

Women and the 1951 Refugee Convention: Fifty Years of Seeking Visibility

NAHILA VALJI

Abstract

The refugee regime, built on the 1951 Convention relating to the Status of Refugees, has long excluded women from the international right to protection from persecution. The gender-blind parameters of the Convention have been exacerbated by the same qualities in the international legal system of which it is a part: state practices toward asylum-seekers, and the dichotomous construction of the refugee regime as a whole, which has produced and reproduced victimizing identities of refugee women. Advances today, such as the adoption of gender guidelines in a number of states, have been more symbolic in effect than transforming. New policy paths need to be evaluated to ensure that the next half-century of refugee protection does not duplicate the inequalities of the past.

Résumé

Le régime juridique encadrant la protection des réfugiés, bâti sur la Convention des Nations Unies de 1951 relative au statut des réfugiés, a longtemps servi à priver les femmes du droit international de protection contre la persécution. Les paramètres de la Convention, qui sont indifférents aux spécificités de genre, ont été intensifiés par les mêmes qualités se trouvant dans le régime juridique international dont elle fait d'ailleurs partie, par le traitement réservé aux demandeurs d'asile par les États et par la structure dichotomique du régime de la protection des réfugiés en général qui a produit et reproduit pour les femmes demandeurs d'asile des identités de victimes. Les progrès que l'on peut voir aujourd'hui, tel que l'adoption par un certain nombre de pays de programmes de sensibilisation aux spécificités de genre, sont plutôt symboliques et n'apportent pas de transformations réelles. Conséquemment, pour l'avenir, il

importe d'examiner de nouvelles initiatives en matière de politiques à suivre afin de s'assurer que le prochain demi-siècle de la protection des réfugiés ne perpétue pas les inégalités du passé.

Sex-specific violence and discrimination has never been treated with the same seriousness as other human rights abuses . . . If a person is murdered because of his or her politics, the world justifiably responds with outrage. But if a person is beaten or allowed to die because she is female, the world dismisses it as cultural tradition.

—Lori Heise
Crimes of Gender

Until very recently, if one spoke of domestic violence within mainstream refugee scholarship, it could safely be assumed that the reference was to the internal security concerns of a state—perhaps fears of domestic clashes in the wake of large flows of migration. One of the last actions of outgoing U.S. Attorney General Janet Reno was to overturn a 1999 Board of Immigration Appeals decision to deny political asylum to a Guatemalan woman who had been persecuted relentlessly at the hands of an abusive husband. The decision did not grant asylum, but rather ensured that the case was held over until new regulations, currently before the Department of Justice, can be decided upon.¹ If approved, the new regulations will facilitate the case of women fleeing gender-specific or gender-based persecution, including that of domestic violence.²

The last decade has seen a number of such advances in the policies of industrialized states, as increasing awareness

Refugee Convention At Fifty

Richard Bailey



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