

Difference and Diversity in the Refugee Experience: Gender and the Asylum Process

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Lecture structure

- Who is a refugee under the meaning of the international refugee law?
- Feminist critiques of international refugee law
- The experiences of refugee women
- The concepts of 'gender', 'gender-related' and gender-specific persecution
- Gender-related violence as “persecution” under the meaning of the international refugee regime
- Universal human rights and cultural relativism
- Resettlement, the resilience of refugee women

"A refugee situation is a difficult one. We are people with many problems. Our rights are **not respected in our land** of origin and often neither **in the land of asylum**. We are without a voice and when we try to speak, our voices are not heard. But we have our lives and that is our greatest hope. We shall one day return to our homeland, where there will be peace for all and we shall live together and have a chance to plan for **our lives and to build our future**"

K. J. de Dew, a Burundian refugee woman in Tanzania

Who is a refugee?

The 1951 UN Convention is the key legal document in defining who is a refugee, their rights and the legal obligations of states. It defines a refugee as:

A person who, "owing to a well-founded fear of **being persecuted** for reasons of race, religion, nationality, **membership of a particular social group** or political opinion, is outside the country of his/her nationality and is unable, or, owing to such fear, is unwilling to avail him/herself of the **protection of that country**."

(1951 Convention relating to the Status of Refugees, Article 1a with gendered language)

NB: In this lecture International Refugee Regime refers to both the 1951 Convention + the 1967 protocol (see reading list)

Feminist critiques of international law

- Since the late 1970s, feminist jurisprudence has emerged as a systematic critique of the practice and profession of law (Grant,1991) (Harding,1993)
- “Not a single woman was present amongst the plenipotentiaries when the drafters of the convention had met in Geneva. the Law has developed within a male paradigm which reflects the factual circumstances of male applicants” (Sircar, 2006: 256)
- National and international law are presented as, and are often assumed to be, objective (Grant,1991)
- Law - an inherently gendered system that serves to reinforce male domination (Indra,1999)
- Creation of binary categories – particularly the public/private dichotomy – to determine whether or not something is of relevance to the law (Crawley, 2001)
- Privatisation of sexual and domestic violence

- In 1980, the World Conference for the Decade on Women (UHNCR, 1980) revealed that 80% of the refugees registered with the UNHCR were women and their dependents (to note that this number is valid to times).
- However, women are likely to have fewer economic resources to afford normal way of leaving (passports, visas etc.) so more likely to end up in – and remain – in refugee camps (Indra, 1999).
- Women are more likely to be internally displaced
- Gender plays a significant role in shaping the experience of persecution itself (Agger,1994) (Sadawi,1980)
- Countries which produce the highest number of refugees are generally comprise within a ‘patriarchal belt’, which runs from North Africa, eastwards to South East Asia (Forbes-Martin, 2003)

The Experience of Oppression

- Women participate in nationalist struggles not only through their role in the biological reproduction of members of collectivities and its boundaries, but also in the ideological reproduction of the collectivity and as transmitters of its culture (Guemar, 2009).
- Women's political protest, activism and resistance to repression may manifest itself in different ways.
- Women may be targeted because of laws and social norms which dictate their behaviour and treatment. The strict cultural/religious codes of what is proper behaviour for women impose boundaries that keep women in a powerless position (Guemar, 2009).

The Experience of Abuse

“The soldiers were ordered to take off all her clothes and put her in a public place and shave her hair even **in the intimate parts of her body**...We saw the pictures in the news **papers**...The **government denied** that something like that would never happen in Uganda. They asked the woman to publically tell that the story has happened in Congo instead.. She said to the newspapers how she was abused and she said she wanted to recover **her dignity**. Then She was sent to prison for 2 years. When they released her, all what She wanted was money to leave ... She tried to have a passport, but it was impossible. After two weeks, she was arrested again” (J.A a refugee woman from Uganda living in the UK).

The Experience of Ostracism

- Sexual violence carries traumatic social repercussions which may be affected by a woman's cultural origins or social status. These may include, (but are not limited to):
- Rejection by (or of) the spouse, family or community members
- Stigmatisation or exclusion by the wider community, and deprivation of education, employment and other types of assistance and protection.

- Social and cultural norms of gender roles may lead to lesbians experiencing different forms of 'serious harm' than those directed towards gay men (e.g. lesbians may be denied the right to express their sexual orientation because they have been forced into marriage).
- Woman's experience of rape is different from that of men, i.e pregnancy or miscarriage.
- A victim of sexual violence may have no alternative but to marry her attacker or can lead her to become a prostitute in order to survive
- Women face gender-related hostilities when they flee, and have gender-specific needs in refugee camps. Often women's transit to safety is obtained by offering sexual favours, sometimes, even with those responsible for ensuring security within the refugee camps (Sircar, 2006).

How the law understands gender-related persecution and gender-specific forms of harm?

- Understanding the ways in which women are violated as women is critical to naming as “persecution” those form.
- The reasons for the persecution are also critical in establishing the appropriate ground within the meaning of the Refugee Conventions-
- Understanding “harm” that only or mostly affect women.

‘Gender’, ‘Gender-related’ and ‘Gender-specific’ persecution’

- “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 and roles. It is not the same as ‘sex’ which is biologically defined” (Crawley 2001, 7)
- Gender is not static or inborn but adopts social and culturally constructed meaning
- Gender relations are historically, geographically and culturally constructed.

- The concept of gender-related persecution addresses forms of persecution that are more likely to happen to women because they are women, i.e FGM, forced abortion, sterilisation or denial of access to contraception (Crawley, 2011)
- “Gender-specific” violations do not necessarily constitute “persecution” because of gender. For example, if under torture, a man’s genitals are subjected to electric shocks, he is being tortured in a gender-specific way, but it does not necessarily mean that he is being persecuted because of his gender (ibid)
- Many women experience gender-specific forms of persecution, including rape and sexual violence, because of their identity or political activities ,i.e ethnic cleansing in Kosovo. **It is important not to assume that in all refugee women experience , gender-related persecution occurred, even where this persecution takes a gender-specific form (ibid).**

To establish a well-founded fear of ‘serious harm’, a woman needs to show that her state has failed to protect her.

“Persecution” = “serious harm + the failure of state protection”

“Serious harm” against women because they are women, (gender-related) are, but are not limited to:

- Marriage-related harm;
- Violence within the family or community;
- Domestic slavery;
- Forced abortion;
- Forced sterilisation;
- Trafficking;
- Female genital mutilation (in all its forms);
- Sexual violence and abuse and rape.

Failure of state protection

A failure of state protection exists if 'serious harm' has been:

- (1) Inflicted by the authorities or associated organisations ;
- (2) committed by others and the authorities are unwilling to give effective protection or
- (3) Committed by others, and the authorities are unable to give effective protection:

Example: Family laws , social policies/practices (including cultural or religious or their abusive implementation may constitute a failure of protection.

The law may have a 'legitimate' goal but be administered unfairly in a discriminatory way against women (for example, population control in India and the one child policy in China)

Membership of a Particular Social Group (PSG)

- In some asylum claims, gender may be a factor in recognising membership of a particular social group or gender can be an identifying characteristic of such a group.
- Women may be persecuted uniquely because of their male's relatives political activities, their family or kinship relationships (i.e pressure her into revealing information).
- Particular social groups can also be identified by reference to constant characteristics, they are, but not limited to:
- Sex or sexual orientation, age, religion, family and kinship.

Universal Human Rights and Cultural Relativism

- “Suffering and abuse are culturally authentic values and cannot be justified in the name of cultural relativism” (UNHCR document)
- If the “harm” is sufficiently serious to be described as ‘persecution’ it must be measured against the spirit of the UN Declaration of Human Rights and Human Rights entitlements recognized by the international community.
- Whether to recognise gender-related persecution as a basic violation of women’s rights by oppressive culture/religion or to consider cultural relativism to explain and justify such oppressions (Crawley 2001)? (i.e a woman being beaten by her husband is considered a violation of European women’s human rights in Europe but not of a woman who bases her asylum claim on the same reason)

Introductions of Gender Guidelines

- “Gender-related persecution” is a term that has no legal meaning per se (Crawley,2011)
- A need to implement Gender Guidelines that particularly focus on the interpretation of the refugee definition , from a gender perspective (Crawley 2001).
- Guidelines propose procedural practices in order to ensure that proper attentions are given during the determination procedures and that gender-related claims are recognised as such.
- The first state to introduce gender guidelines was Canada (1993), followed by Australia, The USA and then The UNHCR

The UK Asylum Policy

- In the UK, the Refugee Women's Legal Group (RWLG) published gender guidelines in July 1998 (Crawley, 2001), drawing on the guidelines existing in other countries.
- In 2000, the U.K.'s Immigration Appellate Authority (IAA) adopted the majority of the RWLG recommendations and issued their own Asylum Gender Guidelines to assist asylum adjudicators in their assessment of gender-related claims.
- In 2004 The U.K BA (Home Office) issued further guidance in the form of an Asylum Policy Instruction.
- In 2006: UK Asylum Policy Instruction: Gender Issues in the Asylum Claim, (see reading list).

Resettlement and the resilience of refugee women

“[There] when my husband wanted to teach me how to drive; we had to hide and do it at night. ..The Taliban were burning all the houses. They burned ours. I really hope that they will let us stay in this country and rebuild our life. My husband is good, he will allow me to work, to drive and to travel. My children will have an education, a good education” (W.A a Afghani woman seeking asylum in the UK).

Resettlement and the resilience of refugee women

- Because of the wounds refugee women have had to undergo, they may change previous behaviour and lifestyle to bring new meaning to their lives.
- Refugee women are not “victims” nor “needy” (Indra, 1999)
- It is wrong to deny refugee women’s agency
- Feminist Literature reveals refugee women’s resilience with some degree of intactness (Hajdukowski-Ahmed, 2008; Forbes-Martin, 2004; Indra, 1999 and Chester, 1992)
- Many women become strengthened by the inhuman conditions they had to endure and the constant changes to which they had to adapt during their journey to asylum (Guemar, 2009),
- Refugee women are often ready to re-acquire value and behaviour that war and conflicts might have destroyed.

- A whole range of factors can impact upon the process of resettlement/ integration for refugee women:
- The politic of gender and identity in the country of asylum
- Personal and family characteristics of the refugee herself (language, age, disability, economic status, education prior to arrival)
- The level of violence and trauma experienced before leaving and during transit
- The length and outcome of the asylum process, rights of access to the labour market, education and health
- Racism and attitudes of the hosting society including attitudes held by the public and media and race relations more generally
- Role of civil society and refugee community organisations in assisting the adaptation process

Conclusion

Policy makers, rights-advocates and others who want to provide protection and essential help for refugee women, need to understand...

- The politics of gender in countries producing refugees
- Appreciate the strength of these women's gender identities
- Values, their political beliefs and their cultural context
- All of these will need to be borne in mind with regards to all refugee women if they are to achieve some sense of sanctuary.

THANK YOU FOR LISTENING

References and a list of further reading are available on request , please contact me at:

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