised by them or because they fear reprisals from their family and/or community. Female applicants who are survivors of torture and trauma, in particular, require a supportive environment where they can be reassured of the confidentiality of the gender-sensitive claims they are making.

3.13 Officers should be aware that female victims of violence, discrimination and abuse often do not volunteer information about their experiences and may be reluctant to do so in the presence of family members. In particular, during interviews where an interpreter is used, a woman applicant may be reluctant to divulge information for fear that the interpreter may be an informer for the authorities in the country of origin or that they will divulge their story to others in the community. The applicant should be assured of the confidential nature of the interview process.

In the vast majority of cases women who have experienced torture and/or trauma have suffered these abuses at the hands of men. Coupled with a fear and distrust of authorities, this fact is likely to seriously inhibit the capacity of a female applicant to divulge details of her experiences to a male interviewer.

3.14 It will be a matter of the officer having prior appreciation of women's issues in the country of origin, skilful and sensitive interviewing and an understanding of the psychological effects of torture and trauma that will assist these issues to come forward.

#### Physical environment

3.15 In order to facilitate discussion of gender-related claims it is important that the interview room and surrounding environment be conducive to open discussion. The interview room should be arranged in such a way as to encourage discussion of the claims, promote confidentiality and to lessen any possibility of perceived power imbalances.

#### Use of interpreter

3.16 Before scheduling the interview, ensure that appropriate arrangements have been made for interpreters who are sensitive to any special requirements of the applicant regarding language, dialect or ethno-cultural sensitivities. If an applicant has made claims of a sensitive or traumatic nature every effort should be made to ensure an interpreter and interviewing officer of the same sex.

3.17 Where an officer suspects, as a result of researching the country information relating to the case, that gender-related claims may be raised or discussed, every effort should be made to engage an interpreter of the same sex, with regard to any cultural or religious sensitivities, wherever possible.

3.18 During the interview, both the interviewer and interpreter should be aware of the possible difficulties in interpreting particular words, such as 'rape' or 'assault', which may have different meanings or connotations in the applicant's language.

#### Establishing rapport

3.19 Establishing good rapport with an applicant is very important and begins with the first contact. At the interview, the interviewer should take the time to introduce him/herself and the interpreter, explain clearly what his/her role is and the exact purpose of the interview. The applicant should be assured that her claims will be treated in an absolutely confidential manner.

3.20 Officers should behave in a culturally and gender sensitive manner throughout the interview. It is essential that the interviewer remain neutral, compassionate and objective during the interview.

3.21 However, it should be remembered that no matter how supportive the interviewing officer and the environment may be, the interview process (because of the imbalance of power between participants) will impact on how women may respond.

## Culturally sensitive communication

3.22 Officers are required to deal with a wide range of people and as such they should have a well developed understanding of cultural differences, especially in relation to the way they communicate with others.

3.23 Body language can be interpreted in many different ways. It is therefore important that officers ensure they avoid gestures which may be perceived as intimidating or culturally insensitive or inappropriate. Whilst it is important that officers maintain control of the interview, it is also important to ensure that body language does not inhibit the discussion by making the applicant feel uncomfortable.

3.24 Similarly, an approach which is too relaxed may create the impression that the officer is not listening. The officer should allow the applicant to present her claims with minimal interruption.

Active listening skills play an important part in the flow of the interview and can assist an applicant who may be finding it difficult to recall painful or sensitive events associated with her claims.

3.25 Being aware of cultural sensitivities during the interview may provide the applicant with reassurance. As with most interviews this can most appropriately be demonstrated by attentive listening, including the following:

- . reflective listening (ie. paraphrasing what has been said by the applicant)
- . not talking at the same time as the applicant
- . not making judgemental comments
- . maintaining composure if the applicant gets angry or upset.
- . nodding affirmatively when appropriate
- . ensuring minimum interruptions and/or distractions
- . ensuring the interpreting is an accurate reflection of the applicant's testimony (eg relative length of translation, reaction from the applicant)

3.26 If an officer feels that a female applicant has further claims of a sensitive nature that have not been discussed during any stage of the interviewing process, the applicant should be encouraged to provide any supplementary information that she feels may support her

claims. Alternatively, if an applicant has difficulty in speaking about her persecution, she may be more comfortable putting her claims in writing.

### Assessing and handling information

#### Credibility/Demeanour

3.27 In many societies the stigma attached to victims of sexual assault are such that women cannot bring themselves to discuss such events. In addition, the effects of abuse and trauma may make it difficult for a woman to accurately recall the details and dates of the events when they finally recount their experiences. It may be that a woman is either unable to discuss a particular experience or may not see its relevance to her claims. It is also unlikely that a woman whose written claims are part of an application supplied by other members of her family unit or who is interviewed in the presence of other family members will discuss the circumstances surrounding a sexual assault.

The fact that a woman failed to raise a gender-related claim of persecution on several occasions should not necessarily cast doubt on her credibility if it is raised at a later date and should not be responded to as if it does. The pertinent issue, of course, is whether or not the claimed event occurred and, in the protection visa class and refugee visa subclasses, whether it was for a Convention reason.

3.28 If such claims are revealed separately from the rest of the family, officers must treat the information provided with great care. This is particularly necessary if the woman has indicated that other members of the family are unaware of her experiences. In some cultures rape and other forms of sexual assault are seen as the women's failing to preserve her virginity or marital dignity - disclosure of this information to family members may have adverse consequences to the applicant.

3.29 Similarly, the level of emotional distress exhibited by a female applicant during the recounting of her experiences should not automatically add more credibility to her claims than that of another who may be very calm and quiet when describing a similar event. A lack of emotion displayed at interview does not necessarily mean that the applicant is not distressed or deeply affected by what has happened. Cultural differences and trauma can often play an important role in determining demeanour.

3.30 In some circumstances, it may be reasonable to seek, and accept, objective psychological evidence. It is unnecessary to establish the precise details of the sexual assault as opposed to the fact of its occurrence and the motivation of the perpetrator. In some circumstances it should be noted that a woman may not be aware of the reasons for her abuse.

## Confidentiality

3.31 Any applicant who has provided gender-related claims should be reassured that the details will not be provided, in any form, to another member of their family unit. All information both written and audio taped should be marked "*No: for release to anyone except with the agreement of the applicant*".

3.32 All confidential information provided by female applicants, particularly that of a gender-sensitive nature, is protected under the *Freedom of Information Act*. The only circumstances in which another member of a family unit can obtain access to the gender-related claims (or indeed any claims) made by a female member of their family is with the written consent of the female applicant concerned.

3.33 If a visa is refused, some applicants who have provided gender-sensitive claims may wish to personally collect their notification letter and copy of the decision record, or nominate a separate address for the letter to be sent. These issues should be discussed with the applicant at the interview stage.

## 4 THE ASSESSMENT OF CLAIMS

4.1 The following section provides guidance for officers assessing applications for protection visas and applications for entry to Australia, under the offshore Humanitarian Programme, as a refugee (ie under visa class 866 and subclasses 200, 201, 203 and 204). These types of applications centre on the definition of 'refugee' in the *1951 Convention and 1967 Protocol relating to the Status of Refugees* (Refugee Convention).

Women outside Australia who are refugees or who are registered as being of concern to UNHCR may also be eligible for entry to Australia under the Woman at Risk (WR) 204 visa subclass of the offshore Humanitarian Programme. This visa reflects Australia's response to the circumstances of certain women outside their home country who are in danger of victimisation, harassment or serious abuse because of their gender. Further policy advice in deciding applications of this visa subclass can be found in *PAM3 Schedule 2 - Permanent Visa (Migrant) Woman At Risk - Visa 204*.

Under the offshore Humanitarian Programme, applicants who meet the Refugee Convention definition of a refugee must also satisfy the other criteria of the visa subclass before they may be granted a visa.

Officers should also refer to other sources of guidance for processing these applications, including: *Onshore Refugee Procedures Manual*; *Refugee Law Guidelines*; *PAM Generic Guidelines B2: Offshore Humanitarian Visas*.

4.2 The non-refugee components of the offshore Humanitarian Programme (the Special Humanitarian and Special Assistance Categories) are designed for people who do not meet refugee criteria but who, nonetheless:

- are subject to substantial discrimination amounting to serious human rights violations and for whom resettlement in Australia is the appropriate solution; or
- are suffering some form of disadvantage or hardship meriting a humanitarian response and who have close links to Australia.

Although discrimination, disadvantage and hardship constitute lesser tests than persecution, assessment of applications for these visas will also involve an examination of the human rights environment in an applicant's country of origin. Officers should be aware that women may experience not only persecution but also discrimination, disadvantage or hardship in a manner qualitatively different from men as a result of their gender.

The Refugee Convention is intended to provide protection to persons who have a well founded fear of being persecuted on specified grounds. Recognising that treatment or discrimination amounts to persecution is the first step. An officer must also be satisfied that this fear of persecution is 'well-founded' and that is 'for reasons of' a Convention ground.

## Persecution and gender-related persecution

4.3 The types of persecution inflicted on individuals may differ because of their gender. It is important to bear in mind that gender-based persecution is only one of many types of persecution a woman may encounter.

Accordingly, officers must carefully consider all general claims of persecution before turning to consider gender-related claims, otherwise there is the possibility that a woman's claims of persecution unrelated to gender will be ignored.

- this will also avoid unnecessary retraumatisation of applicants over their experiences related to sexual violence.

4.4 The process of identifying every abuse of human rights against internationally agreed standards of human rights (the human rights protected in the International Bill of Human Rights which includes the UDHR, ICCPR and ICESCR - see 2.2 above) should allow a decision-maker to properly consider all serious forms of harm a person may face, including those harms that are gender-based.

the further step of focussing on gender-based persecution will ensure that officers are conscious of forms of harm that may be inflicted on a woman uniquely or more commonly than on a man.

this emphasis on gender-related persecution, combined with the appropriate techniques and awareness, may assist a decision-maker to elicit such claims which would otherwise have remained untouched.

Increased emphasis on the role of gender in persecution is not intended to alter the ordinary meaning of persecution. Rather it is intended to ensure that all of the applicant's claims of persecution are fully considered.

4.5 Australian case law has referred to internationally agreed standards of human rights in recognizing persecution. Whilst there are areas of uncertainty, it can generally be stated that the more fundamental the right threatened, the more likely that the breach of that right amounts to persecution.

## Persecution by torture or cruel, inhuman or degrading punishment or treatment

4.6 Rape and other forms of sexual assault are acts which inflict severe pain and suffering (both mental and physical) and which have been used by many persecutors. Such treatment clearly comes within the bounds of torture as defined by the Convention Against Torture (CAT). Furthermore, sexual violence amounts to a violation of the prohibition against cruel, inhuman or degrading treatment, the right to security of person and in some



instances the right to life, as contained in a variety of international instruments. There are many other types of treatment that are specific to women, such as female genital mutilation and forced abortion, that also constitute cruel, inhuman or degrading treatment.

4.7 Rape is often used to punish a woman for her actions or to encourage her to put pressure on others whose activities meet with State disapproval. Systematic rape has also been used as part of "ethnic cleansing".

4.8 It should also be remembered that in many nations victims of sexual assault become outcasts or are considered to have committed a criminal offence. This fact can be part of the persecutor's motivation in choosing this form of persecution.

#### Restrictions imposed by legal, social or religious mores

4.9 The status of women in some societies may be restricted and dictated by legal, social or religious mores. The restrictions will vary from mere inconvenience to oppression. In addition a broad range of penalties may be imposed for disobeying restrictions placed on women. Officers should carefully assess the available country of origin information on those issues.

#### Possible persecution by violation of thought, conscience and religion

4.10 Gender-based persecution is sometimes more subtle than other forms. It can take the form of restrictions on the way a woman behaves or it can involve forcing her to act in a certain way. It may affect a woman's ability to participate in the public life of a society.

Some examples of gender-based treatment against women which may constitute persecution in particular circumstances are:

- societal oppression of women - in some communities the status and behaviour of women has been dictated by a State sanctioned religious hierarchy.
- denial of participation by women in the political, civil or economic life.
- forced marriage - many societies practice arranged marriage and this in itself may not be a persecutory practice. However, the consequences of defying the wishes of one's family when viewed against the background of the State's failure to protect a person should be carefully considered.
- infanticide, forced abortion, female genital mutilation, which has serious impact on a woman's physical and mental health.

### Agents of persecution

4.11 A Convention refugee is someone who is at risk because their country of nationality has failed to protect them from persecution. A failure to protect can occur in several ways. It may be that the authorities are themselves the perpetrators of the persecution. However, it may be that the persecutor is another party from whom the authorities do not protect the person either because they are unwilling or unable to do so. Claims of gender-based persecution often involve persecution committed by non-state agents.

In assessing gender-based persecution it is important to research the accepted norms of the relevant societies to determine how they operate both through legislation and in terms of actual practice in order to determine the degree of protection available to women.

4.12 In some societies, particular types of violence against women may be officially condemned or even illegal but in fact be so endemic that local authorities turn a blind eye to its occurrence. Sometimes these forms of abuse are systemic or culturally acceptable so that local authorities may actively participate or be complicit in the harms suffered.

4.13 It is important to remember that the international protection of the Refugee Convention is only available to those who are not able to gain protection from their national authorities. Where a non-state agent of persecution is involved there is a need to establish that the state is "unwilling or unable" to protect the applicant. Clearly, this is established if the authorities were aware of a person's need for protection (either because of her approach or by some other means) and none was forthcoming.

4.14 It should also be noted that it is not always reasonable or possible for a woman to alert the authorities to her need for protection. State protection should be effective - with provision of mechanisms for dealing with complaints and also assurance that such avenues for redress are realistic and accessible to a woman of her culture and position.

Officers should investigate why a woman did not seek the protection of the state, as her inability to even request protection may in itself be indicative of a failure of state protection.

### Cumulative grounds

4.15 An applicant may put forward accounts of different types of harm, none of which, taken individually, will amount to persecution. In these cases it is necessary to consider the cumulative effect of the individual instances of harm.

4.16 This principle is not gender specific. However, the forms of harm directed against women may be more various and more subtle. This may reflect the fact that the woman may not be the primary focus of the persecutory behaviour, which may be directed primarily at male family members.

### **Well-founded fear**

#### Past persecution and the "changed circumstances" test

4.17 There are two ways that a well-founded fear of persecution can be established:

- there is a "real chance" of future persecution; or
- a person has been persecuted in the past and the "changed circumstances" test (set down by the High Court in Chan) has not been satisfied.

4.18 There is a significant difference between the two. A person who has suffered persecution in the past does not have to prove that there is a "real chance" of future persecution. Rather, a continuing well-founded fear of persecution should be accepted unless the officer can establish that there has been a substantial and material change in circumstances in the country of origin.

4.19 The application of the "changed circumstances" test must be carefully applied in cases of gender-related persecution. The subjective state of mind of the applicant has obvious implications for gender-related persecution, especially in cases of sexual assault, where the effects on the victim are long lasting. In addition, an overall understanding of the role and perception of women in the applicant's society will demonstrate the extent of the persecution a woman would face if she were to return.

4.20 Officers must also carefully consider what circumstances, if any, would satisfy the "changed circumstances" test in cases of gender-related persecution. Many cases of gender-based persecution occur at the hands of non-state agents of persecution whose actions are ignored or condoned by the authorities. Even where changes in the national legislation or other state of affairs 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 applicant.

### Relocation

4.21 An important consideration in gender-related persecution, as with other persecution, is whether the persecution occurs nation-wide or whether it is regionalised. It may be for example that a person is able to access protection in urbanised parts of the country where there is a real chance of persecution in the rural areas. If so, officers should consider whether the applicant could reasonably be expected to relocate within her own country.

In considering the issue of relocation the relevant issue is whether the applicant could safely live in another part of the country. Officers must carefully consider gender-related issues when applying this test. Financial, logistical, social, cultural and other barriers to reaching internal safety may significantly affect persons of one gender over another. In addition, gender-based persecution may be systemic and no protection may be available from the authorities in any part of the country.

### Convention grounds

4.22 There are five Convention grounds: race, religion, nationality, membership of a particular social group and political opinion. In addition to actual membership of a Convention ground, a well-founded fear of persecution may be for reasons of an imputed Convention ground. A woman's claims for refugee status may rest on one or more grounds of the Convention even where the persecution is gender-based.

4.23 Where the persecution of women is concerned, it should be recognised that an imputed Convention ground is an important aspect to consider. Women in many societies are forced into a subordinate role in many areas of life. Therefore, the opportunities to assume a publicly recognisable profile do not occur frequently and women are often aligned with the views of their male relatives.

4.24 The added difficulty is that, in many societies women have little or no information on the activities of their male relatives and may find it difficult to explain the reasons for their persecution. They may not realise that the authorities, for example, impute a political opinion to them because of their association (by marriage, family links etc) with others who have attracted the authorities' attention.

### Political opinion

4.25 In some societies, overt demonstration of political opinion by women may not be possible as women are not allowed to formally participate in political life. However, there may be country information about the existence of covert political organisations involving women or about the suspicions of authorities that such organisations exist. Furthermore, the fact that a woman may challenge particular social conventions about the manner in which women should behave may be considered political by the authorities and may attract persecutory treatment on this basis.

In some societies an organisation of women who are not seeking a public or political profile but who may, for example, possess a feminist ideology, may be viewed as espousing a political opinion hostile to the current administration and persecuted for that reason.

4.26 In many cases there is a societal assumption that women defer to men on all significant issues and that their political views are aligned with those of the dominant members of their family (usually husbands, fathers or brothers). They may thus experience persecution for this reason, ie imputed political opinion.

4.27 There are also cases where persecutors are aware that a woman possesses no political opinion but persecute her as a means of demoralising the rest of her family or community who do hold a political opinion hostile to the current administration.

4.28 The difficulty in assessing claims of imputed political opinion, of course, is that the woman may not be aware of the reasons why she has been persecuted. Officers faced with unexplained instances of persecution should look to whether the explanation may be traced to her family's political opinion or another Convention ground.

#### Race

4.29 Race is a Convention ground based on readily identifiable characteristics. In general racism knows no gender, however persecution may be expressed in different ways against men and women. For example the persecutor may choose to destroy the ethnic identity and/or prosperity of a racial group by killing, maiming or incarcerating the men whilst the women may be viewed as capable of propagating the ethnic identity and persecuted in a different way, such as through sexual violence.

#### Religion

4.30 In certain societies, the role ascribed to women may be attributable to the requirements of the state or official religion. The failure of women to conform to this role or model of behaviour may then be perceived by the authorities or other agents of persecution as the failure to practise or to hold certain religious beliefs and as such an attempt to corrupt the society or even as a threat to the religion's continued power. This may be the case even though the woman actually holds the official religious faith but it is not outwardly evidenced by her behaviour.

#### Nationality

4.31 Gender-based persecution for reasons of nationality may have its genesis in laws which deprive a woman of her citizenship in certain situations (eg marriage to a foreign national). Alternatively, a woman who has married a foreign national may not be able to live with him in her country of nationality. Rather than the loss of citizenship itself, officers should enquire into what harm results from this loss. For example, whether it leads to loss of right of residence or loss of other privileges or benefits.

### Membership of a Particular Social Group

4.32 The Australian Federal Court has laid down some essential principles in the interpretation of the particular social group ground. Those principles are summarised as follows:

- the claimed particular social group must be cognisable
  - a group is cognisable if there is a common unifying element binding the members of the group because of shared common social characteristics and/or shared interest or experience in common (*Morano's case*);
  - cognisability does not require a voluntary association amongst the members of the group (*Morano's case*);
  - a group is not cognisable where the sole criterion defining the group is a common act although it is possible that, over a period of time, individuals who engage in similar actions may form a particular social group (*Morano's case*);
  - the group is not defined solely by the persecution feared (*A&B's case*).
- the nexus between the particular social group and the fear of persecution must be established. That is, there is a well-founded fear of persecution "for reasons of" membership of that group (*Ram's case*); and
- the individual is (or is perceived to be) a member of that group, ie there is a common unifying element binding members together (*Ram's case*).

4.33 While 'gender' of itself is not a Convention ground, it may be a significant factor in recognising a particular social group or an identifying characteristic of such a group. Officers should bear in mind that there is no Australian jurisprudence on the issue of 'women' as a 'particular social group'. The Refugee Review Tribunal has found that whilst being a broad category, women nonetheless have both immutable characteristics and shared common social characteristics which may make them cognisable as a group and which may attract persecution. In addition, gender may be combined with certain other characteristics which could define a particular social group in situations where there is evidence that this group suffers or fears to suffer severe discrimination or harsh and inhuman treatment that is distinguished from the situation of others of the same gender. The important principle to consider is whether the persecution suffered or feared is for reasons of membership of a particular social group.

Officers should consider this Convention ground on a case by case basis which takes account of the totality of an applicant's claims and the situation in the applicant's country of origin.