

# **GENDER ISSUES IN THE ASYLUM CLAIM**

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## Introduction

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This instruction gives guidance on:

- the additional considerations decision-makers should have in mind when assessing claims for asylum that could include gender related issues;

and

- how to take gender issues into account when looking at the persecution experienced and whether there has been a failure of state protection.

This instruction should not be read in isolation but in conjunction with the Asylum Policy Instruction (AI) on [Considering the Asylum Claim](#).

Further information can also be obtained from the Asylum Gender Guidelines published by the Immigration Appellate Authority in November 2000, which is available on the Asylum and Immigration Tribunal's website, <http://www.ait.gov.uk/>

Gender-related claims may be brought by either a woman or a man, but are more commonly brought by women. Many of the gender-related issues that arise in asylum claims only affect women, but there are some aspects of this guidance (for example, on sexual orientation and social norms) which will affect men.

Although gender is not listed as a convention reason under the 1951 Convention decision-makers should be aware of gender issues in their assessment of asylum claims. Persecution in the conventional sense does not always correspond with the experiences of women and decision-makers should be aware of this in coming to their decision. This should not mean or be accepted to mean that women asylum seekers do not have to establish both the subjective and objective aspects of their claim to fear persecution for a 1951 Convention reason. Nothing in this guidance should be taken as shifting the burden of proof from the applicant or reducing the standard of proof. Considering the gender related aspects of the claim will help ensure that all aspects of a claim are fully and fairly considered.

### **Application of this instruction in respect of children and those with children**

Section 55 of the Borders, Citizenship and Immigration Act 2009 requires the UK Border Agency to carry out its existing functions in a way that takes into account the need to safeguard and promote the welfare of children in the UK. It does not impose any new functions, or override existing functions.

Officers must not apply the actions set out in this instruction either to children or to those with children without having due regard to Section 55. The UK Border Agency instruction 'Arrangements to Safeguard and Promote Children's Welfare in the United Kingdom Border Agency' sets out the key principles to take into account in all Agency activities.

Our statutory duty to children includes the need to demonstrate:

- Fair treatment which meets the same standard a British child would receive;
- The child's interests being made a primary, although not the only consideration;
- No discrimination of any kind;

- Asylum applications are dealt with in a timely fashion;
- Identification of those that might be at risk from harm.

## Definition of Gender

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'Gender' is not the same as 'sex', which is biologically defined. The term 'Gender' relates to what it means to be a woman or a man. Gender refers to the relationship between men and women based on socially constructed and defined identities, status, roles and responsibilities. Gender differences are affected by the power relations between women and men in a particular society and the implications of these relations for the identity, status, roles and responsibilities of women and men.

## Gender and Persecution

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There is no definition of "persecution" in the 1951 Convention. The UNHCR Handbook states that it may be inferred from Article 33 of the 1951 Convention that a threat to life or freedom on account of race, religion, nationality, political opinion or membership of a particular social group is always persecution.

The European Council Directive (2004/83/EC) of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted contains definitions of certain terms within the 1951 Convention, including persecution. The Directive has been transposed into UK law through the Refugee or Person in need of International Protection (Qualification) Regulations 2006 – "Qualification Regulations" – and changes to the immigration rules, and will apply to all asylum and human rights claims from 9 October 2006.

Section 5 (1) of the Qualification Regulations states that:

"In deciding whether a person qualifies as a refugee an act of persecution must be: sufficiently serious by its nature or repetition as to constitute a severe violation of a basic human right, in particular a right from which derogation cannot be made under article 15(2) of the ECHR;

or

an accumulation of various measures, including a violation of a human right which is sufficiently severe as to effect an individual in a similar manner as mentioned in (a).

Section 5(2) of the Regulations provides examples of the types of acts that can be persecutory, these include:

- an act of physical or mental violence, including an act of sexual violence;
- a legal, administrative, police, and/or judicial measure which in itself is discriminatory or which is implemented in a discriminatory manner;
- 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, where performing military service would include crimes or acts falling under the exclusions in Regulation 7.
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To result in qualification as a refugee, section 5 (3) of the Regulations state that "an act of persecution must be committed for at least one of the reasons in Article 1 (A) of the Geneva Convention."

The list in section 5 (2) of the Regulations is not exhaustive and acts of a gender specific-nature, other than sexual violence, may also constitute persecution. Whether a particular action amounts to persecution in a Convention sense requires the decision-maker to make a judgement in each case. For further guidance on persecution see the [AI on Considering the Asylum Claim](#).

As with all other applications decision-makers will also need to bear in mind that someone who may not attract international protection under the 1951 Convention could nevertheless qualify

under the European Convention on Human Rights (ECHR) on the same set of facts (see the **AI on [ECHR](#)**).

Gender issues may appear in an asylum claim when:

- i) the form of persecution experienced is gender-specific: for example, rape and other forms of sexual violence, female genital mutilation (FGM), forced abortion and sterilization; and/or
- ii) the basis of the asylum claim is gender-related persecution i.e. gender is the reason for the persecution

A woman may experience:

- i) **gender-specific persecution for reasons unrelated to gender** (e.g. raped because of activity in a political party);
- ii) **non-gender-specific persecution for reasons relating to her gender** (e.g. flogged for refusing to wear a veil); or
- iii) **gender-specific persecution because of her gender** (e.g. female genital mutilation).

There are many forms of harm that are more frequently or only used against women that may constitute torture or cruel, inhuman or degrading treatment and which may amount to persecution. Such persecution, if for a Convention reason, could result in the woman being recognised as a refugee. These include, but are not limited to:

- marriage-related harm (e.g. forced marriage);
- violence within the family or community (e.g. honour killings) ;
- domestic slavery;
- forced abortion;
- forced sterilization
- forced prostitution;
- trafficking;
- female genital mutilation;
- sexual violence and abuse; and
- rape.

Gender-specific harm is not different from other forms of ill treatment and violence that are commonly held to amount to persecution. The fact that violence against women is common, widespread and culturally accepted in a particular society is not relevant in assessing whether the gender-specific harm amounts to persecution. Each case should be considered on its own merits against country information and not disregarded because such treatment is common and widespread.

## Discrimination

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A discriminatory measure, in itself or cumulatively with others, may amount to persecution (see above on regulation 5 and the **AI on [Considering the Asylum Claim](#)**). For example, if the discrimination has consequences of a substantially prejudicial nature for the person concerned such as:

- serious legal, cultural or social restrictions on rights to earn a livelihood;
- restrictions on political enfranchisement;
- to practise or not practise a religion;
- to have access to public places;
- or to access normally available educational, legal, welfare and health provision (e.g. a woman may have limited property rights or be restricted access to healthcare including birth control of her choice) this may, depending on the facts of the case, amount to persecution.

Women may be subjected to discriminatory treatment that is enforced through law or through the imposition of social or religious norms that restrict their opportunities and rights. This can include, but is not limited to:

- Family and personal laws;
- Dress codes;
- Employment or education restrictions;
- Restrictions on women's freedom of movement and/or activities.
- Political disenfranchisement

## The Failure of State Protection

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Section 3 of the Qualification Regulations clarifies that an applicant can face persecution from both state and non-state agents. Though persecution is often perpetrated by the state, acts of violence and serious discrimination committed by the local populace, or by individuals, can also be considered persecution if such acts are knowingly tolerated by the authorities, or if the authorities refuse, or prove unable, to offer sufficient protection. In cases where the applicant fears persecution from non-state agents, decision-makers will need to assess whether the authorities in the home country are willing and able to protect her from harm in practice.

(Decision-makers should refer to country information provided by the **Country of Origin Service (COIS)**, **Operational Guidance Notes (OGNs)** produced by **Country Specific Asylum Policy Team (CSAPT)**, and sections 8.3 and 8.4 on actors of persecution and the sufficiency of state protection against their actions in the **AI on [Considering the Asylum Claim](#)**.

The existence of particular laws or social policies/practices (including traditions and cultural practices) or the manner in which they are implemented may themselves constitute or involve a failure of protection. Thus, for example,

- i) a law, policy or practice could be inherently persecutory; or
- ii) it may have a "legitimate" goal but be administered unfairly in a discriminatory fashion or through persecutory means; or
- iii) the penalty for non-compliance with the law or policy may be disproportionately severe against certain persons/groups; or
- iv) it may not be enforced in practice and therefore fail to deter or prevent the banned behaviour

Women may be subject to gender-related abuse resulting from social customs or conventions because there is no effective means of legal recourse to prevent, investigate or punish such acts. Such failure of state protection may include, but is not limited to, legislation (e.g. marital rape exemptions in law), lack of police response to pleas for assistance and/or a reluctance, refusal or failure to investigate, prosecute or punish individuals and encouragement or toleration of particular social/ religious/customary laws, practices and behavioural norms or an unwillingness or inability to take action against them. For example the state may make an act that can amount to persecution, such as FGM, illegal, but continue to condone or tolerate the practice or be unable to put an effective end to the custom because of its widespread cultural acceptance.

It is not always reasonable or possible for a woman to alert the authorities to her need for protection, for example, if by doing so she risks violence, harassment, rejection by her society or even persecution.

## Internal Relocation

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In accordance with Paragraph 339 O of the Immigration Rules, if there is a part of the country of origin to which the applicant can relocate where there is no persecution **and where it is reasonable to expect them to stay there** then the application for refugee status should be rejected.

The question to be asked is whether the applicant would face a well-founded fear or persecution in the place of relocation and whether it is reasonable to expect an asylum seeker to stay in that place. In considering the reasonableness of relocation the decision-maker may need to take into account gender issues. For example, in certain countries, financial, logistical, social, cultural and other factors may mean that women face particular difficulties. This may be particularly the case for widows or single parents. Women may have family ties i.e. children who are not able to relocate, they may face a particular form of discrimination in the place of relocation, or be unable to work such that they cannot survive in the place of relocation. Decision-makers should refer to any relevant country reports provided by **COIS**, **OGNs** produced by **CSAPT**, and the *AI on* [Internal Relocation](#)

## Gender-Related Persecution and the Convention Grounds

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Gender may inform an assessment of whether one of the five convention grounds do apply, i.e. race, religion, nationality, political opinion or membership of a particular social group. Women may face persecution because of a Convention ground which is attributed or imputed to them. In many societies a woman's political views, race, nationality, religion and social affiliations are often seen as aligned with relatives or associates or with those of her community. It is therefore important to consider whether a woman is persecuted because of a Convention ground which is attributed to her. 'Religion' and 'political opinion' in particular need to be properly interpreted to include women's experiences. In some cases, 'women' (or some sub-category thereof) may qualify as a 'particular social group'. Decision-makers are reminded that an application does not have to be on one Convention ground only. If no Convention reason can be identified, decision-makers must consider whether the return of the applicant would breach her human rights. For further guidance see the **AI on [Considering the Asylum Claim](#) and [Considering Human Rights](#).**

### Race

Whilst actual or attributed racial identity is not specific to women, gender may affect the form that persecution takes in race-related cases. For example, whilst the destruction of ethnic identity and/or prosperity of a racial group may be through killing, maiming or incarcerating men, women may be viewed as propagating ethnic identity through their reproductive role, and may be persecuted through, for example, sexual violence or control of reproduction.

### Religion

A woman may face harm for her adherence to, or rejection of, a religious belief or practice. Religion as the ground of persecution may include but is not limited to, the freedom to hold a belief system of one's choice or not to hold a particular belief system and the freedom to practise a religion of one's choice or not to practise a prescribed religion.

Where the religion assigns particular roles or behavioural codes to women, a woman who refuses or fails to fulfil her assigned role or abide by the codes may have a well founded fear of persecution on the ground of religion. For example a woman who does not adhere to certain dress codes, such as wearing a veil, may be subject to discrimination and harassment amounting to persecution.

Failure to abide by the behavioural codes set out for women may be perceived as evidence that a woman holds unacceptable religious opinions regardless of what she actually believes about religion.

A woman's religious identity may be perceived to be aligned or shared with that of other members of her family or community. Imputed or attributed religious identity may therefore be important.

There may be considerable overlap between religious and political persecution. An example of this is where the state supports or favours a particular religious belief or tolerates or otherwise fails to provide protection against the activities of non state agents who are supporters of a particular religious belief.

## Nationality

The term 'nationality' does not only mean 'citizenship'. It can include membership of an ethnic or linguistic group and may overlap with 'race'.

Whilst actual or attributed national identity is not specific to women, it may operate in tandem with gender to explain why a woman fears persecution. For example women may be deprived of full citizenship rights in certain circumstances, if they marry a foreign national. In such circumstances it may be necessary to consider what harm results from this loss and whether it amounts to persecution on the basis of nationality.

## Membership of a Particular Social Group (PSG)

Most women who are persecuted will be covered by other Convention grounds i.e. race, religion, nationality and political opinion, whether actual or imputed. However in some cases gender may be a factor in recognizing membership of a particular social group or an identifying characteristic of such a group (see the section on membership of a Particular Social Group in the **AI on [Considering the Asylum Claim](#)**

A definition of what constitutes a particular social group is provided in the Qualification Regulations, which state that:

“A group shall be considered to form a particular social group where, for example:

- i) Members of that group share an innate characteristic, or a common background that cannot be changed, or share a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it, and
- ii) That group has a distinct identity in the relevant country, because it is perceived as being different by the surrounding society.”

The Qualification Regulations set out an approach to identifying the existence of a social group which is similar to the one taken by the UK courts, most significantly in the House of Lords judgement in the case of *Shah and Islam* [1999] UKHL 20.

In *Shah and Islam* it was found that women in Pakistan constituted a particular social group. This was because women shared the same immutable characteristic of gender, they formed a distinct group in society as evidenced by widespread discrimination in their fundamental rights and the state did not give them adequate protection as they were not seen as entitled to the same human rights as men. Decision-makers should refer to the section on membership of a particular social group **in the AI on [Considering the Asylum Claim](#)** for a more detailed definition of what constitutes a social group.

Particular social groups can be identified by reference to innate or unchangeable characteristics. Examples of such characteristics may include, but are not limited to, sex, age, marital status, religion, family and kinship, past economic status/class, occupational history, disability, sexual history, sexual orientation and ethnic, tribal or clan affiliation.

The important principle to consider is whether the persecution suffered or feared is for reasons of membership of a particular social group.

There are cases where women are persecuted solely because of their family or kinship relationships, for example, a woman may be persecuted as a means of demoralising or punishing members of her family or community, or in order to pressurise her into revealing information.

Women who may be subject to FGM have been found by the courts in some circumstances to constitute a particular social group for the purposes of the 1951 Convention. Whether a PSG exists will depend on the conditions in the "society" from which the applicant comes. If there is a well-founded fear, which includes evidence that FGM is knowingly tolerated by the authorities or they are unable to offer effective protection, and there is no reasonable possibility of internal flight, an applicant who claims that she would on return to her home country suffer FGM may qualify for refugee status.

The fact that the particular social group consists of large numbers of the female population in the country concerned is irrelevant - race, religion, nationality and political opinion are also characteristics that are shared by large numbers of people. If decision-makers believe that a person may be part of a social group not mentioned here they should consult a senior officer and the section on membership of a particular social group in the **AI on [Considering the Asylum Claim](#)**

## Political Opinion

Holding political opinions different from those of the government is not in itself a ground for refugee status. An applicant must show that they have a fear of persecution for holding such opinions. Persecution 'for reasons of political opinion' implies an applicant holds an opinion that either has been expressed or has come to the attention of the authorities. There may, however, also be situations in which the applicant has not given any expression of their opinions. For full details see section on political opinion in the **AI on [Considering the Asylum Claim](#)**

Persecution "for reasons of" political opinion is typically seen in terms of male experience i.e. due to direct involvement in conventional political activity such as membership of a political organisation. Claims on these grounds will often involve an openly expressed opinion, which is directed against and is not tolerated by the state.

Whilst many women will be involved in such conventional political activities and raise similar claims this does not always correspond to the reality of the experiences of women in some societies. The gender roles in many countries mean that women will more often be involved in low level political activities, for instance hiding people, passing messages or providing community services, food, clothing or medical care. Decision-makers should beware of equating so-called "low-level" political activity with low risk. The response of the state to such activity may be disproportionately persecutory because of the involvement of a section of society, namely women, where because of their gender it is considered inappropriate for them to be involved at all.

Involvement in such activities could be seen to imply that the person holds a political opinion. Indeed such activities may be the outward expression of a political opinion although it is not necessary for a person to have formed a specific opinion in their own mind in order for their actions to imply that they hold a political opinion.

Furthermore a person may be attributed a political opinion that they do not actually hold –women may be attributed the same political views as their male relatives. In these circumstances it is essential to look at what motivates the persecutor as they will be attributing the political opinion

to the individual. For instance a woman who is forced to provide food for a rebel group may be attributed a political opinion by the State even though she does not support the group. It is important not to underestimate or overlook the political dimensions of women's experiences of persecution even though a woman may not regard herself as making a political statement. Non conformist opinions or behaviour may in certain circumstances be the expression of a political opinion or may result in a woman having a political opinion attributed to her whether she holds one or not. For instance opposition to institutionalised discrimination against women in society or expressing views in opposition to the predominant social or cultural norms can be seen to constitute a political opinion. Nonconformist behaviour in certain cultures such as refusing to wear a veil, pursuing an education or choosing a partner could also lead to a woman having a political opinion attributed to her.

Each case must be considered on its individual merits and will be dependent on the facts and the context on which it is based. For instance, in a moderate Muslim society a woman who chooses not to wear a veil may be frowned upon by certain sections of society but her action is not necessarily perceived to be political. Whereas in a strict Muslim society, where all women are required by the State to wear a veil, a woman who refuses is more likely to be attributed a political opinion due to her actions and may be persecuted for this reason.

## Trafficking

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Trafficking for sexual exploitation involves the movement of a woman into a situation of exploitation using deception and/or coercion. Decision-makers should be mindful not to confuse trafficking with illegal migration or human smuggling, although many victims of trafficking may have been smuggled illegally.

That a woman has been trafficked for sexual exploitation is not, in itself, a ground for refugee status. However some trafficked women may be able to establish a Convention reason (such as a membership of a particular social group) and have valid claims to refugee status. Forced recruitment of women for the purposes of forced prostitution or sexual exploitation is a form of gender-related violence and/or abuse and may amount to persecution. In addition, trafficked women may face serious repercussions upon their return to their home country, such as reprisals or retaliation from trafficking rings or individuals, or discrimination from their community and families. Each case should be considered on its individual merits and in the context of the country on which it is based.

For further guidance on handling claims where the applicant has or is believed to have been trafficked into the UK for sexual exploitation will be soon be available in an **Asylum Process Notice**.

## Interviewing

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Every effort will be made to comply with any request for an interviewer or interpreter of the same sex as the applicant that is made in advance of an interview. Requests made on the day of an interview for a same sex interviewer or interpreter will be met as far as is operationally possible. This may mean a delay for an applicant while a same sex interviewer/ interpreter becomes available.

Women who have been sexually assaulted may suffer trauma. The symptoms of this include persistent fear, a loss of self-confidence and self-esteem, difficulty in concentration, an attitude of self-blame, shame, a pervasive loss of control and memory loss or distortion. Decision-makers should be aware of this and how such factors may affect how a woman responds during interview. (For further guidance see the **AI on [conducting the asylum Interview](#)**).

Victims of sexual abuse may not feel comfortable recounting their experiences in front of relatives, who may not know, and especially their own children who, frequently, will not have been told about allegations. Applicants should be interviewed by themselves, especially in cases where a claim of sexual abuse has been made or it is considered to be a possibility. All applicants are advised in their letter of invitation not to bring their children to the interview but to make alternative arrangements. If their children do attend the interview, they will have to accompany the applicant in the interview room (assuming that no other adult relative is present).

## Credibility

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An inability to provide information relevant to an asylum claim may not of itself undermine credibility. In certain cultures men do not share information about their political, military or even social activities with their female relatives and decision-makers should consider whether this might account for gaps in a woman's knowledge.

If an applicant does not immediately disclose information relating to her claim, this should not automatically count against her. There may be a number of reasons why a woman may be reluctant to disclose information, for example feelings of guilt, shame, concerns about family dishonour.

Decision-makers should be sensitive to the fact that gender and cultural norms may affect an applicant's demeanour. Cultural and other differences, and trauma play an important role in determining demeanour. For example how a woman presents herself physically e.g. whether she maintains eye contact, shifts her posture or hesitates when speaking. Demeanour alone is an unreliable guide to credibility.

Establishing credibility is an important element in assessing the claim and may be crucial to the decision. It is therefore important that an effective interview is conducted and relevant issues clarified with the applicant. Decision-makers should be aware that many forms of torture, sexual abuse and violence do not leave physical signs.

## Objectivity

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The decision-maker needs to assess objectively whether there are reasonable grounds for believing that the applicant would, if returned to the country from which they seek refuge, face persecution for a Convention reason. It is important to consider fully relevant objective evidence including the country information provided by the Country of Origin Information Service. The absence of objective information to corroborate a claimant's account is likely to be an important factor, but should not necessarily be taken to mean that human rights abuses do not occur. For instance, systematic abuse of a certain group would usually be documented, but isolated acts of ill treatment perpetrated by one person on another would not.

Decision-makers should familiarise themselves with the role, status, and treatment of women in the country from which a woman has fled, using the country information supplied by the Country of Origin Information Service. It is essential to consider a number of issues when gathering information. These include, but are not limited to:

- Position of women before the law including their standing in court, the right to bring a complaint and give evidence, divorce and custody law, the right to own property, reproductive rights, freedom to travel, and the political, social and economic rights referred to below;
- Political rights of women including the right to vote, to hold office and belong to a political party;
- Social and economic rights of women including the right to marry the person of their choice, the right not to marry and the right to divorce, the right to determine their own sexuality, the right to an education, a career, and a job or remunerated activities, the status of single women, widows or divorcees, and freedom of dress;
- Consequences for women who refuse to abide by or who challenge social, religious or cultural norms regarding their behaviour including, for example, norms regarding virginity and pre-or extra marital sex or pregnancy, norms around the institution of marriage including arranged marriages and divorce, and norms about behaviour and dress;
- Incidence and form of violence against women and the forms it takes (such as, but not limited to, violence within the family, sexual abuse, honour killings, bride-burning)
- Efficacy of protection available to women and the sanctions or penalties on those who perpetuate the violence;
- Consequences that may befall a woman on her return. A woman may be at greater risk on return than a man because, for example, of the authorities' and the society's attitude towards women travelling alone.

## Granting or Refusing the Claim

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After reaching a decision, the decision maker should grant or refuse the application according to the normal provisions outlined in the APIs.

**Enquiries:** Further enquiries should normally be made in writing via a senior officer to Group B, Asylum Policy Unit.

## Document Control

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