



# Gender in Refugee Law. From the Margins to the Centre

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Since gender sensitivity was first given recognition under the official UNHCR Guidelines in the 1990s, approaches in decision making processes and the legal framework have constantly been influenced by questions of gender. However, gender is no longer at the centre of refugee agenda and, as the evidence beyond this volume suggests, even in the jurisdictions that were the first to recognise the need for gender sensitive approaches in analysing asylum seekers' claims, an astonishing number of decisions and practices do not meet the standards of the UNHCR guidelines (Arbel, Introduction: p.6).

*On the basis of these assumptions, the authors of this volume bring attention to the current challenges of both women and men seeking refuge on the basis of gender-related persecution in a joint effort to return gender to its place at the forefront of the refugee law agenda.*

One of the limitations of the legal framework within which asylum claims on the basis of gender-related persecution are made derives from the 'particular social group' (PSG) approach, often the only available ground for these claimants in most jurisdictions. In the first chapter, Michelle Foster investigates both the gaps at the theoretical level, and the practical challenges that result from the misinterpretation of the UNHCR Social Group Guidelines, such as the cumulative rather than disjunctive use of the conditions under which a PSG ground could be defined. Some of the obstacles have been overcome by direct representation, according to Deborah E. Anker (Chapter 2), which has managed not only to change the culture of decision-making, but moreover to influence it at higher levels (p. 67). Even if the initial resistance has been overcome, much remains to be done, as Karen Musalo (Chapter 3) makes a strong case for in showing





inconsistency at the decision-making level, where cases with similar facts and conditions often lead to different outcomes (p. 74).

Another impediment to asylum claims based on gender-related persecution refers to credibility. The unreasonably high standard of proof required, combined with unfounded assumptions about what human behaviour and the impact of shame and trauma on disclosure and demeanour, disproportionately affect women in credibility assessments (Deborah Singer, Chapter 4, p. 101). Jane Herlihy (Chapter 5) develops on the psychological barriers at work when it comes to expressing gender identity and points to the need to take into account the ways in which our construction of gender can interfere in the processing of asylum claims (p. 133). Going even further with this argument, Claire Bennett (Chapter 6) shows how when faced with sexual stereotypes, lesbians find it difficult to reveal their sexual identity, a fact that further influences negatively whether they are to be believed or not, and consequently whether they are to be granted legal protection or not.

The obstacles to addressing gender sensitivity in asylum claims do not come to a halt here. Connie Oxford (Chapter 7) puts an emphasis on the hegemonic narratives under which claims have to be formulated in order to be 'successful', which shows why pressure through advocacy to recognise all forms of violence against women is at stake, while Maria Hennessy (Chapter 8) advocates for the use of training and strategic litigation as tools to correct the serious inconsistency between law and practice and to address gender inequality better. In this way, gender-related persecution stands a chance of being contextualised as just one aspect of a complex net of power relations and social structures, leading in return to a better response to the needs of trafficked women (Susan Kneebone, Chapter 9), or to the development of gender-sensitivity in other legal areas that juxtapose with refugee law, such as humanitarian law (Christel Querton, Chapter 10).



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*The volume makes a strong case in arguing that part of what has pushed gender from the centre of the refugee agenda consists in the general anti-refugee policy that each country in a position to do so takes part in.*

Measures such as the Safe Third Country Agreement, which bars asylum seekers in the US from making refugee claims in Canada or at the land border and vice versa, not only disproportionately affect women, but ultimately make it more difficult to see that this phenomenon is taking place, as Arbel suggests in her chapter (p. 258). The fact that Canada itself – the first country to implement UNHCR Gender Guidelines – actively contributes to the demise of gender-sensitivity in refugee law signals a massive lack of advocacy. Shauna Labman and Catherine Dauvegne (Chapter 12) show how the key gaps – identified over two decades ago – in the consideration of gender in Canadian refugee law have not yet been properly addressed, despite the continued increase in their importance (p. 276).

Identifying the current place of gender in refugee law is part of a larger current theme that includes discussions on new interdictory policies Ball (2015) together with the concern that UN resolutions on gender inequality have only led to very slow advances – see, for instance, Hilker’s (2015) post on UN Security Council Resolution 1325 on Women, Peace and Security. What they all have in common is the imperative to recognise all forms of violence and inequality. Otherwise, the sole concept of ‘gender’ as it is largely interpreted by decision-makers in most jurisdictions will not suffice to challenge the ‘us’/‘them’ divide between countries that generate refugees and those that do not (p. 279) – where the immediate implication is that the latter ‘save’ the former.

*The interdisciplinary approach of the volume is achieved by bringing together reflections from different actors working on asylum claims, ranging from law scholars and psychologists, to those in the advocacy community.*

As such, this volume challenges the assumptions on which our current



interpretation of gender in asylum claims is founded. Nevertheless, while discussing the asylum claimants' situation in the Western world is a never ending story. In order to dissolve the aforementioned dichotomy underlying the mainstream discourse about refugees, the 'refugee producing countries' must be given a voice in future studies, academic publications and advocacy situations. *Gender in Refugee Law* constitutes a milestone in this process, as it paves the way to further advances in refugee law - such as a study examining on the one hand how refugees find out about the asylum claim process, and on the other how governments and society view refugees (pp. 171-2). For this reason, scholars in anthropology and other social sciences, whose work is critical in the investigation of this issue, would find this book of particular interest in their endeavours. It not only shows how gender has been pushed from the centre to the margins of refugee law, but more importantly, it successfully proves the urgency of bringing it back to its former place.

## References:

Ball, Michelle. May 31, 2015. The Shifting Borders of Interdiction and Asylum: A Canadian Case Study of Safe Country of Origin Policies. Available at: <https://refugeereview2.wordpress.com/2015/05/31/the-shifting-borders-of-interdiction-and-asylum-a-canadian-case-study-of-safe-country-of-origin-policies/>

Hilker, Lindsay McLean. May 8, 2015. UN Council Resolution 1325 on Women, Peace and Security: What Has It Achieved? Available at: <http://allegralaboratory.net/un-security-council-resolution-1325-on-women-peace-and-security-what-has-it-achieved-2/>

**Arbel, Efrat, Dauvergne, Catherine and Millbank, Jenni (ed.). 2014. *Gender in Refugee Law. From the Margins to the Centre*. Routledge. 296 pp. Hb: £90.00. ISBN: 9780415839426.**



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