



Researching country of origin information on gender and persecution in the context of asylum and human rights claims

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Introduction

Country of origin information (COI) is required within the asylum decision making process as it provides 'objective' evidence to help assess and determine asylum and human rights applications.

Particular difficulties arise in substantiating women's cases due to a lack of research in the field and consequently a lack of awareness of issues affecting women amongst COI practitioners. Research in relation to a case needs to focus on the specific circumstances of the individual applicant.

1. Gender

a. What do we mean by 'gender'?

'Gender' refers to socially and culturally defined roles and identities based on whether a person is male or female. As a social construction gender roles dictate power relations between men and women, having significant implications for these relations, identity, responsibilities, behaviours and status.

Gender differs to sex, which is a biological determination. Both men and women experience discrimination on the basis of gender.

Examples of gender characteristics include

- Women and girls are expected to do housework and tend crops rather than go to school
- Men are allowed to drive cars, women are not
- Men should not wear make up, women can
- Men are considered head of households, women are submissive to their husbands
- Women may need permission to leave family home, whilst men do not

Examples of sex characteristics include

- Women give birth, men do not
- Women menstruate, men do not
- Men have testicles, women do not¹

The experience of having to conform to ascribed gender roles can be oppressive for both men and women, activities may be prohibited and

¹ World Health Organisation, What do we mean by "sex" and "gender"? Available at www.who.int/gender/whatisgender/en/index.html

there may be demands and expectations with regard to one's behaviour and personal conduct.

Socially defined rules govern how members of each gender should behave when interacting with each other. Not conforming to the ascribed role can lead to various levels of persecution which is used to intimidate individuals into conforming or as punishment for their transgression.

Men can be victims of gendered societal expectations too, particularly with regard to sexuality and orientation with pressure to conform to 'masculine' behaviours. Men (and boys) can experience forced marriage, be victims of honour crimes or sex slavery.

The remainder of this paper focuses on the persecution experienced by women.

b. What is gender persecution?

Gender persecution can be divided into two forms, gender related persecution and gender-specific harm.

i. Gender related persecution

'Gender related persecution' refers to the causal relationship between the persecution and the reason for the persecution², i.e. when the reason for persecution is related to a person's gender. It refers to people who are persecuted because they refuse to conform to expectations for their gender (e.g. refusing to wear a veil).

'Gender related persecution' refers to the *reason* why women are persecuted and encapsulates the experience of women being persecuted *because* she is a woman.

ii. Gender-specific harm

This term refers to forms of harm which are "more frequently or only used against women or affect women in a manner which is different to men"³, such as bride burning, forced (and early) marriage, genital mutilation, lack of autonomy over reproductive life (including forced abortion, refusal of access to contraception, forced sterilisation), societal and legal discrimination.

² Immigration Appellate authority, Asylum and Gender Guidelines, November 2000

³ Immigration Appellate authority, Asylum and Gender Guidelines, November 2000

Gender specific harm refers to the *method* by which women are persecuted, and encapsulates women being persecuted *as women*.⁴

2. How are women's experiences of persecution different from men's?

The traditional image of a refugee is of a male political activist who is persecuted for his political activities against the state. Women may also be persecuted for their political activities.

However women's political activities often take a different form to men's. During armed conflict women may be involved as willing or coerced armed combatants. They may also hide people, pass messages or provide community services, food, clothing and medical care. In addition, women may be persecuted for their imputed political opinion in which they may be subjected to human rights violations simply because they are the wives, mothers or daughters of people whom the authorities consider to be "dangerous" or "undesirable".

Additionally women face persecution which is unique to them as the persecution is related to their gender, for example rape and sexual violence, forced sterilisation, genital mutilation and domestic violence, from which women may be unable to get state protection. Women who do not conform to the moral or ethical standards imposed on them may suffer persecution from the state, members of their family and/or community. Women may be targeted because they are particularly vulnerable, for example, those who are young, elderly, disabled or those with caring responsibilities.

Research cannot be carried out in a vacuum, it is crucial that researchers are aware of the context in which abuses are carried out. In addition to statistical and legal information attention should be paid to the cultural and social context of gender based harm and the nature of patriarchal societies.

"Gender relations, and therefore gender differences, are historically, geographically and culturally specific, so that what it means to be a woman or a man varies over place and time. Any analysis of the way in which gender (as opposed to biological sex) shapes the experiences of asylum seeking women, must therefore *contextualise* those experiences."⁵

In many parts of the world societies foster unequal power relations between women and men in public and private. In countries of origin women may experience secondary status to men, experiencing social,

⁴ RWLG, Gender Guidelines for the determination of Asylum Claims in the UK, July 1998

⁵ RWLG, Gender Guidelines for the determination of Asylum Claims in the UK, July 1998

cultural, political, economic and legal subordination.⁶ A woman may have limited opportunity and means to access protection either in law or where laws exist, in reality. Attention should be given to laws laid out in theory and the reality of a woman being able to access their protection (for example in some countries police may view rape as a private matter and refuse to process complaints).

It cannot be assumed that women asylum seekers will have the freedoms in their countries of origin enjoyed by western women.

3. Researching women's asylum claims

a. What are the difficulties in accessing information about women?

Many organisations producing country of origin information focus on the male experience as indicative of the human rights situation in a country. Although women's human rights concerns are increasingly appearing on the agenda, information on women's human rights in country reports often only constitutes a paragraph unless the report is specifically focused on women. This paragraph doesn't adequately reflect the fact that women are frequently subjected to forms of persecution different to men.

In researching women's cases, it may be necessary to go beyond sources appropriate for other claims and locate organisations that specialise in gender specific issues such as female genital mutilation, honour crimes and domestic violence.

UNHCR has published guidelines on international protection and gender-related persecution⁷. It acknowledges that evidence to support gender-related claims might not be as readily available as for other refugee claims.

It is important to recognise that in relation to gender-related claims, the usual types of evidence used in other refugee claims may not be as readily available. Statistical data or reports on the incidence of sexual violence may not be available, due to under-reporting of cases, or lack of prosecution. Alternative forms of information might assist, such as the testimonies of other women similarly situated in written reports or oral testimony, of non-governmental or international organisations or other independent research.⁸

⁶ United Nations, In-depth study on all forms of violence against women, 6 July 2006

⁷ Guidelines on International Protection: Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees, 7 May 2002

⁸ Guidelines on International Protection: Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees, 7 May 2002. Point 36, x.

Country of origin information should be collected that has relevance in women's claims such as the position of women before the law, the political rights of women, the social and economic rights of women, the cultural and social mores of the country and consequences for non adherence, the prevalence of such harmful traditional practices, the incidence and forms of reported violence against women, the protection available to them, any penalties imposed on those who perpetrate the violence, and the risks that a woman might face on her return to her country of origin after making a claim for refugee status.⁹

b. What categories of harm are important for women's cases?

The table in Annex 1 provides a series of categories and sub-categories that has been found useful in classifying gender specific harm. Researchers undertaking women's cases need to familiarise themselves with these categories as they are pertinent to asylum and human rights research.

c. What issues are raised in relation to women's cases and country of origin information?

The following issues that are particularly of relevance to women's cases need to be considered by the COI researcher.

i. Individual circumstances

A woman's individual circumstances will be scrutinised by the courts so information concerning the following will be needed;

- Age
- Ethnicity/Language/Religion
- Area of residence
- Marital status
- Dependents
- Occupation/education

ii. Agents of persecution

- State agents
- Non State agents; Father, husband, brother, other relatives, community members, use of private detectives/bounty hunters
- Family as persecutors in practices such as domestic violence, FGM, honour crimes, trafficking

⁹ 'Guidelines on International Protection: Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees, 7 May 2002. Point 37, Evidentiary Matters

iii. Invisible groups

- Women often constitute an invisible group in COI as their experiences are not well documented
- Women may be found not credible if substantiating information about the existence of a practice is not reported in COI
- Not being able to find COI on a particular group or issue does not equate to the group or issue not existing

iv. Relocation

- Internal Flight Alternative raises particular issues for women who may not be able to integrate into society without male relatives or have access to employment, accommodation, etc. A single woman may become vulnerable to exploitation, especially if her ethnicity and language identify her as not being from that area. It is uncharacteristic in many countries for a woman to be living by herself, this may lead to her being identified as a troublemaker and further stigmatised.

v. Risk on return

- Woman may be subjected to the practice she fled, by force
- by her actions a woman may be considered to have brought shame to her family and community so she may be at risk from honour crimes
- Social isolation and stigmatisation
- Inability to support herself without male relatives

vi. Individual case research

The contextual framework from which research questions should be viewed include

- The position of women before the law
- Protection of women in reality
- Incidences of failure of the state to provide protection
- Political rights of women
- Social and economic rights of women
- Status of women within society and family
- Concepts of family honour
- Consequences for women who challenge social/cultural norms
- Forms of violence against women
- Consequences for women on return
- Attitudes to same sex relationships

Annex 1

Categories of gender specific harm

Armed Conflict and women
Violence against women in wartime
Providing food and shelter to forces
Domestic Violence
Violence within the family and community
Dowry deaths
Bride Burning
Economic and Social Rights of women
Education
Employment
Widowhood
FGM
Associated health risks (see Reproductive rights)
Stigma against uncut women
Prerequisite to marriage
Secret societies
Health and Women
Availability and costs of medical treatment
Women and children's health services
Mental health
HIV/AIDS and Women
Access to treatment
Social Attitudes, including sex with virgin as cure, women spread HIV
Honour crimes
Self Immolization
Murder
Acid attacks
Marriage
Legal rights
Customary practices
Early marriage
Forced marriage
Polygamy
Divorce
Child custody

Single parenthood
Property rights
Political and civil rights of women
Right to vote
Drive/Travel independently
Refugee and internally displaced women
Migration
Internal migration
Voluntary migration
Forced migration
Asylum seekers
Risk on return
Reproductive health and rights
Coercive family planning
Forced abortion
Forced sterilisation
Virginity testing
Contraception
Spouse permission
Female infanticide
Restrictive social/religious norms
Dress codes
Cultural/social mores
Sexual orientation
Lesbian
Gay
Bisexual
Transvestite
Sexual autonomy
Sexual violence
Rape
Trafficking
Sex slavery
Prostitution
Domestic slavery
Women in state custody
Detention
Prisons
Police treatment

Women's legal status
Discriminatory legislation
Religious laws

Annex 2

Generic gender specific case research questions

The following lists of questions have been compiled on two particular topics, domestic violence and female genital mutilation to provide examples of the range of questions which a country information researcher will need to consider.

a. Domestic Violence

1. Is there legislation banning domestic violence in XXX?
2. What punishment/sentence is given to those found guilty of domestic violence?
3. What is the attitude of police towards women who want to report domestic violence,
4. Are cases pursued by the police?
5. Are there obstacles to women in accessing the legal system to gain protection?
6. What are the socio-cultural attitudes towards domestic violence?
7. Are there women's shelters in XXX?
8. How many women can they accommodate and for how long?
9. What financial support is there for women who have separated from partners due to domestic violence in XXX?
10. How can a separated woman support herself financially in XXX?
11. Is domestic violence grounds for divorce in XXX?
12. What is a woman's child custody rights if she divorces/leaves her husband?
13. Is there stigma attached to leaving an abusive relationship?
14. Would a woman fleeing domestic violence be able to relocate in another part of the country and support herself as a single woman?

b. Female genital mutilation (FGM)

1. Is FGM illegal in XXX?
2. Are these laws upheld in practice?
3. What are the punishments for those performing illegal FGM?
4. What protection is available to women who do not want to undergo FGM?
5. Which ethnic/religious groups practice FGM in XXX?
6. What percentage of women and girls from XXX are subjected to FGM?
7. At what age is FGM usually performed in XXX?
8. What type of FGM is usually performed?
9. What rituals accompany the practice of FGM?
10. What action is taken towards women and girls beyond this age who have not been subjected to FGM?
11. Is there evidence of FGM being forcibly performed?
12. What is the social status of women and girls who are uncut?
13. Is FGM associated with secret/women's societies in XXX?
14. Is FGM a prerequisite to marriage in XXX?
15. What is the socio-cultural justification for FGM in XXX?
16. Which parties are likely to insist on FGM?
17. Would a woman fleeing FGM be able to relocate in another part of the country and support herself as a single woman?
18. Can members of an ethnic group identify people as being from other ethnic groups?
19. Could a single woman exist outside of her ethnic group? What is the effect on a woman who is separated from her ethnic group?

Annex 3

Examples of research issues arising from gender based claims

The following research queries demonstrate the range of issues raised by women's asylum claims which require country information specific to gender persecution.

1. Jordan, Domestic Violence

- The position of divorced women in Jordan, in the family and in society
- Is there any legal protection for victims of domestic violence?
- Is medical and social support available for sufferers of domestic violence?
- Are there any women's organisations supporting and assisting those experiencing domestic violence?
- How effective is the support?
- Are there refuges?

2. Albania, Romania, Serbia, Trafficking for sexual exploitation

I am representing a Romanian girl aged 16. Her parents divorced in 1992 when she was 8 and she lived with her father in Romania until his death in 1996 when she was 12. After his death, she and her brother, sold cigarettes informally across the border in Serbia. In February 2000 when she was 15 an Albanian man forcefully took her from the market stall where she was selling cigarettes. She was trafficked to Albania, exchanging hands between various Albanian men. In Albania she was convicted of prostitution and imprisoned for 2 months. On release she was sold back to a man who had helped traffic her in the first place. She was then trafficked to the UK and forced to provide sex services here. She escaped the trafficker and reports that he has been searching for her and making threats against her life. She has reported him to the police.

It would be helpful if I had background information on file about:

- The prevalence of trafficking and the sex industry in Romania, Serbia and Albania - and risks to her if she was returned to Romania
- Whether young females can approach the authorities for protection
- The type of human rights violations young females are subjected to
- Whether it is common for young females to be detained for prostitution (and conditions in prisons in Albania)
- Any case law or Conventions addressing rape and sexual slavery, which may support her case

3. Uganda, Sexual orientation

I am acting for an unaccompanied minor from Uganda whose basis of claim is that she was persecuted for being a lesbian. Her asylum claim has been refused and we are currently in the process of preparing her appeal. I am desperate to locate an expert who could comment specifically on lesbianism in Uganda. The objective evidence indicates that lesbianism is not illegal in Uganda and there is very little evidence that I could locate indication societal discrimination – at present it seems that attacks have escalated but more so towards gay men. Would be grateful of any assistance.

4. China, Forced sterilisation

I am instructed by two Chinese women asylum seekers whose both fled China to avoid the consequences of breaching the One Child Policy. They are both serving prison sentences in the UK for an offence under section 2 of the Asylum and Immigration (Treatment of Claimants) Act 2004. The Immigration Service has informed me that consideration of their asylum applications will commence after they have completed their sentences at the end of February 2005. I have only taken brief instructions on their claims as yet. They both fear that they may be forced to undergo sterilisation and/or that they may be detained for long periods and/or required to pay a very large fine if they are returned to China.

5. Nigeria (Isoko tribe), FGM

- What is the prevalence of FGM in the Isoko tribe?
- How does FGM fit into the belief structure of the Isoko?
- Any description of the nature of the rituals surrounding FGM in the Isoko
- What is the likely sanction (if any) against an Isoko woman who gave birth to a child without having undergone circumcision. (i.e. what is likely to happen if client returned to Nigeria?)
- Willingness of the authorities in the Delta State to enforce law against FGM - there is a law against it in the Delta State.
- Anything relating to laws against FGM, and state protection on a national level.

6. Angola, Sexual violence

My client is 26 years of age and has no legitimate husband and no children. She is severely traumatised esp. by being gang raped over a

period and having to carry out atrocities herself. I am considering a fresh claim. The fresh claim would essentially be based on the fact that as a "wife" and soldier of UNITA rebels, the client would not have protection on return. Interestingly, in this case it appears (based on information from 2003) that the lack of protection and importantly in this case, access to reintegration and assistance stems from the fact of her being in this position. I have learned that direct access to the benefits offered to other soldiers are not offered to wives who therefore often have to access such support through the very men who took them as wives by force. In addition, it appears that there is serious stigma attached to having been raped and to having assisted UNITA even if it was by force.

I need updates on the rehabilitation situation and IDP situation in Angola especially as it relates to women. Can women survive without family links in any part of Angola? What is the availability of mental health treatment in Angola for the severely traumatised? Also need information on rape stigma and stigma attached to women acting as soldiers.

- What is the rehabilitation situation and Internally Displace Persons situation in Angola especially as it relates to women?
- Can women survive without family links in any part of Angola?
- What is the availability of mental health treatment in Angola for the severely traumatised?
- Do you have any information on rape stigma and stigma attached to women acting as soldiers?

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