

Engendering Protection

The Case of Women Refugees

In Latin America, Asia, Africa, and elsewhere around the world, women bear the brunt of disasters, both natural and human-made. Women and children comprise roughly 80 percent of internally displaced and refugee populations. The sheer magnitude of this numerical dominance presents a strong case for the centrality of women in refugee research and policy. While men and women often share common experiences, women face risks unique to their gender. Women are vulnerable at all stages of displacement; during flight and resettlement, as well as during repatriation or return. In many cases, it is the threat of gender-based exploitation that causes women to flee across borders or to seek safe havens within their own country. Despite growing awareness of gender-related risks, there are no separate legal categories for women in international and national regimes of protection. This paper explores the challenges posed to women by the absence of formal legal protections. It also highlights the impact of global feminism on exposing the dangers faced by refugee women and the need for gender-specific policies within international relief and human rights agencies. The author proposes that protection regimes must do more than guarantee women's physical safety. Reframing the refugee support system requires a comprehensive focus on women's rights, women's empowerment, and their full participation in the policies and practices that affect their lives.

In Latin America, Asia, Africa, and elsewhere around the world, women bear the brunt of disasters, whether natural or human-made. Women and children comprise roughly 80 percent of internally displaced and refugee populations. Most of these women come from the developing world. The sheer magnitude of this “numerical dominance” presents a strong case for the centrality of women in refugee research and policy (Kaapanda and Fenn). Yet statistics tell only part of the story. There is increasing evidence that forced migration is

highly gendered in other ways. While men and women often share common experiences—the destruction of property, the loss of livelihoods, the disruption of social networks—women face risks unique to their gender. These risks include rape, demand for sexual favors, and human trafficking for domestic labor or the sex trade. Women are vulnerable at all stages of displacement; during flight and resettlement, as well as during repatriation or return. In many cases, it is the threat of gender-based exploitation, such as genital mutilation or forced marriage, that causes women to flee across borders or to seek safe havens within their own country.

Policy Responses — Protections and Limitations

Despite growing awareness of gender-related risks, there are no separate legal categories for women in international and national regimes of protection. The most widely accepted definition of a refugee is enshrined in the 1951 Convention Regarding Refugees; more than 100 nations are currently signatories. The Convention is the only refugee accord of global scope, with many nations having imported its standards into domestic immigration legislation (Hathaway). The 1951 Convention, written in the aftermath of the Second World War, requires a “well-founded fear” of persecution on the part of those seeking refuge. Persecution is based on *who* the refugee is (race, nationality, social group) or *what* s/he believes (religion, political opinion) (UNHCR 1993). Significantly, gender is not included in the enumerated grounds of persecution. Critics of the 1951 Convention argue that the gender blindness of this accord—with its privileging of neutrality, universality and equality—denies women’s unique experiences. A non-gendered concept of fear, critics contend, has resulted in procedural guidelines that fail to acknowledge women’s forms of persecution. The threat of death or loss of liberty are valid grounds for asylum; the threat of sexual violence or human trafficking are not.

The literature on refugees has increasingly concerned itself with the different motivations and challenges women experience when they leave their country of origin. Not only do women fear persecution for different reasons, they “face a different set of problems on becoming refugees” (Chimni 5). Ranabir Samaddar insists that this failure to acknowledge gender-specific vulnerabilities has several important implications. It obstructs women’s access to asylum. It marginalizes gender-based crimes. And it turns the female refugee into a “political non-subject.” Samaddar’s concerns are echoed by many feminists, who cite the omission of gender in the 1951 Convention as evidence of “the depth of gender delegitimation in refugee contexts” (Indra 3). Feminists argue further that current legal definitions of persecution privilege the male-dominated public sphere, thereby neglecting the private realm of women’s oppression. Doreen Indra insists that the addition of gender as an enumerated ground for refugee status must be coupled with a redefinition of persecution. The situation of refugee women can only be improved, she maintains, when “state oppression

of a religious minority” holds equal place with “gender oppression at home” (Indra 3). Others argue passionately that the Convention refugee definition

... ignores the persecution that girls and women endure, even die under, for stepping out of the closed circle of social norms; choosing a husband in place of accepting an arranged marriage; undergoing an abortion where it is illegal; becoming politically active in the women’s movement. Women are also abandoned or persecuted for being rape victims, bearing illegitimate children or marrying men of different races. (Bonnerjea 6)

The international scope of violence against women, and the concomitant need for international protections, is further underscored in the following:

Every day, thousands of women are beaten in their homes by their partners, and thousands more are raped, assaulted and sexually harassed. And, there are the less recognized forms of violence. In Nepal, female babies die from neglect because parents value sons over daughters; in Sudan, girls’ genitals are mutilated to ensure virginity until marriage; and in India, young brides are murdered by their husbands when parents fail to provide enough dowry. In all these instances, women are targets of violence because of their sex. This is not random violence; the risk factor is being female. (Heise 3)

Proponents of the historic accord claim that the drafters of the 1951 Convention deliberately left the parameters vague. In the words of one scholar, “it was an impossible task to enumerate in advance the myriad forms [refugee status] might assume” (Chimni 4). Many engaged in the issue argue that separate legal status for women is not warranted. Rather, what is required is the inclusion of gender-based discrimination and violence under existing categories. There is increasing international support for the application of the “particular social group” grounds to the claims of women who allege a fear of persecution by reason of gender. The United Nations High Commission for Refugees (UNHCR) the primary international agency charged with protecting and assisting asylum-seekers, has repeatedly asserted that refugee women have special needs in the area of protection. In 1985 the UNHCR Executive Committee formally recognized that refugee women and girls encompass the majority of the world’s displaced populations. Conclusion No.39 likewise states that states are “free to adopt” the interpretation that women fearing gender-based persecution “should be considered a member of a social group for the purposes of determining refugee status” (UNHCR 1985). Included in this category are women asylum-seekers faced with harsh or inhumane treatment based on non-conformity to restrictive or discriminatory social norms.

Since the mid-1980s, UNHCR has published a series of Conclusions that focus on the special needs of refugee women and underscore the importance of gender guidelines within international law. The Conclusions address first and foremost the vulnerability of refugee women and stress the need for improved protection to prevent sexual violence. In 1990 UNHCR pronounced that severe gender discrimination, prohibited by the *Convention on the Elimination of all Forms of Discrimination Against Women* (CEDAW), can be used to grant refugee status. The following year UNHCR released *Guidelines on the Protection of Refugee Women*, which outlined protection measures for women in refugee camps. The Guidelines also recommend procedures for improving women's access to the refugee adjudication process (UNHCR 1991). UNHCR likewise introduced a "Women at Risk" program, which seeks to identify refugee women who are at extreme risk and to expedite their resettlement to one of seven developed countries sponsoring the program. Women perceived to be at high-risk are those who have protection problems and are single heads of family (UNHCR 2002).

In 2000 the United Nations Security Council passed Resolution 1325, a landmark decision that linked gender equality to global security (Hill). Resolution 1325 calls upon the UN Security Council, member states and all other parties (non-state actors, militias, humanitarian agencies, civil society) to take action in four key areas: the participation of women in decision-making and peace processes; gender perspectives and training in peacekeeping; the protection of women in conflict and post-conflict scenarios; and gender mainstreaming in UN programs and monitoring. UN Resolution 1325 is widely considered groundbreaking policy. Building on international standards such as CEDAW, Resolution 1325 marks the first formal acknowledgement by the Security Council of women's experiences in armed conflict. The resolution aims to protect refugee women from violence and abuse, while simultaneously ensuring their participation in the peace process. The Security Council likewise pledges to address human rights violations committed by UN peacekeepers against women refugees and to increase gender training of field personnel. While Resolution 1325 is not legally binding, it "sends a strong message" to UN bodies, governments and involved parties that women's protection and participation are vital components of a sustainable peace (Amnesty International).

Awareness of the plight of refugee women and their right to protection has led a number of humanitarian agencies to establish policies and guidelines that address gender concerns. According to UNICEF, "the issue of protecting refugee women has by no means been resolved, but at least the mechanisms for improving the situation are in place" ("Select UNICEF Policy Recommendations" 38). UNICEF has recommended the appointment of gender specialists at field locations, as well as improved monitoring and reporting of gender abuses and human rights violations. The International Committee of the Red Cross (ICRC) has included in its provisions an "Article on the Protection of Women." Article 76 stipulates that "women shall be the object

of special respect and shall be protected against rape, forced prostitution and any form of indecent assault.” The ICRC proposes further that women with dependents “have their cases considered with utmost priority” (ICRC 1995). In 1993 Canada became the first country to adopt formal procedures for the adjudication of refugee claims by women. The Canadian Immigration and Refugee Commission recognizes gender-based persecution as legal grounds for refugee status. In 1996 the IRBC updated its guidelines to include greater sensitivity to the difficulties faced by women during determination hearings, particularly when their experiences are humiliating or traumatic (IRBC 1996). In May 1995 the United States became the second country to adopt formal gender guidelines (Chimni 5). Section III of the U.S. Immigration and Naturalization Guidelines states that “the applicant’s gender may bear on the claim in significant ways” and instructs adjudicators to “give proper consideration to gender-related claims” (USINS 1995).

Scholars of refugee law note that, while such guidelines mark significant progress in the area of protection, “they coexist with a host of restrictive practices which all but ensure that women will not have access to them” (Chimni 6). U.S. guidelines acknowledge that membership in a particular social group is the “least clearly defined” ground for eligibility as a refugee (USINS 1995). The 1995 document likewise provides a number of legal precedents where female claimants (from Iran, El Salvador and Poland) failed to produce adequate evidence to safeguard their asylum. In most cases, refugee women are unfamiliar with required legal procedures and are wary of local police and judicial authorities. The Working Group on Women, International Peace and Security reports that women refugees are not educated about protections or allowed to learn of their rights. Because of this, potential applicants are treated as “ill-educated, traumatized victims,” not as courageous individuals with valid and pressing concerns (Working Group 2002). Women’s lack of legal recourse is further hampered by the absence of “timely, systematic and sensitive” responses by international and local authorities (Human Rights Watch n.d.).

Living in No Man’s Land—Women IDPs and the State

There are currently 20–25 million internally displaced persons worldwide. The causes for displacement vary. In some regions, it is conflict or human rights violations; in others, it is natural or man-made disasters. Despite the magnitude of the crisis, IDPs do not fall under the protection mandate of a single agency. There is also no international convention that delineates their rights under international law. While refugee protections provide an important moral framework, IDPs remain by definition within their national borders. They are therefore under the domestic jurisdiction of their home countries. This absence of a “coherent or consistent jurisprudence” (Goodwin-Gill 67) allows states a large measure of discretion in the treatment of the internally displaced.

Scholars nevertheless are divided on the need for a specific legal framework. Some contend that existing humanitarian laws “offer a firm basis to enforce the accountability of states” (Chimni 391). To introduce separate protocols would be to complicate, and ultimately undermine, current protections. Others, including the UN Special Representative on IDPs, counter that national governments and local authorities—who bear primary responsibility—lack the capacity and even the will to ensure the safety of their own people (Deng and McNamara 24).

Host countries are also complicit in the abuses that cause displacement. More than three-fourths of all wars in the last decade have been wars between the state and its people. The targeting of civilian populations has increased dramatically, with the UN reporting twice as many conflict-induced IDPs as refugees (UNOCHA 2006). In these wars against the “enemy within,” it is again the women who suffer most. States can punish women directly based on politics, religion or a refusal to conform. Alternatively, the State can express its complicity by allowing others to perpetrate abuses with impunity. In many instances, the State maintains the paradoxical position of both displacing women for greater consolidation and authority and controlling female citizens to maintain patriarchal norms. Indeed, it is often excessive control over women’s lives that causes them to flee. Fundamentalist movements in Afghanistan and Iran offer two recent and compelling examples. Paula Banerjee shows how in South Asia, women are simultaneously victimized by the state and transformed into subjects that require state protection. The birth of Human Rights Commissions in the 1990s did little to hide the emergence of ever-expanding conflict zones in the region. The case of South Asia suggests that national human rights institutions are no guarantor of human rights protections. Banerjee draws on the words of one scholar who observes: “It is unclear why some governments would create national institutions to implement international norms that they routinely violate” (Banerjee 280).

In 1998 the UN sought to enhance the protection of IDPs by publishing international standards for the internally displaced. These *Guiding Principles on Internal Displacement* provide a framework for states, intergovernmental and non-governmental agencies when addressing internal displacement. The principles identify rights and guarantees during all stages of displacement, as well as during return and reintegration. The *Guiding Principles* make gender issues a top priority. The UN document identifies the special needs of women and children, including the need for physical safety, reproductive health care, and counseling for sexual and other abuses. The document likewise advises authorities to include women in the planning and management of their dislocation, as well as the distribution of supplies (UNOCHA 1998). CEDAW, along with the 1999 Optional Protocol, establishes specific protocols for states to proactively support and protect displaced women. Among these are measures to prevent sexual violence, trafficking and gender-based exploitation (Banerjee 281).

Protection guidelines notwithstanding, the UN has identified a “universal”

attitude among humanitarian agencies that more needs to be done (Deng and McNamara 25). The ICRC continues to protect and assist internally displaced women and children. UNHCR increasingly highlights gender-based abuses and works to improve camp layout, security patrols, and the provision of services to survivors of sexual assault. But all too frequently, efforts to increase international involvement are rejected as violations of state sovereignty. Consequently, many assistance agencies are reluctant to interfere. UNICEF responded by issuing additional policy recommendations on the gender dimensions of internal displacement. The agency emphasizes the continued need to safeguard women and girls and states that “in general, agencies have been more willing to direct attention and resources to providing material assistance than to involving themselves with participation, protection and gender violence issues.” Included in UNICEF’s recommendations are interagency training on gender and human rights, the dissemination of international laws and conventions, and greater pressure on states to protect their citizens. The consequences of *not* doing so, UNICEF maintains, “resonate in overlooked human rights abuses against women and girls” (“Select UNICEF Policy Recommendations” 38).

Continuing the Debate

Despite a plethora of gender-related policies, international and national protection systems have repeatedly failed. Women’s advocates and activists argue that protection remains secondary to survival, and that the provision of temporary shelter and basic services has done little to prevent widespread abuse. A recent and tragic example is the protracted violence in Darfur and Chad (Human Rights Watch 2005; “Stop Violence Against Women”). In July 2004, the four-year anniversary of Resolution 1325, UN Secretary-General Kofi Annan urged member states to transform rhetoric into reality, to take concrete and immediate steps to end gender violence and to promote gender equality. The objectives of UN Resolution 1325 are clear; but states must also be willing to act. According to a recent report from the Australian National Committee on Refugee Women (ANCORW), the continued vulnerability of displaced women is not the result of missing legislation, but rather a failure to implement protections that already exist. The report cites the difficulty of identifying women at greater risk (when all refugee women are potential victims), the failure to remove women from situations of danger, and the refusal to regard sexual abuse as grounds for protection. The report likewise references a “culture of distrust” regarding women’s experiences and the poor quality of existing social and legal services. Resettlement in a host country is no guarantee of effective protection. Refugee women are often placed in situations where officials and agencies neither understand, nor are equipped to deal with, the physical and emotional scars of protracted displacement (ANCORW 2-4).

Feminists argue that the inclusion of gender as a critical consideration in refugee determination is necessary to avoid a male paradigm that elides

women's experiences under a false universalism (Greatbatch). However, we must be careful not to universalize women's experiences for the sake of protection. Refugee women are not a uniform category. Gender awareness and analysis plays a vital role in understanding women's experience of dislocation. Yet gender is only one form of identity. Displaced women represent different ethnic, linguistic, political, economic and religious affiliations. These other identities divide women as well as unite them and also play a crucial role in refugee determinations (Kaaconda and Fenn). One of the major difficulties faced by displaced women is their loss of individual subjectivity and their inclusion into an "homogeneous lot" of "hapless victims" (Editorial" 2003). Media reports and donor agencies contribute to this process. Such images sensationalize the plight of women refugees; they also bolster a sentimentalized notion of women's helplessness and need for male protection (Editorial" 2000). The homogenization of female victims provides further "proof" that men are the natural decision-makers and guarantors of women's safety. Ironically, such protection is often expressed through acts of male aggression against perceived threats to female "honor." Thus, women are used to ignite the very antagonisms that give rise to their displacement.

The Women's Commission for Refugee Women and Children describes displaced refugee women as "resilient survivors, courageous protectors and untiring caregivers" (Buscher and McKenna). Hence, women are not just in need of protection, they actively protect others. Forced displacement causes a dramatic increase in the number of women heads of household. With male family members killed, captured or missing, women assume added responsibilities for providing food and shelter for their children and relatives. Many humanitarian agencies now recognize that, in contrast to men, women refugees and IDPs derive considerable confidence from their new roles as providers and protectors. While men suffer a loss of position and prestige, women often develop a stronger sense of political consciousness and agency. Increasingly, women refugees are rejecting patriarchal notions of their rights, roles and identities. Women's narratives reveal a multiplicity of protests against restrictive familial structures, state legislative and judicial systems, and oppressive cultural and religious practices (de Rivero). Empowering refugee women, and creating opportunities for active participation in decision-making, implementation and assessment, are key areas for improvement. This "help to self-help" approach makes women major stakeholders in the policies and programs that directly affect their lives. Women's involvement in their own protection and well-being signals an important shift from viewing displaced persons as victims to emphasizing their resilience, determination and capacity.

Conclusion

Gender-based violence and discrimination is by no means limited to displacement. Abuse and the lack of civil liberties exists as part of many women's daily

experience. Yet the disruptions caused by war or disaster exacerbate pre-existing social tendencies. Knowledge of gender-based risks and needs is therefore an essential first step in enhancing women's protection (Buscher and McKenna). Gender-disaggregated data is necessary to ensure that refugees have adequate water, sanitation, medical care and educational facilities. Such data is also necessary to plan effective strategies for protection (Hans). To further mitigate risk, broad strategies are required to change the attitudes and behaviors of the perpetrators, whether in the country of origin or the host nation. Advocates for women's rights demand greater accountability by societies that allow gender-based crimes to go unpunished (Buscher and McKenna). Others propose the establishment of safe houses for victims of violence, gender-based training for police and security forces, and free legal counseling to inform women of their rights.

Many practitioners and scholars correctly observe that protection must extend beyond the provision of physical safety to the overall well-being of displaced populations. Asha Hans writes that refuge is, at best, only a temporary solution. The primary issue, she insists, is to create a system of protection that prioritizes equity as well as security. Reframing the refugee support system requires a comprehensive focus on women's protection, women's rights and women's full participation in humanitarian policy and planning. While governments cannot be absolved of responsibility, they cannot meet all the needs of displaced women. The steady increase in refugee and IDP populations demands that NGOs, social activists and citizens' groups play an active role (Hans). Action plans for protection should include culturally appropriate reporting systems regarding gender-based violence, as well as long-term support through legal, psychosocial and reproductive health services. Amnesty International recommends the UN-wide ratification of all treaties related to the protection of women, and that national laws be made consistent with international law. Amnesty likewise demands greater transparency in monitoring procedures, the effective training of judicial staff, and the participation of women at the local, national, regional and international level (Amnesty International).

But protection regimes must do more than guarantee women's physical safety. They must take into account the overall status of women, their chances for empowerment, and the new social roles women adopt in times of emergency. The perception that women are less "economically viable" not only hampers their access to asylum, but can force women into prostitution as a means of survival (Hans). More broad-based measures for women's protection include the provision of education, literacy and skills training, as well as childcare and small loans to help refugee women earn a living. At the policy level, women must have equal access to senior positions in United Nations departments and missions. UN Resolution 1325 provides a key tool for mobilization. Women at the grassroots, national, and international level must actively participate in conflict prevention, resolution, and peacebuilding. All of these measures encourage women to demonstrate their strength, knowledge, and skills. Equally

important, such measures promote a human rights agenda that combines freedom from violence with freedom and equality. As one scholar writes, the ultimate goal is to help refugee women “tread on a smoother path to self-sufficiency” (Basu Roy).

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